

96A532
L.237
CAAT(A)

IN THE MATTER OF AN ARBITRATION

BETWEEN

**CONESTOGA COLLEGE
(Hereinafter referred to as the "College")**

AND

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(Hereinafter referred to as the "Union")**

**AND IN THE MATTER OF THE GRIEVANCE OF
NORM SOCHA (OPSEU #96A532)**

BOARD OF ARBITRATION

**Loretta Mikus
Ed Seymour, Union Nominee
David Cameletti, College Nominee**

APPEARANCES FOR THE COLLEGE

**Stephen Gleave, Counsel
Hans Zawada, Chair,
School of Trades and Apprenticeship
Debra Croft, Human Resources**

APPEARANCES FOR THE UNION

**Andrew Lokan, Counsel
Walter Boettger, Local President
Roy Kummo, Former Professor
Norm Socha, Grievor**

DATE OF HEARING

May 29, 1998

DATE OF AWARD

June 29, 1998

The grievor, Norman Socha, is employed as a Professor at the School of Trades and Apprenticeship at the Detweiler campus of Conestoga College. Between November of 1993 and April of 1994 he was requested to and did work overtime. On August 2, 1996 he filed a grievance claiming he had been denied payment for that overtime. At the commencement of the hearing the College raised a preliminary objection to the arbitrability of the grievance on the grounds that it was filed outside of the time limits in the collective agreement. Article 32.02 reads as follows:

It is the mutual desire of the parties that complaints of employees be adjusted as quickly as possible and it is understood that if an employee has a complaint, the employee shall discuss it with the employee's immediate supervisor within 20 days after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee in order to give the immediate supervisor an opportunity of adjusting the complaint. The discussion shall be between the employee and the immediate supervisor unless mutually agreed to have other persons in attendance. The immediate supervisor's response to the complaint shall be given within seven days after discussion with the employee.

There is very little dispute about the facts of this case. The government buys 8 or 10 week sections of teaching time from the College in the apprenticeship programs. Because the classes are offered in 8 or 10 week blocks, it often happens that teaching hours are under or over those set out in the collective agreement which are a maximum of 20 teaching contact hours 20 per week or 760 per year and a maximum total number of 44 hours per week or 1672 hours per year.

At least six weeks prior to establishing a workload, the hours of work are set out in a Standard Workload Form (Hereinafter referred to as "SWF") and given to the teacher for approval. That SWF includes the teaching contact hours, accumulated contact days, accumulated teaching contact hours, number of sections, type and number of preparations etc.. The teacher is to indicate in writing on the SWF any disagreement with its terms within three days. Any disagreement is reviewed by

the Workload Monitoring Group (WMG). Absent any disagreement, the teacher is deemed to be in agreement with the workload.

The grievor is claiming overtime for three SWF periods; i.e., November 15 to December 17, 1993, January 3 to February 25, 1994 and February 28 to April 8, 1994. He signed off on all three SWF's for those periods without objection. The first claim for overtime payment for those hours was submitted on March 24, 1995, although the College denies receiving it at that time. The next claim for the overtime was dated July 11, 1996, and was submitted to Mr. Hans Zawada, the Chair of the Trades and Apprenticeship Program and the grievor's supervisor.

The grievor testified that he knew that he was scheduled to work overtime hours on his SWF's but assumed that, according to his past experience with overtime payments, he would either be paid automatically or he would be asked to fill out a form claiming payment. His evidence was that when he received his summary of hours worked in July of 1994, he realized the College owed him some overtime pay. He filed the March 24, 1995 claim as a result. Mr. Socha stated that he was very busy teaching more courses than usual at the time and working on his doctorate. He had no reason to believe his overtime claim was a priority. In September of 1995, when he returned from his vacation, he realized he had not been paid and tried to speak to Mr. Zawada.

Mr. Socha testified that he was the Union Steward from 1988 to 1997 and as such was aware of the terms of the collective agreement.

Mr. Gleave, counsel for the College, took the position that the grievance was filed outside of the mandatory time limits of the collective agreement and should be dismissed. He asserted that no matter when the grievor claims he was made aware of the overtime owing, he did not file his grievance within the time limits. He was a Union Steward and knew the terms of the collective agreement. He knew he had worked overtime and knew there were time limits in the collective agreement for filing a claim for that overtime. He could have filed the grievance when he first signed the SWF's with the overtime hours. He could have grieved when he actually worked the hours in 1993 and 1994. He could have grieved when he filed his March 24, 1995 claim. He could have grieved after any one of the discussions he claims he had with Mr. Zawada about the overtime. He could have grieved after the July 11, 1996 memo to Mr. Zawada. The actual grievance was filed outside of the time limits of any of these events.

Mr. Lokan, counsel for the Union, conceded that the time limits in the collective agreement are mandatory but takes issue with the triggering dates suggested by the College. It was his submission that the time limits cannot begin to run until an employee knows he/she has a grievance. The times offered by the College, he submitted, were not practicable. For example, the problem with claiming the overtime within 20 days of signing the SWF is that the claim would be made before the hours were actually worked. Claiming it when it was worked makes more sense, but as far as the grievor understood, the practice was to wait until the end of the school term. By March 24, 1995, the claim had crystallized. The grievor knew what he had worked and knew he had not been paid. The problem is that he still did not know whether he would be paid. The Union submitted that the appropriate time to start the clock is when he knew for certain that his claim had been denied,

which, in this case, was July 17, 1996. The grievance was filed within 20 days of that date and is therefore within the time limits of the collective agreement.

DECISION

After considering the submission of the parties, we are of the view this grievance should be dismissed. The collective agreement requires that grievances be submitted “within 20 days after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee”. In this case the grievor knew when he signed the SWF’s that he was scheduled to work overtime hours. He not only did not file a grievance but he signed off on the SWF’s without comment. He knew when he was paid, both at the time and at the end of the school year that he had not been paid for the overtime hours and did not take any steps to file a grievance or even make a claim for the overtime pay. . He had been a Union Steward for almost ten years and had to know the requirements under the collective agreement. The fact is that he himself did not consider this matter a priority. He cannot expect relief in the circumstances from his own inaction.

The suggestion by the Union that the time limits should not start to run until a grievor knows his claim has been denied is inconsistent with the very concept of time limits. In practical terms that would mean that an employee wait months and even years after the events giving rise to a grievance have occurred and would only be bound by the time limits when the grievance was denied. That would leave the College forever open to grievances years after the event and is not what the parties

intended when they negotiated the grievance procedure. Section 32.02 begins by stating that "it is the mutual desire of the parties that complaints be adjusted as quickly as possible". That allows the parties to deal with these issues while memories are fresh, while the evidence and witnesses are available and before liabilities become too onerous. The Union's argument is inconsistent with those considerations and would not serve the parties well in the future.

The grievance is therefore dismissed.

Dated this 29th day of June, 1998.



Loretta Mikus
Chair



David Cameletti
College Nominee



Ed Seymour
Union Nominee