

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170510**

**Docket: A-246-16**

**Citation: 2017 FCA 100**

**CORAM: TRUDEL J.A.  
SCOTT J.A.  
GLEASON J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**CANADIAN FEDERAL PILOTS  
ASSOCIATION**

**Respondent**

Heard at Ottawa, Ontario, on May 10, 2017.  
Judgment delivered from the Bench at Ottawa, Ontario, on May 10, 2017.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**GLEASON J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on May 10, 2017).

**GLEASON J.A.**

[1] The applicant seeks to set aside the June 2, 2016 award of the Public Service Labour Relations and Employment Board (the PSLREB or the Board) in *Canadian Federal Pilots Association v. Treasury Board*, 2016 PSLREB 46, 127 C.L.A.S. 289. In that award, the Board

allowed the respondent union's grievance contesting the way in which the employer compensated flight followers for scheduled after-hours and week-end work.

[2] The work in question involves monitoring the progress of Transport Canada's Flight Operations Service aircraft that are outside the range of terrestrial radar and radio communication when they are flying over the North Atlantic Ocean. Flight followers are scheduled to perform this work and when so assigned are required to check every 30 minutes for a computer-generated e-mail containing a flight status report that is generated via satellite and GPS communication systems onboard the aircraft. Flight followers can perform this task on their smartphones. They also must be available to receive emergency communications from the aircraft and to conduct required follow-ups in the event of a problem.

[3] The employer was paying standby pay to the flight followers for each shift they were so assigned (payable at the rate of a single hour's pay for each 8 hours when on assignment) as well as overtime for the time it took to receive and review the e-mails and, where applicable, to take calls and conduct follow-ups if the employees worked more than half an hour.

[4] In the award under review, the Board found this to be impermissible and instead determined that the flight followers were entitled to be paid overtime at the applicable collective agreement rates for the entire duration of their assignments, including during periods when they were not actively performing tasks. The PSLREB reasoned that, as the employees were scheduled and required to work every 30 minutes during these assignments, they could not said

to be on stand-by. Rather, as the work was scheduled and performed, the Board found it to be overtime.

[5] The Board further held that the quantum of the overtime payment was governed by article 19.03 of the applicable collective agreement, which provides in relevant part that “all calculations for overtime shall be based on each completed one-half (1/2) hour”. The Board reasoned that this provision meant that employees were entitled to overtime for the entire duration of the assignment as they were working each 30 minutes and therefore part of every half hour, which was to be rounded up under the article in question.

[6] The applicant argues that the Board’s decision should be set aside for either or both of the following reasons: first, because the Board denied it procedural fairness in reaching an interpretation of article 19.03 of the collective agreement that the employer had not contemplated and that had not been discussed during the hearing; and second, because the interpretation given to article 19.03 is unreasonable.

[7] In our view, neither point has merit.

[8] Insofar as concerns the procedural fairness point, as the parties did not agree to have the Board bifurcate the hearing between a determination on the merits and remedy, the issue of remedy was in play and it was therefore incumbent on the parties to make all their submissions on remedy. The fact that the employer may not have considered that the remedy selected was a possibility or that the particular remedy was not requested by the union does not mean that the

PSLREB was required to canvass the parties for their views on the remedy before issuing its award. The situation is distinguishable from that in *Arsenault v. Canada (Attorney General)*, 2016 FCA 179 relied upon by the applicant as there, unlike here, the Board departed from an interpretation that the parties had agreed to. Here, in the absence of any agreement as to remedy, it was open to the Board to fashion a remedy without first running it by the parties.

[9] As for the merits of the Board's interpretation, it is beyond dispute that decisions like the present that involve collective agreement interpretation are entitled to considerable deference as collective agreement interpretation is at the core of the PSLREB's mandate and expertise: *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at paras. 3 and 7, [2013] 2 S.C.R. 458; *Delios v. Canada (Attorney General)*, 2015 FCA 117 at paras. 19-21, 472 N.R. 171.

[10] Despite the able argument of counsel for the applicant, we see nothing unreasonable in the PSLREB's award in the instant case. It was reasonable to conclude that employees are not merely on stand-by when there is a certainty that they are required to work. Nor is the quantum of overtime pay awarded unreasonable in light of the requirements of article 19.03 of the collective agreement, particularly as the flight followers are required to stay alert for the duration of the assignment to perform the required tasks. In short, it was open to the PSLREB in the unique circumstances of this case, to find that article 19.03 required rounding up of time worked.

[11] Contrary to the submissions of the applicant, we see nothing in the Board's award in this case that would require that it be applied to any circumstance other than the unique circumstances of the flight followers that were before the Board in the present case.

[12] We therefore dismiss this application with costs fixed in the all-inclusive amount of \$2,500.00.

“Mary J.L. Gleason”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-246-16

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. CANADIAN  
FEDERAL PILOTS  
ASSOCIATION

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** MAY 10, 2017

**REASONS FOR JUDGMENT OF THE COURT BY:** TRUDEL J.A.  
SCOTT J.A.  
GLEASON J.A.

**DELIVERED FROM THE BENCH BY:** GLEASON J.A.

**APPEARANCES:**

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