

IN THE MATTER OF AN ARBITRATION

BETWEEN: GREATER VANCOUVER REGIONAL DISTRICT
(the "Employer")

AND: GREATER VANCOUVER REGIONAL DISTRICT
EMPLOYEES' UNION
(the "Union")

(Calculation of Overtime Grievance)

ARBITRATOR: David C. McPhillips

COUNSEL FOR THE EMPLOYER: Alan J. Hamilton

COUNSEL FOR THE UNION: David Tarasoff

DATES AND PLACE OF HEARING: October 25, 1999
Vancouver, B.C.

DATE OF AWARD: November 12, 1999

The parties agree this Board has jurisdiction to determine this matter. The interpretation issue in dispute here arose following a policy grievance decided by this Board on July 20, 1999. The issue here centers on what the rate of pay is for a regularly scheduled shift if the employee has worked overtime immediately prior to that regular shift.

ISSUE

The relevant provisions of the Collective Agreement are Article 3.01 and Article 3.06. Those provisions state:

3 OVERTIME AND PREMIUM PAYMENTS

3.01 Overtime Allowed

Unless otherwise noted herein, overtime wages will be paid as follows:

- (a) at one and one-half (1 1/2) times Schedule "A" rates for the first two (2) hours of overtime and at twice times Schedule "A" rates for overtime hours thereafter;
- (b) at twice times Schedule "A" rates for overtime work not connected to a regular shift;
- (c) at twice times Schedule "A" rates for any overtime hours worked beyond four (4) hours' overtime in a week;
- (d) at twice times Schedule "A" rates for overtime work done from 7:00 a.m. Saturday to 7:00 a.m. Monday;
- (e) at twice times Schedule "A" rates for work done within eight (8) hours of having completed an overtime shift.
- (f) Except as provided in (e) above, at no other time will overtime rates be paid for work which is part of the normal daily or weekly hours of work.
- (g) Overtime pay will be calculated to the nearest one-half (1/4) hour of time worked.

3.06 Call Out

- (a) **Work Outside of Regular Shifts:**
Employees for whom stand-by time has not been arranged and who are called out to work separate from their regular shift will receive two hours pay at prevailing overtime rates if they are sent home without working.

- (b) Employees for whom stand-by time has not been arranged and who are called out to work separate from their regular shifts will receive two hours pay at straight time rates plus pay for the time worked at the prevailing overtime rates.

Employees for whom stand-by time has been arranged and who are called out to work separate from their regular shifts will receive pay at the prevailing overtime rates.

- (c) Employees who start work prior to a normal shift and continue to work during the normal shift or employees who continue to work beyond the normal shift will be paid the applicable rates for such time worked. As per Clause 3.05, an employee who has been notified of a requirement to work overtime immediately preceding the regular shift and who is entitled to a meal allowance shall not be paid callout. Any grievance with regard to time shall be adjusted by following the procedures laid out in Clause T02.

As indicated, this Board recently decided a policy grievance between these parties which involved the following two questions:

1. Is an “overtime shift” a period of time of not less than 7 hours that is worked at overtime rates or is an “overtime shift” a period of time of any duration that is worked at overtime rates?
2. When an “overtime shift” is worked, and a second shift is then worked that is partly within the 8 hour period following the conclusion of the “overtime shift”, are overtime rates payable for all hours worked during the second shift or only for those hours that are within the 8 hour period following the conclusion of the “overtime shift”?

This Board set out the positions of the parties at pp.6-7 of the decision:

On these points, the Union submits that any overtime work constitutes an “overtime shift” and that if a second shift then commences within eight hours, that entire second shift must be paid at double time. On the other hand, the Employer submits that to constitute an “overtime shift”, the employee must work at least seven hours of overtime as that is the shortest shift referred to elsewhere in the Agreement. Further, if the employee has worked in excess of seven hours of overtime and then commences a second shift within eight hours, it is only that portion of the second shift which occurs within the eight hour period which is paid at double time.

To put some context on these legal issues, an illustration is helpful. An employee is required to work two hours overtime after a shift and then commences his next shift within seven hours of finishing that overtime. The Union would claim first, that the two hours of overtime constitutes an overtime shift and second, as his next shift commenced within eight hours, he is to be paid double time for the entire second shift.

The Employer would argue that two hours does not constitute an overtime shift and that no overtime is payable for the second shift. Second, if overtime at double time is found to be payable under Article 3.01(e), then the overtime rate would only apply for the first hour of that second shift as that is all that falls within the eight hour period.

After reviewing the jurisprudence this Board answered the two questions as follows:

As a result an “overtime shift” under this Agreement must be interpreted to refer to whatever the amount of time an employee works as overtime, whether it be one hour, five hours, seven hours or twelve hours. Certainly, there is no basis whatsoever to indicate that an “overtime shift” must be of at least seven hours duration. That is a completely arbitrary conclusion on the part of management and cannot be sustained by anything that is contained in this Collective Agreement. Therefore, on this first point, this Board agrees with the Union that any overtime work, regardless of duration, constitutes an “overtime shift” within the meaning of Article 3.01(e).

In my view, the resolution of the second issue is equally clear, given the plain meaning of the words in Article 3.01(e). The provision indicates that double time will be paid “for work done within eight (8) hours of having completed an overtime shift”. The expression “work done within the eight hours” can only have one meaning, that is the actual time worked within that eight hour period. The provision does not refer to any work or shift commenced or started within that eight hour period which is the meaning the Union wishes to give the Article. To arrive at that conclusion, this Board would have to alter the meaning of the words used by the parties and that is not within an arbitrator’s jurisdiction. Therefore, on this second aspect of the interpretation this Board agrees with the position of the Employer.

Therefore, the grammatical, plain, and ordinary sense of the words in Article 3.01 (e) must be adhered to and it is the conclusion of this Board that the clear meaning is that any overtime worked constitutes an “overtime shift” and that double time must be paid only for the work that occurs within the eight hour period after the completion of the overtime shift.

The issue that has now arisen between these parties is whether Article 3.01(e) applies to a situation where an overtime shift occurs prior to and contiguous to a regular shift. The Union asserts the eight hours of the regular shift should be paid at double time and the Employer argues it should be paid at straight time.

The parties are agreed on how overtime is treated in a number of scenarios. First, if an employee works for two hours (3:30 p.m. to 5:30 p.m.) at the end of a regular shift (7:00 a.m. to 3:30 p.m.) then the employee is paid time and a half for those two hours (Article 3.01(a)). Second, if an employee works a regular shift from 7:00 am. to 3:30 p.m. then works overtime until 5:30 p.m., then goes home and is recalled to work at 9:30 p.m., then the employee receives time and a half for the period 3:30 p.m. to 5:30

p.m. (Article 3.01(a)) and then double time for the period 9:30 p.m. to 1:30 a.m. as that is work which occurs within eight hours of his overtime shift ending at 5:30 p.m. That scenario was the focus of the previous policy decision of this Board. Third, if an employee is called out at midnight and works until 3:00 a.m., then goes home and returns for his regular shift at 7:00 a.m. to 3:30 p.m., it is agreed that he receives two hours call-in pay (Article 3.06(b)) and double time from midnight to 3:00 p.m. (Article 3.01(b)). Further, he will receive double time for the period from 7:00 a.m. to 11:00 a.m. as that is work which is performed within eight hours of the completion of his overtime shift at 3:00 a.m. (Article 3.01(e)). Fourth, even if the call out during the night was for only one hour (2:00 a.m. to 3:00 a.m.), it is agreed the employee would receive double time for the work from 7:00 a.m. to 11:00 a.m. on his regular shift as this has occurred within eight hours of his overtime shift ending. The Employer conceded this is the case because the overtime shift is an unconnected shift, that is, it is not attached to the regular shift.

The fifth and final scenario is the one which gives rise to the present dispute between these parties. An employee is called out at midnight and works an overtime shift until 7:00 am. and then proceeds with his regular shift. It is agreed by the parties that there is no call out pay due in this situation because it is not a separate call out. Moreover, it is agreed that in this situation the employee would receive pay at one and a halftime his pay for the first two hours (midnight to 2:00 a.m.) and then double time for the period from 2:00 am. to 7:00 a.m. under Article 3.01(a).

Where the disagreement arises is the rate of pay for the regular shift which follows this overtime. The identical issue arises where the employee is called in early to work at 6:00 a.m. and works until 7:00 am. at time and a half and then his regular shift commences. The Union claims that both the midnight to 7:00 a.m. overtime shift or the 6:00 a.m. to 7:00 a.m.. overtime shift end at 7:00 a.m. and thus, any work within eight hours of that time would be paid at double time pursuant to Article 3.01(e). On that basis, the rate of pay for the employee's entire regular shift (7:00 a.m. to 3:30 pm.) would be at double time. To restate the Union's position, it is submitted that if the overtime shift ends at the commencement of a regular shift, then Article 3.01(e) applies and double time must be paid for any hours worked within eight hours of that overtime shift ending and that would include any work done as part of a regular shift. In Mr.

Tarasoff's submission there is no difference between scenarios three and four on one hand and five on the other hand and it does not matter whether the overtime shift is connected or unconnected to the regular shift. The Union asserts that it is call out pay which takes into account whether the shifts are connected or unconnected. The Union argues that it would be absurd to accept the Employer's position that if an employee worked overtime from midnight until 3:00 a.m. and then went home and returned to work his regular hours at 7:00 a.m., he would get double time for the first four hours (7:00 am. to 11:00 n.m.) but if he worked right through from midnight to 7:00 a.m. and then commenced his regular shift, he would only get straight time for all the hours on the regular shift

The Employer submits that there is a critical difference in this Collective Agreement between connected and unconnected shifts. Mr. Hamilton submits that Article 3.01 distinguishes between rates of pay for connected and unconnected shifts. It is asserted that where the shifts are connected, Article 3.0 1(a) applies and provides for time-and-a half for the first two hours and then double time thereafter. However, if the work is not connected, then Article 3.0 1(b) provides for double time. The Employer submits that the previous decision of this Board was made completely within the context of disconnected shifts and did not address the issue presently in dispute.

The Employer asserts that the Union's position would lead to absurdities. First of all, if an employee was called in even thirty minutes early for his shift, then according to the Union double time would have to be paid for the next eight hours. Moreover, if that was the case then an employee who works just prior to his shift would be paid differently from an employee who works for the same length of time immediately after his shift and this would offend against Article 3.06(c). It is asserted that this conclusion would lead to an illogical result and the Collective Agreement should not be construed in that manner.

In this grievance, the Union seeks a declaration that this is the proper interpretation of Article 3.01(e) and seeks compensation for any employees affected by this interpretation since May 22, 1999.

DECISION

First, it should be clear that the previous policy grievance did not in any way address the issue which is now before this Board. The evidence, examples or arguments used in that case did not in any way deal with the distinction between connected and unconnected shifts. The entire context of that Policy Award was disconnected shifts and, thus, the issue presently posed by the parties has not been previously addressed.

Second, it is clear these parties have in this Collective Agreement recognized the difference between connected and unconnected shifts. Article 3.01(b) explicitly states that double time will be paid “for overtime work not connected to a regular shift.” (emphasis mine). On the other hand, Article 3.01(a) specifically refers to all overtime shifts which are connected to regular shifts. Moreover, there is nothing in Article 3.01(a) which implies that this remuneration only applies to overtime shifts that follow regular shifts. As a result, on its face, it would seem that the parties intended that preceding shifts would be treated in the same manner as subsequent shifts. The notion that these are similar situations can also be seen in Article 3.06(c) wherein it states that “employees who start work prior to a normal shift and continue to work during the normal shift or employees who continue to work beyond the normal shift...”

In the fifth scenario above, where an overtime shift is connected to the regular shift, the overtime shift is paid at time and a half for the first two hours and double time for the remainder of the shift. That is so whether the overtime shift precedes or follows the regular shift. Moreover, if the overtime shift is unconnected (whether before or after) then call out pay and double time for all hours work is paid for the overtime shift. A further example of how these parties provided differential treatment for connected and unconnected shifts is the use of call-out pay itself. That premium is provided when an employee is called out to work and then returns home but if the employee comes to work early and then proceeds with his regular shift then that premium is not paid (Article 3.06(a))

Moreover, the terminology used in Article 3.06(e), which refers to a shift commencing within eight hours, seems to indicate as well that the parties were contemplating work actually ceasing and then recommencing at a later time and would not apply where one shift runs into another shift.

Those provisions, of course, do not explicitly dictate what rate of pay was intended for the regular shift that follows an overtime shift but it is clear that under the overtime scheme in this agreement the parties do treat connected and unconnected shifts differently. This leads this Board to the conclusion that the Employer's interpretation fits more logically within the scheme of this Agreement.

Finally, from a practical point of view, the Union's position would lead to a rather incongruous or inconsistent result. If an employee were to work for one hour of overtime after his regular shift, he would receive a total of 9.5 hours pay (eight regular hours and one overtime hour at time and a half). However, if the same employee worked the one hour prior to his regular shift, then under the Union's analysis, for a similar nine hours of work he would receive 17.5 hours pay (one and half times for the first hour and double time for all eight hours his regular shift). In my respectful opinion, if the parties intended to create such an anomalous situation, they should have done so with more explicit language.

AWARD

For the above reasons, this Board agrees with the position of the Employer on this interpretation issue. Article 3.01(e) does not apply to work on regular shifts which follow overtime shifts and which are connected to that regular shift.

This Board reserves jurisdiction to deal with any matters arising out of the implementation of this Award.

Dated this 12th day of November, 1999.

(Original Signed)

David C McPhillips

Arbitrator