

Subject - Overtime

**ARBITRATION AWARD**

BETWEEN:

FISH, FOOD AND ALLIED WORKERS  
(FFAW/CAW)  
(hereinafter called the "Union")

AND:

FISHERY PRODUCTS INTERNATIONAL LIMITED  
(hereinafter called the "Employer")

GRIEVOR: Jim Dalton  
Grievance No. 14639

COUNSEL: For the Union  
Gregory Pretty

For the Employer  
Sadie Popovitch

ARBITRATOR: James C. Oakley

The arbitration hearing was held at St. John's on October 23, 2007. The parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Arbitrator would remain seized of the matter following publication of the Award in the event there is a question of interpretation or compensation arising from the Award.

The parties proceeded with an Agreed Statement of Facts and an expedited hearing process. The parties requested that the Arbitrator's decision be issued before the end of October.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Fish, Food and Allied Workers (FFAW/CAW) and Fishery Products International Limited, dated April 1, 2006 to December 31, 2009 (Plants)
- Consent 2 - Grievance Form, Grievance No. 14639 dated July 23, 2007 and letter dated July 25, 2007 from the Employer to the Union responding to the grievance
- Consent 3 - Agreed Statement of Facts

The Agreed Statement of Facts stated as follows:

1. The Grievor, Jim Dalton, is employed by Fishery Products International ("FPI" or "the Employer") at its facility at Port Union, Newfoundland and Labrador.
2. FPI has an ongoing collective bargaining relationship with the Fish, Food and Allied Workers, CAW ("FFAW" or "the Union") and are subject to a collective agreement effective March 31, 2007 to December 31, 2009.
3. In the Grievance dated July 23, 2007 the Grievor claims a violation of Article 10:10 and is seeking that overtime be paid for the week of July 1<sup>st</sup>, 2007 for all hours worked after 32 regular hours.

4. In its reply to the Grievance, dated July 25, 2007, FPI has denied any violation of the Collective Agreement.
5. During the week of July 1, 2007, employees received eight hours of holiday pay for Canada Day in accordance with Article 13:01. The Grievor claims that, as a result of this holiday pay, overtime pay should be payable after an employee has worked only 32 hours instead of the usual 40 hours as set out in Article 11:01.
6. The parties have agreed that this grievance is a question of interpretation of the Collective Agreement. As such, there will be no testimony given at the hearing and the parties will only present argument.
7. The only issue in this grievance can be stated as follows:
  - a. In a week in which there is a paid, statutory holiday, should employees be entitled to overtime after working 32 hours.

There were additional facts agreed at the hearing. The plant at Port Union is a shrimp processing operation. The employees work a rotating shift schedule of 4 consecutive days of 10 hours shifts. The Collective Agreement was signed on June 28, 2007. The Memorial Day (July 1) statutory holiday was the first holiday to occur following the signing of the Collective Agreement. The Memorial Day holiday was recognized on Monday, July 2. Employees who worked on the holiday were paid at a rate of 1½ times hours worked. Employees not scheduled to work on July 2 were paid 8 hours holiday pay for that day and during the week of July 2, they worked 4 days at 10 hours per day for which they were paid straight time. The issue is whether employees ought to have been paid at the overtime rate of pay after 32 hours.

The relevant Articles of the Collective Agreement are as follows:

Article 10 - Hours of Work

10.01 The regular hours of work for employees shall be as follows:

...

- (c) The regular hours of work for production and maintenance employees at Marystown, Port au Choix, Port Union, Bonavista and Triton, shall be as set forth in Schedule "C".

...

10.10 When a statutory holiday named in this Collective Agreement occurs on a regularly scheduled work day, the regular weekly hours shall be reduced accordingly.

...

Article 11 - Overtime

11.01 All hours worked in excess of eight (8) hours in any day or 10 hours in a day in Shrimp operations, or forty (40) hours in any week shall be paid at a minimum of time and one-half. A regular work day, for the purpose of this Article, is defined as eight (8) hours, or 10 hours, from the commencement of work. For the purposes of this Article, a 24 hour period commences from the start of an employee's regular shift in a calendar day.

...

Article 13 - Statutory Holidays

13.01 Eligible employees shall receive holiday pay of eight (8) hours at their basic rate for each of the following holidays: [table omitted].

...

Letter dated May 31, 2007 from the Employer to the Union

Following recent discussions between the Union and the Company and pursuant to Recommendation No. 2 of the majority Conciliation Board Report, the following confirms certain commitments and undertakings on behalf of the Company with respect to Port Union and South Dildo Discharge operations.

Statutory/Floating Holidays

1.0 All employees who have worked their last scheduled shift immediately preceding the holiday (provided this shift is in the week immediately preceding the holiday) unless absent due to sickness, accident, bereavement or other just cause permitted by the Company; and are in good standing on the seniority list shall be entitled to pay for a regular shift at straight time in addition to any monies received for hours worked on each of the following days:

- New Year's Day
- Good Friday
- Memorial Day
- Labour Day
- Remembrance Day
- Christmas Day

Article 10.01 refers to Schedule “C”. In Schedule “C” at page 65, item number 5, the hours of work are set out for the Port Union plant. Employees are scheduled in one of 3 shifts, identified as the A, B or C shift, and are placed on a 10 week rotating schedule in which they are scheduled to work 4 consecutive 10 hour work days.

The Union submitted that it negotiated overtime pay benefits in the Collective Agreement. The employees expected to be paid for hours worked in excess of 32 hours per week in the week of a statutory holiday. The Memorial Day holiday was recognized on a regularly scheduled work day and overtime should be paid after 32 hours of work. The principles of interpretation should be applied to give effect to the intention of the parties and to give meaning to the language of Article 10.10. The purpose of having a provision in Article 10.10 stating that regular hours are reduced when there is a statutory holiday is so that overtime would be paid after the reduced regular hours of work. The Union was not asking the arbitrator to add any language to the Collective Agreement. The Union asked that the grievance be allowed to give effect to the agreement of the parties.

The Employer submitted that entitlement to overtime was not linked to the regular weekly hours in Article 10.10. Overtime was stated in Article 11.01 to occur after an employee works 40 hours in a week. Article 13.01 provided for 8 hours pay for a statutory holiday, but Article 13.01 did not state that those 8 hours would be counted as hours worked for the purpose of entitlement to overtime pay. Articles similar to Article 11.01 were interpreted in the arbitral authorities to mean that the employee has to actually work the required number of regular hours to be entitled to overtime pay. According to the authorities, “hours worked” means periods during which an employee attends at the workplace and performs the duties of the job. Article 10.10 may be given meaning as part of the “Hours of Work” article. Article 10.10 was not intended to be applied to the overtime article. There was no language in the Collective Agreement stating that hours paid for a statutory holiday would count towards an employee’s hours of work when calculating entitlement to overtime pay.

The Arbitrator has given consideration to the agreed facts, the submissions of the parties and the arbitral authorities. The Arbitrator has considered the principles of interpretation of collective agreements. The objective of interpretation is to give effect to the intention of the parties. The principles of interpretation include interpreting the language within its context in the article and the Collective Agreement as a whole, and avoiding redundancy by giving some meaning to the words used.

The obligation of the Employer to pay overtime is set out in Article 11, which is headed “Overtime”. Article 11.01 states that hours worked “in excess of . . . 40 hours in any week shall be paid at a minimum of time and one half”. The plain meaning of Article 11.01 is that overtime is payable after employees have attended at the workplace and performed duties in excess of 40 hours in any week. This interpretation is consistent with the arbitral authorities.

The Arbitrator has considered the effect of other articles in the Collective Agreement on the entitlement to overtime in Article 11.

Article 13.01 states that employees receive holiday pay of 8 hours at their basic rate for the listed holidays. The holidays for the Port Union plant are listed in the letter attached to the Collective Agreement. There is nothing in Article 13 or in the said letter stating that statutory holidays are counted towards hours worked for the purpose of calculating overtime in Article 11.01.

Article 10.10 states that “when a statutory holiday occurs on a regularly scheduled work day the regular weekly hours shall be reduced accordingly”. The Union argues that because 8 hours are paid for a statutory holiday, the effect is to reduce the regular work week to 32 hours with the overtime rate of pay being paid for hours worked in excess of 32 hours. The Arbitrator finds that the language in Article 10.10 does not have the effect claimed by the Union. Article 11.01 states that overtime is paid for hours worked in excess of 40 hours in any week. Article 11.01 does not state that overtime is paid for hours worked in excess of regular hours. If the parties had intended overtime to be paid for hours worked in excess of “regular weekly hours”, then the parties could have used language to that effect in Article 11.01. If the parties had used such language, then a reduction in regular weekly hours would reduce the required hours of work before overtime was payable. It is noted that Article 10.10 does not make any reference to overtime or to the required hours of work before overtime pay is payable. It is also noted that Article 10.10 is contained within the “Hours of Work” article and not within the “Overtime” article. Article 10.01, together with Schedule “C”, sets out the regular hours of work for the Port Union plant. Article 10.10 may be given meaning by the fact that it modifies the regular hours of work in Article 10 when a statutory holiday occurs on a regularly scheduled work day.

The Arbitrator has reviewed authorities on the issue of whether statutory holiday time should be counted towards calculation of weekly overtime entitlement. (eg. *Re Retail Wholesale Bakery and Confectionary Workers, Local 461 and Canada Bread* (1966) 17 L.A.C. 357 (Reville), *Shrader*

*Canada Ltd. and USWA* (1995) 37 C.L.A.S. 321 (Haefling), *Sobeys Ontario Ltd. and U.F.C.W., Local 175* [1999] O.L.A.A. No. 217 (E. Newman), *Beatrice Foods Inc. and RWDSU, Local 440* (1994) 44 L.A.C. (4<sup>th</sup>) 59 (MacDowell) and *Cargill Ltd. and UFCW, Local 1118 (005)* (2000) 90 L.A.C. 4<sup>th</sup> 289 (Ponak)). It is apparent that the decision in each case depends on the collective agreement language agreed by the parties. However, it is clear from the authorities, that express language is required to have paid holiday time counted as time worked for the purpose of calculating entitlement to overtime. There is no such express language in this Collective Agreement. Article 10.10 does not contain express language stating that payment for a statutory holiday counts towards the 40 hours per week required before entitlement to overtime in Article 11.01. The Arbitrator's finding that the Collective Agreement does not have the effect claimed by the Union is consistent with the arbitral authorities.

In response to the question submitted by the parties, the Arbitrator finds that employees are not entitled to overtime after working 32 hours in a week in which there is a paid statutory holiday. The grievance is denied.

**DATED** this 30<sup>th</sup> day of October, 2007.

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James C. Oakley  
Arbitrator