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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

CHRISTIAN HEIM AND PETRA PETROVIC

Grievors

and

**TREASURY BOARD
(Department of Fisheries and Oceans)**

Employer

Indexed as

Heim v. Treasury Board (Department of Fisheries and Oceans)

In the matter of individual grievances referred to adjudication

Before: Augustus Richardson, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Samantha Lamb, counsel

For the Employer: Marc Séguin and Laetitia B. Auguste, counsel, Treasury Board Secretariat Legal Services

Heard via videoconference,
October 30 and 31, 2023.

I. Introduction

[1] Is carrying out a work-related task that must be performed before the start of an employee's regularly scheduled shift considered "work" within the meaning of a collective agreement, and if so, is the employee who carries it out entitled to be paid overtime for that task? That is the question addressed in the two grievances before me.

[2] The grievors are members of the Canadian Merchant Service Guild ("the bargaining agent"). At all material times, they were employed by the Canadian Coast Guard ("the employer"). The union and the employer were parties to a collective agreement (for the Ships' Officers group) that expired on March 31, 2018 ("the collective agreement"). The parties agree that that agreement applies to the grievances in issue.

[3] Both grievors worked as engineering watchkeepers on the employer's vessel the CCS Griffon while at sea. Both allege that the employer breached clause 30.1(b) of Appendix H of the collective agreement when it failed to pay them overtime for the pre-watch vessel inspections that they carried out before commencing their regularly scheduled 12-hour shifts.

[4] Based on the following facts and reasons I have decided to allow both grievances.

II. Evidence

[5] There were two categories of evidence before me. The first consisted of these two books of documents:

- the "Grievance Record" (Exhibit 1); and
- the "Joint Book of Documents" (Exhibit 2).

[6] The second was a "Short Statement of Agreed Facts" (Exhibit 3), which came from counsel for the grievors' opening submissions on October 30, 2023. Counsel for the employer listened to those opening submissions and that evening discussed their accuracy with counsel for the grievors. The next day, I was advised that the employer's counsel agreed it was an accurate summary of the facts that governed the two grievances. Both counsel agreed that it was not necessary to call either grievor to testify. Accordingly, the closing submissions proceeded on that understanding. The next section reproduces the statement. I added paragraph numbering for ease of

reference. I also inserted exhibit numbers or expanded some short forms as necessary, again for ease of reference.

III. The “Short Statement of Agreed Facts”

[7] It is agreed that both grievors, at the times they claimed overtime for, were working as engineering watchkeepers on the CCGS Griffon, a light icebreaker vessel operating out of the employer’s Prescott, Ontario, base.

[8] Two crews were assigned to the Griffon, Crew A and Crew B. Crew A stayed on board for 28 days and then put to port. Crew A then disembarked and Crew B came aboard, which is referred to as a “crew change”. A crew change (in the documents) means a complete changeover of crews, not just the shift change between individuals who are on board at the same time.

[9] Both grievors were on Crew A and in engineering watchkeeper positions, which will be referred to as “watchkeeper” positions, even though other types of watchkeepers, such as navigational watchkeepers and radio watchkeepers, were assigned to other parts of the ship. The other watchkeeper positions are not relevant to this grievance.

[10] The watchkeeper’s role is performed primarily from the Control Room, which is inside the Engine Room that houses all the instrumentation to monitor the major machinery. The watchkeeper’s job, massively oversimplified, is to watch those instruments and to take appropriate action when any part of the engine systems falls below optimum levels. They are multi-million-dollar ships. The last refit of the Griffon, in 2020, totalled \$4 million just to repair and replace some of its parts, so the goal is to address small issues immediately so that they do not become big issues. There is not only the expense of major repairs but also the logistical issues if the Griffon breaks down far from port as well as safety issues if, for example, a fuel leak leads to a fire.

[11] While the chief engineer and the senior engineer, who are the two engineering officers ranked above the watchkeeper, go off duty for part of each day, a watchkeeper is always on shift. Crew A had 1 chief engineer and 1 senior engineer, who had different roles. Each worked a 12-hour day and had 12 hours off in each 24-hour period. Crew A had 2 watchkeepers, and 1 had to keep watch at all times, to the point that 1 watchkeeper could not leave until the incoming watchkeeper relieved them.

When the chief engineer and senior engineer are off shift and sleeping, the

watchkeeper is responsible for making the judgement call of whether they can handle an issue themselves or whether it is major enough that the chief engineer must be awakened.

[12] Before assuming the active watch and relieving the outgoing watchkeeper, an incoming watchkeeper must perform a pre-watch round. That obligation is set out in the *Seafarer's Training, Certification and Watchkeeping Code* ("the STCW Code"; Exhibit 2, Tab 6). The STCW Code states that the chief engineering officer, in consultation with the master, must ensure that the watchkeeping arrangements "... are adequate to maintain a safe engineering watch" (Exhibit 2, Tab 6, Part 3, page 128, paragraph 10). In practical terms, it means that the chief engineer's job is to ensure that competent engineering officers, meaning those who hold the necessary 4th Class Engineering Ticket, which both grievors did and do, are assigned to the watchkeeper role and are scheduled in a way that ensures that a watchkeeper is always on duty.

[13] That obligation is repeated again in more detail in Part 3-2 of the STCW Code, entitled "Principles to be observed in keeping an engineering watch" (Exhibit 2, Tab 6, page 135, paragraphs 53 to 55).

[14] Taking over the watch is then set out (Exhibit 2, Tab 6, page 136, paragraph 56). In practical terms, there are two parts: the pre-watch round, and the changeover. Very briefly, the changeover is a meeting between the outgoing and incoming watchkeepers that takes place in the Control Room. It fulfils two of the obligations required for taking over the watch. The first (Exhibit 2, Tab 6, page 136, paragraphs 56 and 57) is that the outgoing watchkeeper must satisfy themselves that the incoming watchkeeper is fit to take over in the sense that they are not impaired by illness, alcohol, etc. The second (Exhibit 2, Tab 6, page 136, paragraph 58, in particular its parts 1, 2, 10, and 11) is that the incoming or "relieving" watchkeeper must receive a full verbal download from the outgoing watchkeeper with respect to any maintenance orders to be performed in the next 12 hours, any problems that occurred in the last 12 hours that may require special ongoing monitoring or follow up, and any issues with the engineering crew, such as someone being off sick. That verbal download is in addition to reviewing the engineering log, which satisfies paragraph 58.13 of the STCW Code because only major issues are recorded in the log book. Minor issues that still need to be followed up on and any maintenance the chief has requested be performed are not in the log book; they are obtained only in the verbal changeover report.

[15] The other part of taking over the watch is the pre-watch round or pre-watch inspection, which is necessary to fulfil paragraphs 58.3 through 58.9 of the STCW Code. This is performed before the changeover meeting and involves the incoming watchkeeper physically touring and inspecting all the machinery spaces, checking levels of tanks, oil levels, etc., and making sure that the machinery is working properly and that no leaks or other defects are spotted.

[16] This involves walking the entire ship, which on the Griffon included the bridge deck, upper deck, boat deck, poop deck, main deck, Engine Room, machine room, and sewage compartment. There are one or two separate machinery spaces to inspect on each deck as well as upper and lower Engine Rooms and machine rooms.

[17] That pre-watch inspection must be completed before the changeover meeting so that if the incoming watchkeeper sees anything of concern, it can be discussed during the changeover. In the most extreme situation, which the grievors were trained on but have never encountered in practice, if they observed a serious issue, such as the illegal dumping of oil overboard, they would have had to refuse to accept the watch until it was rectified because once they sign in the engineering log book that they have taken over the watch, they also take over legal responsibility for what is taking place.

[18] Complying with the STCW Code is a mandatory part of a watchkeeping engineer's duties, which is confirmed in the *Fleet Safety Manual* (Exhibit 2, Tab 7). Section 7.A.3 (Exhibit 2, Tab 7, page 219), at paragraph 3.1, states that all watches are to be arranged to comply with the requirements of the STCW Code as well as other standards. The focus of that paragraph is then on preventing fatigue, but then section 7.A.9 (Exhibit 2, Tab 7, page 235) speaks to the watchkeeping process and again specifically states it is to be done in accordance with the STCW Code. Paragraph 2.2 summarizes the outgoing watchkeeper's obligation to relay all pertinent information at the changeover, and paragraph 3.2 speaks to the incoming engineer having to perform a pre-watch inspection round.

[19] The employer scheduled the Griffon crew to have only two watchkeeping engineers cover each 24-hour period, with each scheduled to perform a 12-hour watch. The employer was aware of the STCW Code's contents, which were incorporated into its manual. That content requires the incoming watchkeeper to perform a pre-watch inspection and changeover before they can start their watch. The employer designed a watchkeeping schedule that provided no overlap between the two watchkeeping shifts.

[20] If overtime is found to apply, the parties agree that it consists of one hour because the collective agreement, at clause 30.07(a) (Exhibit 1, Tab 1, page 51), provides that overtime that ends “before the expiration of one (1) hour” will be compensated as one hour.

[21] The employer makes no *de minimis* argument, and the union agrees that none of the grievors’ pre-watch rounds and changeover meetings took longer than one hour combined on any of the claimed shifts.

[22] The grievors’ hours of work are governed by Appendix H of the collective agreement that at paragraph (c) of the “General” section (Exhibit 1, Tab 1, page 77) provides that the officers’ workday is 12 hours.

[23] The parties agree that article 30 of the collective agreement’s Appendix H (Exhibit 1, Tab 1, page 80) states that officers are to be compensated at time-and-one-half for overtime worked in excess of their regularly scheduled hours of work but disagree as to whether that article is triggered by the facts of this case. They agree that all the documents in the grievance record (Exhibit 1) are joint exhibits to this statement of facts.

[24] The parties agree that Tabs 1 through 9 and 13 of the Joint Book of Documents (Exhibit 2) are joint exhibits to this statement of facts.

[25] Tabs 10, 11, and 12 of the Joint Book of Documents (Exhibit 2) can be disregarded.

[26] This ends the agreed statement of facts. I turn now to the collective agreement and other documents relevant to these grievances.

IV. The collective agreement

[27] “Overtime” is defined in clause 30.06(a) of the collective agreement as “... time worked by an officer in excess of his/her designated hours of work ...”. The word “work” is not a defined term in the agreement. As already noted, the grievors’ designated hours of work on board the CCGS Griffon while at sea consisted of 12-hour shifts.

[28] Article 30 (“hours of work and overtime”) of Appendix H provides as follows:

1. Overtime compensation will be subject to:

a. clauses 30.07 and 30.08 of the Ships' Officers collective agreement, except that clause 30.07(c), 30.08(b) and (c) shall not apply;

and

b. an officer shall be entitled to compensation at time and one-half (1 1/2) for overtime worked in excess of his/her regularly scheduled hours of work, except when an officer works more than eighteen (18) consecutive hours without six (6) consecutive hours of rest, he shall be paid at the double time rate (2T) for all hours in excess of eighteen (18) hours.

c. an officer shall be entitled to compensation at time and one-half (1 1/2) for overtime worked in excess of his/her regularly scheduled hours of work. An officer shall be entitled to compensation at double time for overtime work of more than six (6) hours in excess of his/her regularly scheduled hours of work.

...

La rémunération des heures supplémentaires sera assujettie :

a. aux clauses 30.07 et 30.08 de la convention collective des officiers de navire; cependant, les alinéas 30.07c), 30.08b) et c) ne s'appliqueront pas;

et

b. l'officier a le droit d'être rémunéré à tarif et demi (1 1/2) pour les heures supplémentaires effectuées en sus des heures de travail normalement prévues à l'horaire; cependant, lorsque l'officier travaille plus de dix-huit (18) heures consécutives sans avoir six (6) heures consécutives de repos, il est rémunéré à tarif double (2) pour toutes les heures effectuées en sus de dix-huit (18) heures.

c. L'officier est rémunéré à tarif et demi (1 1/2) pour les heures supplémentaires effectuées en sus des heures de travail normalement prévues à l'horaire. L'officier est rémunéré à tarif double s'il fait plus de six (6) heures supplémentaires en sus des heures de travail normalement prévues à l'horaire.

[...]

V. The STCW Code

[29] The parties accept that Canada is a signatory to the STCW Code and that the employer expects its watchkeepers to follow it.

[30] Chapter VIII ("Standards Regarding Watchkeeping") includes section A-VII/2. Part 3-2 sets out the standards to be observed in keeping an engineering watch while a vessel is at sea.

[31] Paragraph 58 of Part 3-2, under the heading "Taking over the watch", states as follows:

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58 Prior to taking over the engineering watch, relieving officers shall satisfy themselves regarding at least the following:

- .1 the standing orders and special instructions of the chief engineer officer relating to the operation of the ship's systems and machinery;
- .2 the nature of all work being performed on machinery and systems, the personnel involved and potential hazards.
- .3 the level and, where applicable, the condition of water or residues in bilges, ballast tanks, slop tanks, reserve tanks, fresh water tanks, sewage tanks and any special requirements for use or disposal of the contents thereof;
- .4 the condition and level of fuel in the reserve tanks, settling tank, day tank and other fuel storage facilities;
- .5 any special requirements relating to sanitary system disposals;
- .6 condition and mode of operation of the various main and auxiliary systems, including the electrical power distribution system;
- .7 where applicable, the condition of monitoring and control console equipment, and which equipment is being operated manually;
- .8 where applicable, the condition and mode of operation of automatic boiler controls such as flame safeguard control systems, limit control systems, combustion control systems, fuel-supply control systems and other equipment related to the operation of steam boilers;
- .9 any potentially adverse conditions resulting from bad weather, ice, contaminated or shallow water;
- .10 any special modes of operation dictated by equipment failure or adverse ship conditions;
- .11 the reports of engine-room ratings relating to their assigned duties;
- .12 the availability of fire-fighting appliances; and
- .13 the state of completion of engine-room log.

VI. "Chief Engineer's Standing Orders" (effective May 10, 2010)

[32] While at sea, the watchkeepers were expected to carry out normal watchkeeping routines under the STCW Code. The workday consisted of "... twelve (12) hours of work per day, either on a watchkeeping or daywork schedule."

[33] Overtime would not be approved for payment "... unless pre-authorized by the Senior Engineer, who will consult with the Chief Engineer prior to overtime work being started." The watchkeepers' responsibilities included the following: "Before taking over

a watch, all machinery spaces are to be checked. All machinery spaces outside the Engine Room are to be checked at least once during each watch.”

VII. “Chief Engineer’s Standing Orders” (effective March 18, 2020)

[34] While at sea, the watchkeepers were expected to carry out normal watchkeeping routines per the STCW Code. The workday consisted of “... twelve (12) hours of work per day, either on a watchkeeping or daywork schedule.” Overtime would not be approved for payment “... unless pre-authorized by the Chief Engineer prior to overtime work being started.”

[35] The watchkeeping provision about checking machinery spaces was worded somewhat differently: “All machinery spaces outside the Engine Room are to be checked at least once during each watch.”

VIII. Summary of the submissions

A. For the grievors

[36] The grievors’ counsel submitted that the central issue is whether the employer could require the grievors to perform work before their regularly scheduled 12-hour shifts, without paying them at the overtime rate for that early work. She submitted that the answer, based on the wording of the collective agreement’s Appendix H, clearly is “No” — that work qualified for pay at the overtime rate.

[37] Counsel for the grievors noted that the grievors’ duties and responsibilities as watchkeepers included the requirements that they inspect the ship before coming on watch and that they meet with the outgoing watchkeeper to review any significant events or issues that arose during the previous shift. Because the watchkeepers were on 12-hour shifts, the pre-watch inspection could be conducted in either of these 2 ways:

- before the incoming watchkeeper’s shift started; or
- after the incoming watchkeeper’s shift started.

[38] If the incoming watchkeeper conducted the inspection before their shift started, then they carried out their watchkeeper duties and responsibilities for more than 12 hours. The only way to avoid that would have been to have the incoming watchkeeper perform their pre-watch inspection after their shift started. However, doing that would then have required the outgoing watchkeeper to remain in place until after their shift ended. In other words, the employer’s decision to place the watchkeepers on 12-hour

shifts meant that one of the watchkeepers was forced to perform their position's duties and responsibilities for more than 12 hours.

[39] Counsel for the grievors noted that the employer could have appointed 3 watchkeepers to cover the 24-hour day, resulting in 8-hour watchkeeping duties during each 12-hour shift. Had that been the case, the watchkeepers could have carried out their pre-watch inspection during their regularly scheduled 12-hour shifts. There would have been no need to require any work beyond their regular 12-hour shifts.

[40] Counsel for the grievors noted that the parties had agreed that the amount of time required to perform a pre-watch inspection might vary with the vessel or the circumstances of the day but that it would not in the normal course exceed one hour. Clause 30.07(a) of the collective agreement provided that if the inspection took less than one hour, it would be counted as having taken one hour. Accordingly, the parties had agreed that for the purposes of these two grievances, the time to conduct the pre-watch inspection would be counted as one hour.

[41] Counsel for the grievors noted that clause 30.1(b) of the collective agreement's Appendix H provided for the entitlement to overtime. The operative word used was "shall". The pre-watch inspection was time spent performing their duties. Hence, the grievors were entitled to be paid overtime for that inspection.

[42] Their counsel pointed to the decisions in *Giasson v. Treasury Board (Fisheries and Oceans)*, 2000 PSSRB 94, and *Legge v. Treasury Board (Department of Fisheries and Oceans)*, 2014 PSLRB 47, as supporting the grievors' position. She noted that normally, collective agreements characterize work that falls outside an employee's regularly scheduled hours as overtime, and that it is paid at a premium rate (see Brown and Beatty, *Canadian Labour Arbitration (5th ed.)*, at 8:9). Moreover, depending on the collective agreement wording and the circumstance, the term "work" or the phrase "time worked" can be expanded to include periods spent or required to be spent under the employer's control, even if the activity in question is outside the job that the employees are to perform (see Brown and Beatty, at 8:11).

[43] Counsel for the grievors concluded by submitting that the grievances should be allowed and that the grievors should be awarded 28 hours of overtime (1 hour for each shift) for each 28-day assignment at sea.

B. For the employer

[44] Counsel for the employer submitted that the burden of establishing their overtime claim fell on the grievors. He submitted that the grievances relate only to the incoming shifts. The issue is one of interpretation and, in particular, whether the time in question was work within the meaning of the collective agreement. He submitted that the grievors spent the time performing part of what were in effect their professional and legal obligations under the STCW Code. They had to do it before they could perform their watchkeeper responsibilities once their shifts started. That being so, it was not work within the meaning of clause 30.1(b) of the collective agreement's Appendix H. Rather, it was part of their professional watchkeeper duties and responsibilities under the STCW Code. Counsel relied on *Durham Catholic District School Board v. Ontario English Catholic Teachers' Association*, 1999 CanLII 20211 (ON LA) ("*Durham Teachers*"), in which the Arbitrator found that attending parent-teacher interviews in the evening was part of a teacher's professional obligations.

[45] Counsel for the employer submitted that overtime had to be pre-approved before it could be recognized under the collective agreement. There was no pre-approval in this case. The grievors simply performed the pre-watch inspections before every shift.

[46] In his submissions, counsel for the employer raised an objection that had not been mentioned in his opening submissions or, for that matter, by the employer in its first-, second-, and third-level responses to the grievance. He submitted that Ms. Petrovic's grievance, dated March 16, 2021, was limited in remedy to the 25 days before it was filed. He made the same submission with respect to Mr. Heim's grievance, which is also dated March 16, 2021.

[47] Counsel for the employer relied on the following authorities: *Allen v. National Research Council of Canada*, 2016 PSLREB 76; *Arsenault v. Parks Canada Agency*, 2008 PSLRB 17; *Association of Justice Counsel v. Treasury Board*, 2015 PSLREB 18; *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112; *Durham Teachers*; *Ewaniuk v. Treasury Board (Department of Citizenship and Immigration)*, 2020 FPSLREB 96; *Federal Government Dockyard Trades and Labour Council (East) v. Treasury Board (Department of National Defence)*, 2015 PSLREB 33; *Grégoire v. Canadian Food Inspection Agency*, 2009 PSLRB 146; *Parmiter v. Treasury Board*, 2021 FPSLREB 57; *Stafford v. Canadian Food Inspection Agency*, 2011 PSLRB 123; *Trudeau v. Treasury Board (Canada Border Services Agency)*, 2012 PSLRB 72; *Wamboldt v. Canada*

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Revenue Agency, 2013 PSLRB 55; *Winnipeg Teachers' Association v. Winnipeg School Division No. 1.*, 1975 CanLII 181 (SCC); and *Brown and Beatty*, at 2:4, 4:21, 4:22, 4:23, and 4:27.

[48] Counsel for the employer concluded by submitting that the grievances should be denied.

C. The grievors' reply

[49] Counsel for the grievors objected first to the employer's alternate submission, which was its objection. She noted that it was the first time it had been raised. It had not been mentioned to her until a week before the hearing but then was not referenced in the opening submissions. That omission put the grievors at a disadvantage, given that had they known that the objection would be made, they might have testified rather than proceeding with an agreed statement of facts. They could have provided evidence as to when they first became aware of the issue. Hence, the employer's alternate submission should not be permitted at this late date.

[50] Turning to the merits of the grievances, counsel for the grievors distinguished *Durham Teachers* on the ground that its only issue was whether the teachers could be required to perform the interviews. Moreover, the result supports the grievors' case in some sense, given that the grievances involve something that they had to do. Counsel distinguished *Stafford* on the ground that it concerned pre-shift actions that the grievor in that case carried out as a matter of personal preference that were not part of his job or required by the employer. Moreover, the collective agreement in that case expressly provided that the 15 minutes before a shift started were not considered overtime.

IX. Analysis and decision

[51] I will deal with the employer's alternate submissions first.

A. Is either grievance out of time?

[52] Article 18 of the collective agreement deals with grievances. The following provisions are relevant:

18.04 In this procedure:

...
18.04 Dans la présente procédure, le terme :

a. **“grievance”** means a complaint in writing by an officer on his/her own behalf or on behalf of the officer and one or more officers other than a complaint arising from the classification process

a. « **grief** » désigne une plainte faite par écrit que l'officier dépose en son nom ou en son nom et au nom d'un ou plusieurs autres officiers, autre qu'une plainte relative à la procédure de classification;

...

[...]

18.07 An officer who wishes to present a grievance at any prescribed level in the grievance procedure shall transmit the grievance, either directly or through the officers' representative, to the officer's immediate supervisor or local officer-in-charge who shall forthwith:

18.07 L'officier qui désire présenter un grief, à l'un des paliers prescrits par la procédure de règlement des griefs, le remet directement ou par l'intermédiaire du représentant des officiers, à son surveillant hiérarchique ou chef de service local qui, immédiatement :

a. forward the grievance to the representative of the employer authorized to reply to the grievances of officers at the appropriate level; and

a. l'adresse au représentant de l'Employeur autorisé à traiter les griefs des officiers au palier approprié;
et

b. provide the officer with a receipt stating the date on which the grievance was received by him/her.

b. remet à l'officier un reçu indiquant la date à laquelle le grief lui est parvenu.

...

[...]

18.09 An officer may present a grievance to the first level of the grievance procedure in the manner prescribed in clause 18.07 not later than the twenty-fifth (25th) day after the date on which the officer was notified, orally or in writing, or on which the officer first became aware of the action or circumstance giving rise to the grievance. In the situation where officers are at sea, the twenty-five (25) day period will commence on return to the officer's home port.

18.09 L'officier peut présenter un grief au premier palier de la procédure de la manière prescrite par le paragraphe 18.07 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il est informé de vive voix ou par écrit de l'action ou des circonstances donnant lieu au grief ou à la date à laquelle il en prend connaissance pour la première fois. Si l'officier est de service en mer, la période de vingt-cinq (25) jours commence le jour du retour de l'officier à son port d'attache.

...

[53] Ms Petrovic submitted her timekeeping record for the period worked in June 2020 on or about July 17, 2020. The record included an overtime claim. It was rejected, and on August 18, 2020, she requested the reason for its denial. The reply came on August 21, 2020. It stated that under the STCW Code, watchkeepers were expected to conduct a pre-watch inspection. She filed a grievance against that denial on September 25, 2020, referencing August 21 as the date on which the act, omission, or other matter occurred that gave rise to the grievance.

[54] I was not provided with any initial correspondence from Mr. Heim on the overtime denial. However, his timekeeping record for the same period on board the same ship as Ms. Petrovic was adduced in evidence, along with an email from the employer on the same date (August 21, 2020) denying his claim for overtime in the same words that were used to deny Ms. Petrovic's claim. Mr. Heim filed his grievance on September 10, 2020, referencing the same date, August 21, 2020, as the date of the action that gave rise to the grievance.

[55] If the day of the denial is included in the count, 25 days later was September 14. On the face of it, then, Mr. Heim's grievance was on time under clause 18.09 of the collective agreement, and Ms. Petrovic's was out of time, even if the time began to run on August 22 and ended on September 16 (i.e., the 25th day is not included).

[56] Having said that, I note that the start date for purposes of clause 18.09 is the date on which the officer "... first became aware of the action or circumstance giving rise to the grievance." The question of when Ms. Petrovic first became aware of the employer's August 21 denial is a question of fact based on evidence. But the only evidence I have is the date of the employer's email (August 21). The fact that the email is dated August 21 is not proof that Ms. Petrovic read it or became aware of the denial on August 21. Even if she did become aware of it on that date, something — for example, discussions with the employer after whatever date she read the email — might explain why she did not file a grievance until September 25.

[57] The reason that the evidentiary record on this important point is so scarce is that the employer failed to raise the objection in its responses to her grievance at all three levels of the grievance process, the parties agreed to proceed on the agreed facts without calling evidence, and the employer raised the issue before me for the first time only in its closing argument. Given those facts, it would be unfair and improper for me

to rule on the employer's last-minute objection to her grievance. Accordingly, I dismiss that objection.

B. Is the work done in a pre-watch inspection payable at the overtime rate?

[58] The material facts are clear and straightforward. The grievors worked 12-hour shifts as watchkeepers while at sea on the CCGS Griffon. The employer expected and required them to follow the watchkeeping principles set out in the STCW Code. Those principles included the requirement that before taking over the engineering watch, they had to satisfy themselves as to a long list of things including, but not limited to, the nature of the work being performed on machinery, the condition of water or residue in bilges and ballast tanks, the fuel levels in reserve tanks, and the condition of automatic boiler controls and other equipment related to operating steam boilers. Failing to perform those tasks meant that they could not relieve the outgoing watchkeeper.

[59] These facts dictate the following conclusion:

- 1) since the employer required the grievors to perform the tasks necessary to satisfy themselves as to the things set out in the STCW Code, then those tasks were part of their work as watchkeepers; and
- 2) since the work had to be performed before the grievors started their 12-hour shifts, then it fell within the definition of "overtime" in clause 30.1(b) of the collective agreement's Appendix H.

[60] Support for this conclusion may be found in *Legge*. In that case, while onboard the CCGS Leonard J. Cowley, the grievor was required to stand watch on a "6-on/6-off" schedule twice during a 24-hour period (for 12 hours total) while at sea. While on one of his off cycles (when he did not perform any duties for his employer), he conducted a 1-hour "in-house" refresher course for one of his work-related duties as a rescue specialist. Training was recognized under the collective agreement in that case as attracting the right to pay. He put in a claim for 1 hour of overtime and grieved its subsequent denial. In brief, the adjudicator ruled that an activity recognized under the collective agreement that was performed outside the regularly scheduled hours of work was worked as overtime and was entitled to be paid as such.

[61] Support may also be found in *Giasson*. The grievor in that case was the incoming chief engineer who relieved the outgoing chief engineer upon the ship's return to port. While the start of his regular shift on that day was 12:00 noon, he was required, as part of his chief engineer duties, to arrive at 10:30 a.m., for a "debriefing"

of the outgoing chief engineer. The grievor's claim for 1.5 hours of overtime was denied. However, the adjudicator found that the requirement to debrief the outgoing chief engineer meant that the grievor's work, de facto, started at 10:30 a.m. and not noon, and so he was entitled to overtime pay for that work.

[62] Against that conclusion, the employer argues that this work cannot be paid as overtime because, pursuant to either standing order, it was not expressly pre-approved by the senior engineer before the work was started.

[63] The difficulty with this argument is that both standing orders required a watchkeeper to carry out their duties as laid down in the STCW Code, which requires a watchkeeper to perform the work in question before relieving the outgoing watchkeeper. Hence, the standing order implicitly, if not expressly, pre-approved the work.

[64] To put it another way, the requirement of pre-approval exists because the employer (in the guise of the senior or chief engineer) retains the right to determine whether a task that requires overtime work is actually necessary or whether it might be performed at a different time during a regular shift (and so not require overtime). But the employer in this case has no such discretion. The tasks at issue must be performed by the relieving watchkeeper (in this case, the grievors) before relieving the outgoing watchkeeper. The tasks are in effect mandatory. Since they must be performed before the start of the 12-hour shift, then they must be paid as overtime work.

[65] The employer also argued that these tasks were just the way the grievors chose to carry out, or prepare for, their regular shifts. In other words, the tasks were not "work" within the meaning of the collective agreement.

[66] The difficulty is that the tasks — and when they were to be performed — were not just each grievor's personal preference as in, for example, *Trudeau* (involving the personal choice of the place and time to attach shoulder patches to a uniform) or *Stafford* (the time spent preparing for a shift). In this case, they were specific, identified tasks that had to be performed under the STCW Code, which the employer required the watchkeepers to follow before they could do their assigned work. The grievors could not choose — as in *Trudeau* or *Stafford* — to do something different. And that lack of choice was a result of the employer's mandate that they follow the STCW Code.

[67] Finally, in some of its responses to the grievances, the employer argued that historically, employees had not been compensated for time spent carrying out the pre-watch inspections required under the STCW Code. But the fact that no employee challenged that practice up to this point is not evidence of an estoppel or of a past practice sufficient to alter the plain meaning of clause 30.1(b) of the collective agreement's Appendix H, particularly given that that agreement covered a wide range of the employer's employees across the country; see *Chafe*, at paragraphs 71 to 77.

[68] Accordingly, I am satisfied with respect to the following:

- 1) The time that the grievors spent in their 12-hour shifts carrying out the pre-shift vessel inspection, which the STCW Code required that they do before relieving the outgoing watchkeeper, was overtime and should have been paid as such.
- 2) The grievors are entitled to 1 hour of overtime for such work for each 12-hour shift they worked while at sea, which totals 28 hours of overtime per sailing.

[69] I will retain jurisdiction over this file for 60 days after this decision is released, to deal with any issues arising from it.

[70] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

X. Order

[71] The grievance dated September 25, 2020, in Board file no. 566-02-43954 (of Ms. Petrovic) is allowed.

[72] The grievance dated September 10, 2020, in Board file no. 566-02-43952 (of Mr. Heim) is allowed.

[73] The grievors are to be paid one hour of overtime for the pre-watch tasks that an incoming watchkeeper is required to perform pursuant to the STCW Code before relieving an outgoing watchkeeper while a vessel is at sea.

[74] Jurisdiction to deal with any issues arising from this order will be retained for 60 days from the release of this decision.

November 14, 2025.

**Augustus Richardson,
a panel of the Federal Public Sector
Labour Relations and Employment Board**