



ONTARIO
CROWN EMPLOYEES

GRIEVANCE
SETTLEMENT
BOARD

EMPLOYÉS DE LA COURONNE
DE L'ONTARIO

COMMISSION DE
RÈGLEMENT
DES GRIEFS

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GSB # 0389/97
OPSEU # 97D641

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE GRIEVANCE SETTLEMENT BOARD

BETWEEN

Ontario Public Service Employees Union
(Adams Group)

Grievor

- and -

The Crown in Right of Ontario
(Ministry of the Solicitor General and Correctional Services)

Employer

BEFORE

Richard Brown Vice Chair

**FOR THE
GRIEVOR**

Ed Holmes
Counsel
Ryder Wright Blair & Doyle

**FOR THE
EMPLOYER**

Len Marvy
Counsel
Legal Services Branch
Management Board of Secretariat

HEARING

October 12,13, 1999
January 11,12, 2000
February 3, 29, 2000

This group grievance, dated February 20, 1997, contends unclassified employees at the Elgin-Middlesex Detention Centre were improperly denied stand-by pay. The group is comprised of forty-nine correctional officers, five nurses and one cook. In a memorandum of agreement dated, March 18, 1997, the parties agreed any individual grievances dealing with the same issue would be included in the group grievance. The union's primary claim is for stand-by pay. In the alternative, the union seeks on-call pay. According to the employer, the grievors are entitled to neither form of payment.

The grievances were filed under the 1994-98 collective agreement. The provisions of the agreement relating to stand-by and on-call are the same for all employees, save for the numbering of relevant articles. Those applicable to correctional officers are found at COR10 and COR11. As to stand-by, article COR10 states:

COR10.1 "Stand-by Time" means a period of time that is not a regular working period during which an employee is required to keep himself or herself:

(a) immediately available to receive a call to return to work, and

(b) immediately available to return to the workplace.

COR10.2 No employee shall be required to be on standby unless such stand-by was authorized in writing by the supervisor prior to the stand-by period, except in circumstances beyond the Employer's control.

COR10.3 Where stand-by is not previously authorized in writing, payment as per Article COR10.4 shall only be made where the supervisor has expressly advised the employee that stand-by is required.

COR10.4 When an employee is required to stand-by, he or she shall receive payment of the stand-by hours at one-half (1/2) his or her basic hourly rate with a minimum credit of four (4) hours pay at his or her basic hourly rate.

As to on-call, COR11 states:

COR11.1 “On-Call Duty” means a period of time that is not a regular working period, overtime period, stand-by period or call back period during which an employee is required to respond within a reasonable time to a request for:

(a) recall to the workplace, or

(b) the performance of work as required

...

COR11.4 Should recall to the workplace be required the employee is expected to be able to return to the workplace within a reasonable time.

COR11.5 No employee shall be required to be on-call unless such on-call duty was authorized in writing by the supervisor prior to the on-call period, except in circumstances beyond the Employer’s control.

COR11.6 Where on-call is not previously authorized in writing, payment as per Article COR11.7 shall only be made where the supervisor has expressly advised the employee that he or she is on-call.

COR11.7 Where an employee is required to be on-call, he or she shall receive one dollar (\$1.00) per hour for all hours that he or she is required to be on-call.

The hours worked by classified employees fall into two broad categories. Some of their hours are scheduled days in advance. Other hours are allocated on much shorter notice. The grievance contends employees are

entitled to stand-by or call-in pay because of the state of readiness they are required to maintain to perform work assigned on short-notice. Counsel proposed a series of alternative formulations of the union's claim. Each of these proposals excludes payment for any hours actually worked and for any time after an employee has completed forty hours of work in a particular week. With these two exclusions, the union seeks:

1. Stand-by pay for all hours around the clock;
2. In the alternative, stand-by pay for peak hours--i.e. those immediately preceding the commencement of a shift--and on-call pay for all other hours;
3. In the further alternative, stand-by pay for peak hours;
4. In the further alternative, on-call pay for all hours around the clock; and
5. In the final alternative, on-call pay for peak hours.

I

The union relies upon a series of memos relating to correctional officers. The earliest memo, dated December 15, 1993, is from then superintendent, Mr. G. Simpson, to the unit chairperson, Don Smythe. Mr. Simpson wrote:

The following are issues that were raised at the Employee Relations Committee on November 26, 1993 and which I agreed to consider and then notify you of my decision:

1. Vacation time for unclassified correctional staff.

Management will agree to accommodate the unclassified correctional staff whenever possible but *unless they are specifically authorized otherwise, they are required to remain available at all other times.* (emphasis added)

Other memos are addressed to unclassified officers. In a memo dated June 16, 1994, Paul Downing, Senior Assistant Superintendent, wrote:

It has become increasingly evident to the undersigned that numerous contract correctional officers have been unavailable for work for a variety of unacceptable reasons.

I would like to remind all casual contract correctional officers of their contractual responsibilities to the Elgin-Middlesex Detention Centre.

Contract correctional officers are employed to provide backfill coverage for classified correctional officers who are absent from scheduled work. These absences could be caused by sickness, vacation, injuries, staff training, secondment, labour relations meetings and an assortment of unforeseeable reasons.

One of the core or essential responsibilities/duties of a casual contract correctional officer is to ensure one is available when operations require a backfill for classified correctional staff.

Further, contract correctional staff receive vacation pay in lieu of time off, and it is therefore *this employer's expectation that unless there are extraordinary or unusual circumstances all casual contract correctional officers be available when called to meet the operational requirements of this workplace.* (emphasis added)

In a memo to unclassified officers, dated October 24, 1994, Mary Jo Knappett, Senior Assistant Superintendent, wrote:

As an institution we continue to experience difficulty meeting our operating requirements without incurring overtime costs. Our principal means of accomplishing this is through the utilization of unclassified correctional officers who are contracted to be available "as required". Attempts were made to gain some measure of control over this by directing unclassified staff to formally request all days/shifts they required off to the undersigned/scheduling officer. We continue to be in the position of paying premium costs for salary when casual hours

are technically available, however the casual officer cannot be contacted for scheduling purposes.

In an attempt to gain a measure of control over this concern records will be maintained by the scheduling officer/shift supervisor documenting when casual correctional staff are not available for duty. *This will include instances where the correctional officer could not be contacted directly by means of their recorded phone number as well as any incidents of being unavailable due to a non-work related commitment, whether or not it has been requested and approved by the undersigned /scheduling officer. In the event of two incidents of non-availability in a one week period (Monday to Sunday) an interview will be scheduled between the unclassified officer and an appropriate manager. (emphasis added)*

Shortly after the issuance of this memo, an unclassified officer requested stand-by pay. Richard Stewart made this request in a letter to Ms. Knappett. He was answered by Mr. R. McConnell, Deputy Superintendent, in a memo dated November 2, 1994:

This memo will confirm my receipt of your letter to Senior Assistant Superintendent Ms. M. J. Knappett, dated October 19, 1994, concerning the above subject.

“Stand-by time” means a period of time which an employee is required to be immediately available to receive a call to return to work and immediately available to return to the workplace.

As an unclassified employee, when you are contacted by telephone or pager, *the requirement of your recall will be as soon as possible and not immediate* unless you have been advised that “stand-by” duty is required. Mr. Downing’s memo of June 16, 1994 states that "one of the core or essential responsibilities/duties of a casual contract correctional officer is to ensure one is available when operations require a backfill for classified correctional staff.”

Therefore your request is denied. (emphasis added)

In another memo to unclassified officers, dated December 13, 1994, Ms. Knappett wrote:

ALL requests regarding scheduling should be directed to the attention of the Scheduling Officer. These requests would include requests for time off and non-availability.

Availability also was mentioned in letters about contract renewals sent to unclassified officers in 1995 by Gary Hogarth, Deputy Superintendent:

This is to advise you that your last date of employment with the Elgin-Middlesex Detention Centre, Ministry of Solicitor General and Correctional Services is October 31, 1995. However, *your contract may be renewed based upon satisfactory work performance and availability.* (emphasis added)

Written notice of this termination is being given to you in accordance with Section 4 of Regulation 286, of the Employment Standards Act.

The union called five employees who have worked as unclassified officers. Four held this position when the group grievance was filed and are signatories to it. They are Rick Bradshaw, Drew Burrell, Jason Melmer and Paul Schiedel. The fifth officer to testify is Heather Ringel who was hired in May of 1997.

Mr. Bradshaw is a former chief steward and member of the scheduling committee. He estimated that eighty per cent of the calls he has received required an immediate response, leaving no time to make supper or walk his dog. To facilitate a prompt return to work, he kept a uniform in his car along with his cell phone.

Mr. Bradshaw testified about a conversation he had with Lieutenant Bob Tuff in late 1994 or early 1995. Mr. Tuff told Mr. Bradshaw that Lieutenant Johnson had a "hit list" of ten employees who might not have their

contracts renewed for failing to respond to telephone calls. “As a friend”, Mr. Tuff warned Mr. Bradshaw to “stick by” his telephone. Later in his testimony, Mr. Bradshaw described what he had heard about a hit list as a “rumour”. He testified that he “lived by the phone” as an unclassified employee. He eventually began taking a cell phone to the washroom.

Mr. Bradshaw testified that more than once he was recorded as not available when he missed a phone call while using the washroom at home. He received three such notations in 1994 for not responding to calls while at his cottage. He had taken a cell phone to the cottage without realizing it was in an area without cellular service. Mr. Bradshaw was not disciplined or counseled as a result of this incident.

In examination-in-chief, Mr. Bradshaw testified he would not have dared to decline a call to work because of what happened to an unclassified nurse, Debbie McFadden. The McFadden incident is described below. In cross-examination, Mr. Bradshaw conceded he may have refused a shift when asked to work, but not ordered to do so.

Also in cross-examination, Mr. Bradshaw was referred to the standard form contracts he signed as an unclassified employee. Among the terms and conditions of employment listed is one stating: “Authorized Hours of Work as required up to 40 hours per week.” Mr. Bradshaw conceded some degree of availability to work was a requirement of his contracts.

As Mr. Bradshaw’s evidence about his personal experience is representative of the testimony given by other officers, less need be said about their evidence. Mr. Burrell testified he could not recall ever refusing to return to work. Often he was “told” to return to work, rather than being “asked”. Likewise, Mr. Melmer could not recall refusing to work. Mr.

Schiedel also testified about being told to report to work. He estimated he had refused less than ten shifts over the years. Ms. Ringel testified she was sometimes told to report to work. She has refused to work “once or “twice” due to sickness or a family funeral.

In early 1999, Mr. Schiedel and Ms. Ringel were called to separate meetings with Murray Laird, Deputy Superintendent. Each of these unclassified officers was told that, between April and December of 1998, he or she had been unavailable on more occasions than the average of 3.5 for unclassified officers. Mr. Schiedel was told he had nine and Ms. Ringel was told she had 10. According to Mr. Schiedel, Mr. Laird said he was creating a process whereby he could terminate employees who missed too many phone calls. Mr. Schiedel was told the meeting was non-disciplinary but a letter would be placed in his file. The day after the meeting, Mr. Laird said there would be no letter, but he would make a note of the meeting in his date book. Ms. Ringel was told Mr. Laird would keep a note in order to have a record in the event her contract was not renewed.

In a memo to unclassified nurses, dated October 24, 1994, Kevin Killough, Health Care Coordinator, wrote:

Further to our meeting of October 21, 1994, this serves to confirm our new policy with respect to availability of casual contract nurses for work.

Effective immediately, it is the expectation of this employer that all casual contract nursing staff be *readily available to provide staffing coverage for the department in the event of the absent classified nurse(s)*.

In an effort to ensure the operational requirements of the department are met, casual contract nurses may indicate they are not available for

work on two (2) days only in any given seven day work week.
Requests to be not available must be submitted to myself in writing two weeks in advance.

Non-availability related to illness will not be included in the above noted policy/procedure. This form of non-availability will be monitored closely through our Attendance Review process. (emphasis added)

The foregoing memo was entered in evidence along with an undated policy, signed by Mr. Killough, stating:

The following procedure will go into effect immediately:

1. In the event that one nurse is unable to report for scheduled duties, all efforts will be made to contact a casual contract nurse to provide shift coverage.
2. In the event that none of the casuals are available or it would result in overtime for them, a classified employee who has signed up on on the overtime sheet will be contacted. If no one signs up, it is the supervisor's discretion on who is called, either a classified or a casual, for the overtime.
3. In the event no other nurse is available to provide the second nurse coverage, the department will work on a "Priority Nursing" mode until relieved. The supervisor will contact classified staff using a "Reverse Seniority" process and order them to report for duty.
4. *If a classified staff cannot be reached, a casual contract nurse will be called and ordered to report for duty.* (emphasis added)

Debbie McFadden began working as an unclassified nurse in January of 1994. She was discharged for refusing to obey an order to report to work on November 13, 1994. Ms. McFadden was scheduled to work from 19:00 to 23:00 that day. In the morning, Mr. Killough phoned her about reporting for duty at 11:00. She declined to do so, explaining she had another

commitment. When ordered to work nonetheless, she refused. Ms. McFadden was terminated “for cause” in a letter dated November 23, 1994 from Mr. R. McConnell , Deputy Superintendent. She was reinstated pursuant to a memorandum of settlement dated January 3, 1995. In the minutes of settlement, the grievor undertook “to make herself reasonably available for all shifts.”

In another memo to unclassified nurses, dated June 30, 1996, Mr. Killough wrote:

The policy for N/A days has been clarified as follows:

You are allowed to pre-book 2 days off per week. These are approved days off. You are expected to make yourself available the rest of the time. If you are called and there is no answer, this is considered an unauthorized N/A day; if you are called a message is left and you do not return the call, is an unauthorized N/A day. For all unauthorized N/A days, you will submit an occurrence report to the undersigned detailing the reasons for unavailability.

If you have an emergency, i.e. sick child, you will call and state that you have an emergency and will be unavailable for a few hours.
(emphasis added)

Asked in cross-examination whether she had declined a shift since being reinstated, Ms. McFadden answered in the affirmative. She testified that, if called every day for a month, she might decline 4 or 5 shifts. She went on to say she might be called only once in two weeks.

Barry Thomas is Senior Human Resources Consultant for the ministry’s western and central regions. After this grievance was discussed at mediation, Mr. Thomas wrote a memo to Superintendents, dated July 2, 1999:

This memorandum is to clarify the issue of availability for all unclassified staff.

It is the employer's expectation that unclassified staff be reasonably available for work. It is not the employer's requirement that unclassified staff be "immediately" available to receive a call to return to work and return to work. Nor is it a requirement that unclassified staff "respond within a reasonable time to a request for recall to the workplace". The expectation is that unclassified staff be reasonably available, generally over the period of their contract, to work and to be scheduled for work. There is therefore no requirement for unclassified staff to carry pagers or cell phones so that contact can be made. In the event staff chose to carry pagers and/or cell phones, the employer will attempt to make contact by all available registered contact numbers.

Documentation should be kept by management regarding unclassified employees' general availability in combination with the number of hours actually worked by unclassified employees. This information is kept in order to ensure fairness in the distribution of hours and to reflect the levels of general availability of hours. In the event a particular employee's lack of availability greatly exceeds the level of their peers and their hours of work are lower than the average hours worked, an interview may be scheduled by management to discuss the issue. The intent of the interview is simply to bring the matter to the attention of the employee and to offer the opportunity to disclose issues affecting availability (e.g. alternate employment, child care responsibilities, etc.) so that adjustments may be made if necessary and/or appropriate.

In the event you have questions or concerns regarding this correspondence, please feel free to contact the undersigned or another member of Human Resources.

In cross-examination, Mr. Thomas was asked to compare the policy described in his memo with the contents of some of the documents produced by the union. As to Mr. Simpson's memo, Mr. Thomas testified a requirement to be available at all times, except when on approved leave, was

not ministry policy. Asked about the last paragraph of Mr. Downing's memo, requiring employees to be "available when called upon", Mr. Thomas said this requirement was inconsistent with ministry policy "to a degree". He answered in the negative when asked whether ministry policy was reflected in the last sentence of Mr. McConnell's, requiring employees to be "available when operations require a backfill". Mr. Thomas characterized Mr. Killough's memo of June 20, 1996 as going beyond ministry policy.

II

Counsel for the union relies upon two decisions of this board: *Ontario Public Service Employees' Union (Apfelbeck) and Ministry of the Environment*, File No. 1464/86, dated May 3, 1990 (Simmons); and *Ontario Public Service Employees' Union (Bouillon) and Ministry of the Environment*, File No. 2002/86, dated July 13, 1990 (Fisher). In each of these cases, the union contended stand-by pay was owing for certain hours for which on-call pay had been received.

In *Apfelbeck*, Mr. Simmons awarded stand-by pay for peak periods when the need for employees to respond was particularly urgent. He wrote:

While it is true that the employer has not instructed the grievors to respond immediately the evidence is clear that the employer was aware that the employees were operating under the understanding that they were on "stand-by duty" and did nothing to change the grievors' understanding... In our view, ordinarily the employer must specifically give directions that an employee is "on call" or "stand by" duty. However, situations may arise, as in this case, where the employer is aware that an employee believes that he is operating under the stand-by article of the Collective Agreement and accepts the benefit of his service on that basis, only to object later, such as the circumstances of this case, which given these circumstances, cannot be permitted to do so. (pages 20 and 21)

In *Bouillon*, employees were directed in writing “to respond immediately” when paged. In allowing their claim for stand-by pay, in place of the on-call pay they had received, Mr. Fisher succinctly described the rationale for both forms of payment:

[T]he purpose ... is not to pay persons for working, rather the purpose is to pay people for being ready to work. It is also to compensate an employee for having to restrict his off-duty activity to some degree, and depending on the degree of such restriction, it is either called on-call or stand-by and paid accordingly. (pages 3 and 4).

Employer counsel also relies upon two decisions: *Ontario Public Service Employees’ Union (Jones) and Ministry of Attorney General and Correctional Services*, File No. 1099/93, dated September 12, 1994 (Devlin); and *Ontario Public Service Employees’ Union and Ministry of the Environment and Energy*, File No. 120/95 (Dissanayake).

In the latter case, the issue was whether stand-by pay was owing for certain hours for which on-call pay had been received. In dismissing the grievance, Mr. Dissanayake wrote:

The union led evidence about the inconveniences imposed on an ERP’s personal life when on ERP duty... However, that by itself is not determinative of anything. The issue is whether or not these inconveniences are consistent with the on-call duty status [for which the employees had been paid]. In our view the answer must be in the negative.....

[A]n ERP who exceeds the two hour time period [for reporting to the workplace] without a reasonable excuse may be subject to discipline. However, that is fully consistent with the status of on-call duty. Surely, an ERP on on-call duty, who exceeds the standard of a reasonable response without justification may in certain circumstances be *subject to discipline*. (pages 31 and 32; emphasis added)

In *Jones*, the grievor alleged he was “continuously required to be available to report to work”. He claimed either stand-by or call-in pay and management contended neither form of payment was owing. Ms. Devlin concisely recounted the evidence:

[T]he evidence indicates that work assignments are offered by telephone and that approximately 1/2 of the shifts available to casual Correctional Officers are offered one week in advance. The remaining shifts are offered on short notice.

It was the evidence of Daniel Urquhart, the Institutional Training Officer, that while there is an expectation that casual Correctional Officers will generally be available for work, they are not required to remain by the telephone or advise the Employer of their whereabouts when they are not at work. They are also not required to accept a particular assignment and no record is kept in the event that an assignment is refused. As well, a procedure has been implemented whereby casual Correctional Officers may advise the Employer in advance if they are not available on specified days in which case they will not be contacted during his period. ...

Nevertheless, the Grievor testified that he understood that he was required to be available at all times to report for work. He based this understanding on a memorandum to casual Correctional Officers from the Senior Assistant Superintendent which stressed the importance of them being available to cover weekend call-in shifts. In addition, the Grievor relied on the fact that the Employer made a notation on his performance appraisal concerning his unavailability on a number of days in January and February. The Grievor acknowledged that he did not advise the Employer in advance that he would not be available during this period. (pages 1 and 2)

In dismissing the grievance, Ms. Devlin wrote:

Dealing firstly with the matter of the Grievor’s performance appraisal, there was no suggestion that the notation was disciplinary and, in my view, it was not unreasonable for the Employer to draw to the Grievor’s attention its concern with regard to his general availability in circumstances where he could not be reached for at least 15 days in a

2-month period and gave no advance notice to the Employer that he would be unavailable for work during this time.

Moreover, neither the notation on the Grievor's performance appraisal nor the memorandum from the Assistant Superintendent lead me to conclude the Grievor is entitled to standby or on-call pay. While these documents raise concerns with regard to *general availability*, the evidence indicates the Grievor is not required to accept a particular work assignment and need not remain by the telephone or advise the Employer of his whereabouts when he is not at work. There is also a procedure whereby the Grievor and other casual Correctional Officers may advise the Employer in advance in the event that they are not available on specified days. In these circumstances, I cannot conclude that the Grievor is required to be available for immediate return to work or that he is required to be respond within a reasonable time to a request for recall to the workplace or the performance of other work. (page 3; emphasis added)

III

In most of the cases mentioned by counsel, the grievors who claimed stand-by pay had already received on-call pay for the time in question. In other words, there was no dispute that they were required to maintain one of the two states of readiness described in the collective agreement. The only question was which one of these states applied as determined largely by the time frame for an employee to respond to a call. Stand-by duty requires a faster response than on-call duty. The existence of a requirement to maintain one of the contractually specified states of readiness is highlighted in *Ministry of the Environment and Energy*, where Mr. Dissanayake noted an employee was subject to discipline for failing to report to work in the appropriate manner.

Of the cases cited, *Jones* is the only one to consider whether a grievor was required to maintain either of the two states of readiness specified in the

contract. The decision in that case rests upon a distinction between a requirement of “general availability”, the term used by Ms. Devlin, and the sort of requirement giving rise to either on-call or stand-by pay. On any particular occasion, the grievor was permitted not to take a call or not to work if contacted. In other words, missing a call or refusing work would not result in discipline. This is why Ms. Devlin held he was not entitled to on-call or stand-by pay. Yet there was a requirement of “general availability”, as Ms. Devlin noted. The employer had stressed the importance of being available on weekends. When the grievor had missed too many calls, his lack of availability was noted on his performance appraisal. In short, the grievor was required to be available a certain amount of time over the term of his contract. This requirement did not entitle him to on-call or stand-by pay.

There is a sound basis for the distinction drawn in *Jones*. Both on-call and stand-by pay are designed to compensate an employee for being available in case he or she is needed to work. The tacit assumption underlying each form of payment is that, throughout the period for which it is paid, an employee must take calls and must work if asked. As employer counsel argued, the collective agreement should not be interpreted so as to entitle an employee to payment for any period when he or she is permitted either not to receive a call or not to work if contacted. The grievor in *Jones* could miss a call or refuse work without being disciplined. Accordingly, he was not entitled to on-call or stand-by pay.

IV

How does the general principle established in *Jones* apply to the facts at hand? Were the grievors required only to be generally available or were they

required instead to maintain one of the states of readiness described in the collective agreement?

I begin by considering the situation of correctional officers. Mr. Simpson's memo states unclassified correctional staff are to be available at all times unless time off has been approved. Mr. Downing's memo says much the same. Neither specifies what consequence, if any, flows from not being available. This matter is addressed in the subsequent memo from Ms. Knappett to all unclassified officers. It states two instances of an officer being unavailable--i.e. not taking a call or declining to work--within a single week will result in an interview. No consequence is specified for only one such instance. The implication is that an officer may miss one call or refuse one shift each week without any immediate consequence. The memo does not indicate whether the meeting to be held after two occurrences would be disciplinary in nature.

The only later memo to unclassified officers is also from Ms. Knappett. It contains no substantive change relating to availability and merely indicates scheduling requests are to be directed to the scheduling officer. Mr. McConnell's memo to Mr. Stewart, responding to his request for stand-by pay, does not address the consequences of being unavailable. This memo does not purport to change the general rule, previously communicated by Ms. Knappett, that an interview will occur after the second instance of non-availability in a week. There is no evidence Mr. McConnell's memo was seen by officers other than Mr. Stewart at the time it was issued.

The evidence indicates employees were sometimes "told" to work and sometimes "asked". Paul Schiedel conceded he has refused a shift on occasion. Heather Ringel did the same. Rick Bradshaw admitted he may have

refused to work when asked, but not ordered, to do so. Mr. Schiedel and Ms. Ringel were warned their contracts might not be renewed if their level of availability continued to be below average, but they were not disciplined.

As to unclassified nurses, Mr. Killough's first memo stated they were expected to be available except during approved time off. Debbie McFadden's termination and reinstatement sent mixed messages about the consequences of being unavailable. This matter was addressed in Mr. Killough's later memo stating a nurse who is unavailable without authorization must "submit an occurrence report" saying why she was not available. No other consequence is mentioned. Ms. McFadden has declined shifts since her reinstatement without penalty.

The McFadden dismissal and its reversal occurred two years before the group grievance was filed. There is no evidence of any causal employee being disciplined during this period for reasons relating to availability. The same is true of the three-year interval between the filing of the grievance and the completion of the hearing.

In summary, unclassified nurses and officers were required to maintain a level of "general availability" satisfactory to management. When they sometimes missed a call or refused to work, they were not disciplined. In this regard, there is no evidence calls made during peak periods, immediately preceding a change of shift, were treated any differently than calls made at other times of day. Considering all of the evidence, I conclude unclassified officers and nurses were not required to maintain either of the states of readiness described in the collective agreement. Accordingly, they are not entitled to stand-by or on-call pay. The facts at hand differ in some respects

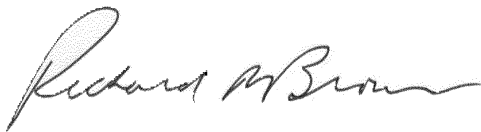
from those in *Jones*, but the general principle underlying the decision in that case leads to the same outcome in the instant case.

The testimony of Mr. Thomas indicates the level of general availability required of nurses and officers at Elgin-Middlesex Detention Centre exceeded the level established by ministry policy. As the requirement related only to general availability, his testimony does not support a claim for stand-by or on-call pay.

As no evidence was led about unclassified cooks, the union has not met the burden of proving they are entitled to any relief.

The grievance is dismissed.

Dated at Toronto, this 20th day of March, 2000.

A handwritten signature in cursive script, appearing to read "Richard Brown".

Richard Brown, Vice-Chair.