Operational Requirements – Some Principles

Verified 2013

1. Operational requirements must be based on the work itself to be performed, not on administrative or economic criteria.

2. Consideration of overtime costs are not proper concerns in determining whether or not operational requirements exist.

3. Operational requirements are a question of fact to be determined in each case.

4. The initial onus rests with the grievor to demonstrate that operational requirements were not a valid reason on the part of the employer to deny a benefit of the collective agreement (e.g., leave). Once that burden is discharged, the onus of demonstrating that operational requirements were valid reasons for denying the benefit will then rest with the employer. Of the two burdens, the employer's burden is more onerous. The reasons are twofold:

   - Knowledge of operating requirements is in the hands of the employer.
   - More importantly, the employer has undertaken an obligation, the release from which is contemplated only in special circumstances. To not impose the onus on the employer to establish the exceptions to the right granted under the relevant provision in the collective agreement could undermine its intent.

5. It has been held that the employer must consider the real alternatives available regarding the use of other staff. That said, the employer's refusal to consider the use of other staff does not necessarily mean that denial of leave is unreasonable.

6. The employer must organize its operations and the service so that employees can exercise their rights under the collective agreement. The employer cannot hide behind staff shortages and operational demands such as training. These are not acceptable excuses to relieve the employer of its obligations.

7. There may be unusual operational requirements of a temporary nature when an employer may block out periods of time in which leave will not be granted because of anticipated needs (e.g. new plants, increase in cross-border traffic). When the employer plans the operations and clearly knows its operational requirements, it has been held that the employer can rightly refuse a request for, for example, compensatory leave.

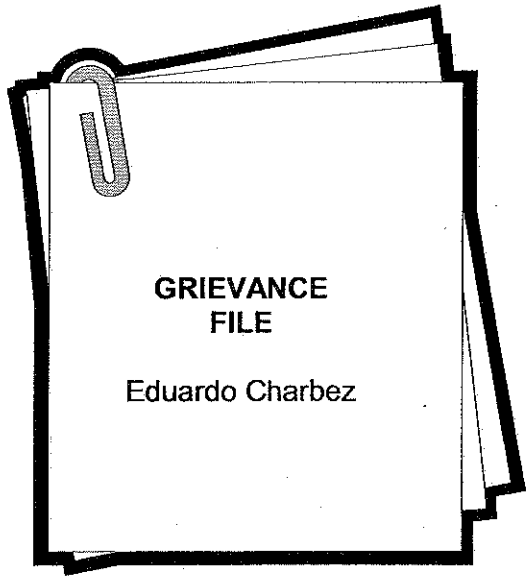
References:

1. *Sumanik* (166-2-395); *Lee & Coulter* (166-2-741, 742)
2. *Gray* (166-2-457; *Savage* (166-2-9734)
3. *Gray* (166-2-457); *D.R. Lawes* (166-2-6437)
4. *Morton* (166-2-14208)
5. *West* (166-2-13823); *Dufresne* (166-2-14582)
6. *Noakes* (166-2-9688); *D.R. Lawes* (166-2-6437); *Lefebvre* (166-2-16101); *Tremblay* (166-2-17538); *Whyte* (166-2-17992); *Medford* (166-2-22035); *MacDonald & Kelly* (166-2-20526 & 20527); *MacGregor* (166-2-22489)
7. *Dawe* (166-2-15468); *Payette* (166-2-13824).

Exercise: Grievance Case File

Eduardo has grieved a two-day suspension. He was given the suspension because he copied a work colleague on an e-mail response to his supervisor. Eduardo's supervisor sent him an email directing him to obtain information from the section his colleague works in, for a confidential report. He felt it would be easiest to include his colleague in the discussion, as a means of ensuring he obtained the correct information requested. Eduardo's supervisor is disciplining him for a breach of confidentiality.

Eduardo intends to file a grievance. One of your tasks is to start the file.

1) What will you include?

2) What are some of your specific approaches to organizing the file?