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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

PAUL MERVIN WURDELL

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer



*Before:* Joseph W. Potter, Vice-Chairperson

*For the Grievor:* Sherrill Robinson-Wilson, Public Service Alliance of Canada

*For the Employer:* Colleen Edwards, Counsel

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Heard at Hamilton, Ontario,  
January 31, 2002.

## DECISION

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[1] Paul Wurdell, a primary products inspector, level 3 (PPI-03), filed a grievance on October 23, 2000, concerning the employer's decision to deny him travel and overtime expenses for the period April 1 to June 27, 2000. The matter was referred to adjudication by way of a letter from his bargaining agent dated September 18, 2001.

[2] At the outset of the hearing, the parties entered into evidence, upon consent, Exhibits G-1 to G-7 inclusive.

### Background

[3] Mr. Wurdell is a meat inspector with the Canadian Food Inspection Agency (C.F.I.A.) and has been so employed since September 1988 at various locations in the Southwest Region of Ontario.

[4] From February 28 to March 31, 2000, Mr. Wurdell was assigned to work at what is called Establishment 439, which was a poultry plant in St. Mary's, Ontario. His substantive position was Establishment 612, in Paris, Ontario. Mr. Wurdell signed what is termed a "temporary assignment agreement" with respect to his assignment at Establishment 439 (Exhibit G-1).

[5] One of the provisions of the agreement signed by Mr. Wurdell states: "While working at Est. 439, Mr. Wurdell will not be considered to be in travel status." Accordingly, travel and overtime expenses were not claimed by Mr. Wurdell for the period February 28 to March 31, 2000.

[6] Mr. Wurdell testified he had signed temporary assignment agreements in the past and occasionally the paperwork to review such agreements came to him a few days after the expiry date of the signed agreements.

[7] On March 31, 2000 nothing came forward from the employer to Mr. Wurdell in the way of a renewal document. This did not worry the grievor as he thought some documentation would arrive shortly, but nothing did.

[8] On April 10, 2000, Charlene Harradine became the Inspection Manager for the Southwest Ontario Region of the C.F.I.A. with responsibility for approximately six plants in the area, including the plant where the grievor worked. She was unaware, when she began, that the grievor was not covered by a signed temporary assignment agreement.

[9] On April 13, 2000, Ms. Harradine received word that the grievor's home plant (i.e. not the one he was currently located at) was closing. Accordingly, she called the St. Mary's plant with the intention of speaking to the grievor and telling him to remain at that location as his home plant had closed. Mr. Wurdell was working elsewhere that day, therefore Ms. Harradine left the message with another employee to be passed on to the grievor. There was no dispute the grievor did receive the message.

[10] Ms. Harradine testified she spoke personally to the grievor about a week later to tell him his home plant had closed and he was to remain at St. Mary's until further notice. Neither Ms. Harradine nor Mr. Wurdell raised the issue of a temporary assignment agreement during that discussion.

[11] Sometime during the second week of June 2000, Ms. Harradine was made aware that the grievor was working without a signed temporary assignment agreement. On June 27, 2000, Ms. Harradine went to the St. Mary's establishment to meet with Mr. Wurdell and she took the necessary documentation for him to sign. This document (Exhibit G-2) would have backdated the assignment to April 3, 2000 under the terms and conditions as were contained in Exhibit G-1.

[12] Mr. Wurdell refused to sign this document, as he felt he was on travel status for this period of time and told such to Ms. Harradine.

[13] Ms. Harradine informed Mr. Wurdell he was not entitled to travel expenses from April 3 onward in spite of the fact there was no signed agreement for that period.

[14] The grievor was presented with another temporary assignment agreement covering the period June 27 to September 5, 2000, still at St. Mary's, and was asked to sign it. He did so. The terms and conditions were the same as the first signed agreement, namely, that "...Mr. Wurdell will not be considered to be in travel status" (Exhibit G-3).

[15] On August 7, 2000, Mr. Wurdell submitted a travel and overtime expense claim wherein he requested reimbursement for travel expenses for the period April 1 to June 26, 2000 (Exhibit G-4).

[16] Ms. Harradine denied the expense claim by way of an October 13, 2000 letter (Exhibit G-5). The grievance followed.

ArgumentsFor the Grievor

[17] The grievor was covered by a signed temporary assignment agreement for the period February 28 to March 31, 2000, which clearly stated he was not entitled to travel expenses. However, when that agreement expired, there was no signed agreement until June 27, 2000.

[18] The grievor assumed he was in travel status for the period of time there was no signed agreement and accordingly he submitted a claim for the period April 1 to June 26, 2000.

[19] Although this was a clerical error on the part of the employer in that the paperwork was not sent to the grievor on time, the grievor should not be made to pay for this error.

[20] A violation of Article 33, "Travelling Time", has occurred (Exhibit G-7). More specifically, the employer has violated clause 33.02, which states:

*33.02 When an employee is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, the time of departure and the means of such travel shall be determined by the Employer and the employee will be compensated for travel time in accordance with clauses 33.03 and 33.04. Travelling time shall include time necessarily spent at each stop-over en route provided such stop-over is not longer than three (3) hours.*

[21] For the period February 28 to March 31, 2000, when there was a signed agreement, the grievor's headquarters area was St. Mary's; therefore there was no entitlement to travel expenses. However, after that date, and up to June 27, 2000, there was no signed agreement, therefore there was no information given to him about his headquarters area.

[22] The grievor's representative submitted the following case: *Re Peterborough Civic Hospital and Canadian Union of Public Employees, Local 19*, (1990) 11 L.A.C. (4<sup>th</sup>) 186.

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For the Employer

[23] What has happened here is that the grievor lay in wait, saying nothing to the employer when he knew a signed temporary assignment agreement was not in place. The employer did not realize this until June 2000, at which time action was taken to have the necessary paperwork signed.

[24] The grievor's headquarters area did not change. He remained assigned to the St. Mary's location throughout the entire period. The grievor was not entitled to take the benefit of a clerical error to say one element of the temporary assignment agreement had changed, namely his headquarters area.

[25] It is irrelevant whether or not a new agreement was actually signed, as paragraph 1 of the agreement states it can be extended upon mutual consent. Ms. Harradine left a message for the grievor on April 13 asking him to stay at St. Mary's. He agreed. That is mutual consent.

[26] An entitlement to travel expenses flows from the collective agreement, not a temporary assignment agreement. There was no requirement for the grievor to travel outside his headquarters area, as that area is defined by the employer in the Travel Directive (see Exhibit G-6). In addition, he did not receive prior authorization to travel as is required by section 1.1.5 of the Travel Directive.

[27] The grievor is estopped from claiming travel expenses as he represented throughout the period in question that his terms and conditions of employment had not changed.

[28] Counsel for the employer filed the following cases; *Arcand* (Board file 166-2-26582), *Fuller and Fryer* (Board files 166-2-15276 and 15277; 166-2-16068 and 16069), *Kovacs* (Board file 166-2-11433) and *Ouellette* (Board file 166-2-21255).

Reasons for Decision

[29] The grievor claims he was on travel status for the period April 1 to June 26, 2000, and therefore he is entitled to related expenses. He claims the employer's denial of such claim is a violation of clause 33.02 of the collective agreement.

[30] The employer states that the collective agreement has not been violated.

[31] Clause 33.02 begins by stating:

*When an employee is required to travel outside his or her headquarters area on government business,, as these expressions are defined by the Employer....*

[32] In order to determine how the employer has defined these terms, one must turn to the Travel Directive (Exhibit G-6).

[33] This document states:

**Definitions**

...

**Government business travel...** - means all travel authorized by the employer, and used in reference to the circumstances under which the expenses...may be paid....

...

**Headquarters area...** - means an area surrounding the workplace....

...

**Travel status...** - means absence from the travellers' headquarters area on government business travel....

...

**Workplace...** - is the location at or from which an employee ordinarily performs the duties of his or her position....

...

[34] Was the grievor required to travel outside his headquarters area on government business?

[35] There is no question he was working on government business, but, in my view, his headquarters area has not changed. He was assigned to work at the St. Mary's plant from February 28 to March 31, 2000, and did so. He remained at that location up to June 27, 2000, when he signed another agreement stating St. Mary's was his headquarters area and recognizing he would not be in travel status from then on.

[36] Therefore, nothing changed with respect to his work location. The only difference for the period in question was an absence of a signed temporary assignment agreement.

[37] I agree with the submissions of the employer's counsel when she said the fact there is no signed agreement does not mean an entitlement to a provision of the collective agreement exists. Either there is a violation of the collective agreement or there is not. In my view, there is no violation of clause 33.02 as alleged by the grievor.

[38] The headquarters area, as defined by the employer in the Travel Directive, is the area surrounding the workplace. What is the workplace? Again, this is defined in the same document as the location from which the employee ordinarily performs the duties of his position. Everyone agreed this location remained constant, namely St. Mary's.

[39] Furthermore, I find that the temporary assignment agreement was extended by mutual agreement given the undisputed fact Ms. Harradine left a message on April 13, 2000 for the grievor, which he received, asking him to remain at that location. If he had not consented to this request, he would have contacted Ms. Harradine and told her so. By virtue of his failure to object, mutual consent was given to continue operating under the same terms and conditions as existed in the signed agreement.

[40] Having found there to be no violation of the collective agreement, I have no basis on which to sustain the grievor's grievance. Accordingly, it is denied.

**Joseph W. Potter,  
Vice-Chairperson**

OTTAWA, March 5, 2002.