

Date: 20060303

Files: 166-32-33025 and
166-32-33190

Citation: 2006 PSLRB 24



*Public Service Staff
Relations Act*

Before an adjudicator

BETWEEN

JEANNOT RIOUX

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

EXPEDITED ADJUDICATION DECISION

Before : Sylvie Matteau, Adjudicator

For the Grievor: Cécile La Bissonnière, Public Service Alliance of Canada

For the Employer: Maureen Harris

Note: The parties have agreed to deal with the grievances by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

Heard at Ottawa, Ontario,
February 24, 2006
(P.S.L.R.B. Translation).

[1] This matter involves two grievances filed by Jeannot Rioux on May 1, 2002 and June 13, 2003, concerning his claims for 80% non-accountable vacation travel assistance for 2000-2001 and 2001-2002.

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, these references to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 ("the former Act").

[3] The parties adduced the following joint Statement of Facts:

[Translation]

...

1. *Jeannot Rioux is a member of the Agriculture group and holds a position as a specialist inspector, Fish Division, Quebec Region, in Gaspé. Gaspé is designated as an isolated post under the Isolated Posts Directive.*
2. *With regards to the travel claims at issue, Mr. Rioux was covered by the collective agreement between the Canadian Food Inspection Agency and the Public Service Alliance of Canada; Article 64 of that collective agreement stipulates that National Joint Council agreements, including the Isolated Posts Directive, form an integral part of the collective agreement.*
3. *On December 22, 2000, the Treasury Board issued a notice announcing that the new Isolated Posts and Government Housing Directive, which had come into force on October 16, 2000, was rescinded as of December 21, 2000 in favour of the former provisions of the Isolated Posts Directive. This notice indicated the key items affected by the rescission and announced that, effective immediately, the 80% non-accountable vacation travel assistance no longer applied. The notice also stated that there was no retroactivity but that there would be no recovery if an employee had already received this non-accountable assistance.*
4. *Between December 19 and 24, 2000, Mr. Rioux's wife and son travelled from Gaspé to Montréal. Mr. Rioux*

submitted a travel expense claim for the 80% non-accountable vacation travel assistance in January 2001. However, this claim was not dated and was forwarded to the finance section in January 2001. The Canadian Food Inspection Agency (CFIA) took the position that the claim had not been sent to the grievor's manager for approval within the time period when he might have been able to avail himself of this option, that is, prior to December 22, 2000.

5. *The Regional Director rejected Mr. Rioux's claim on May 9, 2001. Mr. Rioux grieved the rejection of his claim for the 80% non-accountable vacation travel assistance for fiscal 2000-2001 on June 13, 2001. He claimed a refund of \$2,451.40 for fiscal year 2000-2001.*
6. *Mr. Rioux's grievance was dismissed at the first level of the National Joint Committee grievance process on June 26, 2001, on the basis of the rescission of the October 16, 2000 Isolated Posts Directive. Mr. Rioux lodged his grievance at the second level of the National Joint Committee grievance process on July 19, 2001. The CFIA liaison officer dismissed the grievance on May 7, 2002. Mr. Rioux lodged his grievance at the last National Joint Committee level on May 15, 2002.*
7. *Mr. Rioux submitted a claim for 80% non-accountable vacation travel assistance for fiscal 2001-2002, as set out in the October 16, 2000 Isolated Posts and Government Housing Directive, on March 27, 2002. He claimed a refund of \$2,600.47 for fiscal year 2001-2002.*
8. *Mr. Rioux grieved the rejection of this claim on May 1, 2002. The grievance was dismissed at the first level of the National Joint Committee grievance process on May 15, 2002, given the rescission of the Isolated Posts Directive of October 16, 2000. Mr. Rioux lodged his grievance at the second National Joint Committee level on May 15, 2002; the grievance was dismissed on March 18, 2003. Mr. Rioux lodged his grievance at the last National Joint Committee level on April 3, 2003.*
9. *The executive committee of the National Joint Committee dismissed both of Mr. Rioux's grievances on October 29, 2003.*

10. *Mr. Rioux referred the National Joint Committee grievances to adjudication on February 3, 2004.*

...

[4] The provisions to which Mr. Rioux refers were adopted on October 16, 2000 in the Memorandum of Understanding on the 80% non-accountable vacation travel assistance (the Memorandum), appended to the Isolated Posts and Government Housing Directive (the Directive). The Memorandum was rescinded by the signatories on December 22, 2000.

[5] Mr. Rioux submitted his claim under the Memorandum in January 2001. His second claim, for 2001-2002, was submitted on March 27, 2002.

[6] In Mr. Rioux's view, the December 22, 2000 notice instructed the various departments, as of January 15, 2001, to give employees 90 days' written notice of the rescission of the Memorandum. He therefore believes that the Memorandum remained in force until that notice expired, on March 15, 2001.

[7] Mr. Rioux further argues that, when such provisions terminate, they do not terminate until the first day of the 16th month following the written notice, as is set out in paragraph 5.13.5 of the Directive. Pursuant to the Directive (page 3), these written notices are the responsibility of Treasury Board.

[8] The issue is therefore to determine whether the rescission of the Memorandum took effect immediately or whether claims made within 90 days, or even within the 15-month period set out in paragraph 5.13.5 of the Directive, should be paid.

[9] First, I must point out that paragraph 5.13.5 only applies to clauses 2.4 to 2.8 of the Directive. The provisions at issue are found within a Memorandum of Understanding dated October 16, 2000, not within the Directive itself. Therefore, the 15-month period does not apply in these circumstances and Mr. Rioux's second claim cannot be paid.

[10] As for the first claim, the wording of the December 22, 2000 notice is very clear. The signatories agreed to give immediate effect to the rescission of the Memorandum. They also agreed on the terms and conditions: as of that same date, only provisions relating to vacation travel assistance in place prior to October 16, 2000 were

applicable, and the 80% non-accountable vacation travel assistance was no longer applicable. The notice also states that there would be no recovery if an employee had already received this assistance. Unfortunately, Mr. Rioux had not made his claim prior to that date.

[11] The agreement by the Memorandum's signatories about the date on which the rescission of the Memorandum would come into force did not include any conditions. The signatories were free to impose immediate effect, without notice or delay, which is what they did. Therefore, the assistance requested was no longer available at the time that Mr. Rioux submitted his claims.

[12] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[13] The grievances are dismissed.

March 3, 2006.

P.S.L.R.B. Translation

**Sylvie Matteau,
Adjudicator**