

Date: 20060130

Files: 166-2-34225 to 34239
166-2-34243 to 34259

Citation: 2006 PSLRB 7



*Public Service Staff
Relations Act*

Before an adjudicator

BETWEEN

JOSEPH CLERVEAUX ET AL
(see attached list)

Grievors

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Clerveaux et al. v. Treasury Board (Correctional Service of Canada)

In the matter of grievances referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Léo-Paul Guindon, adjudicator

For the Grievors: Céline Lalande, UNION OF CANADIAN CORRECTIONAL OFFICERS-
SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA-CSN

For the Employer: Neil McGraw, counsel

Heard at Montréal, Quebec,
September 26, 2005.
(P.S.L.R.B. Translation)

Grievances referred to adjudication

[1] The grievors were employed by Correctional Service of Canada (CSC) as Correctional Officers. They filed two series of grievances following transfers of inmates between detention centres within Canada in July and October 2003.

[2] The grievors alleged that their employer failed to grant them a suitable rest period of at least 16 hours after they had worked for more than 17 hours. They alleged violations of the provisions of article 41 of the Collective Agreement and section 4.1 of Part IV of the *Travel Directive* of the Treasury Board Secretariat and the National Joint Council (NJC).

[3] The grievors requested the following corrective measures:

[Translation]

1. *I request that my employer comply with article 41 of Collective Agreement CX-NS/S;*
2. *I request that my employer comply with the Treasury Board Secretariat Travel Directive, specifically Part IV, section 4.1;*
3. *I request that my employer reimburse me \$100 for every hour of rest (5 hours) to which I was entitled but during which my employer made me work;*
4. *I request all of the other entitlements granted to me by Collective Agreement CX-NS/S as well as real, moral and exemplary damages, retroactively with interest at the legal rate, without prejudice to the other entitlements;*
5. *I request that I be represented by an official representative of UCCO-SACC-C.S.N. at all levels of the grievance procedure and that I be present at them, all at the employer's expense; and*
6. *I request assurance that I will not have to suffer any prejudice as a result of this grievance.*

[4] During the hearing, the grievors' representative withdrew the requests for corrective measures contained in points 3 and 5 of the grievance form.

[5] 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”).

Summary of the evidence

[6] The parties agreed on the following Agreed Statement of Facts:

[Translation]

1. On July 17 and 18, 2003, the following applicants conducted an inter-regional transfer. They left the Regional Reception Centre in Ste-Anne-des-Plaines on July 17, 2003 at 6 a.m., arrived at Abbotsford, B.C. at 11 p.m. (Eastern Time) and left again at 10 a.m. on July 18 (Eastern Time) finishing on July 19 at 1 a.m.

Clervaux, Joseph	Gagnon, Olivier	Lévesque, Robert
Correia, Domingos	Gagnon, Stéphanie	Mapachee, Stéphane
Delaleu, Gerald	Gervais, Richard	Parent, Sébastien
DesPeignes, Y.B.	Gonnin, Michel	Pelletier, Serge
Fournier, G.M.	Gravel, Gaetan	Renaud, Réjean

2. On October 8 and 9, 2003, the following applicants conducted an inter-regional transfer. They left the Regional Reception Centre in Ste-Anne-des-Plaines on October 8, 2003 at 6 a.m., arrived at Abbotsford, B.C. at 11 p.m. (Eastern Time) and left again at 10 a.m. on October 9 the following day (Eastern Time), finishing on October 10 at 1 a.m..

Audy, Daniel	Clerveaux, Joseph	Lévesque, Robert
Bélanger, Guylaine	Correia, Domingo	Morrison, J.P.
Bilodeau, J.C	Cruz, César	Picard, Serge
Bolduc, Pierre	Daoust, Daniel	Vincent, Clark
Boulay, Norbert	Gervais, Alain	Vincent, David
Cadieux, Martin	Lacasse, Richard	

3. The applicants were not given a 16-hour period of rest after working for more than 17 hours, as provided for under Part IV, section 4.1 of the Treasury Board Secretariat Travel Directive (**Annex A**).
4. The applicants received all of the compensation payable pursuant to the Collective Agreement (**Annex B**).
5. The applicants filed a grievance with the National Joint Council of the Public Service in relation to the Treasury Board Secretariat Travel Directive.
6. The NJC Executive Committee found that the applicants' grievance did not fall within its jurisdiction (**Annex C**).

[7] The Secretary General of the NJC informed the A/Director General of CSC of the following on April 13, 2004 (Exhibit F-4):

[Translation]

The Executive Committee met on March 25, 2004, and reviewed the grievances of J. Clerveaux et al. concerning the suitable period of rest during inter-regional transfers under section 4.1 of the Travel Directive.

The Appendix of the Collective Agreement sets out the travelling conditions for Correctional Officers required to escort an inmate outside of the officer's Headquarters area. Moreover, the Travel Directive stipulates that the Directive does not apply to persons whose travel is governed by other authorities. Thus, the Executive Committee agrees that the NJC has no jurisdiction to review the grievances of employees who are governed by the Collective Agreement during escorts.

...

[8] The following excerpts from the Collective Agreement between the Treasury Board and the UNION OF CANADIAN CORRECTIONAL OFFICERS-SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA-CSN (Group: Correctional Services; Codes: 601/651; Expiry Date: May 31, 2002) are central to this dispute:

...

ARTICLE 41

NATIONAL JOINT COUNCIL AGREEMENTS

...

41.03

(a) The following directives, as amended from time to time by National Joint Council recommendation and which have been approved by the Treasury Board of Canada, form part of this Agreement:

...

Travel Directive

...

APPENDIX "D"

INMATE ESCORTS

For the duration of the Correctional Services Group Collective Agreement (Non-Supervisory and Supervisory) which will expire on May 31, 2002, the Employer agrees to the following:

...

3. *When an officer is required to escort an inmate outside of the officer's Headquarters area the officers will be subject to the following travelling conditions:*

...

(b) an officer who is required to escort an inmate on a journey involving at least nine (9) hours will be given an overnight stopover whenever it is expected that the journey will exceed twelve (12) hours from the time of departure from the institution to the time of return to the institution.

...

[9] The following provisions of the Treasury Board Secretariat and NJC *Travel Directive* were submitted by the parties in support of their presentations (Exhibit F-2):

...

General

Collective agreement

This directive is deemed to be part of collective agreements between the parties to the National Joint Council, and employees are to be afforded ready access to this directive.

...

Purpose and scope

The purpose of this directive is to ensure fair treatment of employees required to travel on government business consistent with the principles above. The provisions contained in this directive are mandatory and provide for the reimbursement of reasonable expenses necessarily incurred while travelling on government business and to ensure employees are not out-of-pocket. These provisions do not constitute income or other compensation that would open the way for personal gain.

Application

The directive applies to Public Service employees, exempt staff and other persons travelling on government business, including training. It does not apply to those persons whose travel is governed by other authorities.

Definitions

...

Travel status (déplacement) - *an absence from the traveller's headquarters area on government business travel.*

...

Government business travel (voyage en service commandé) - *all travel authorized by the employer, and is used in reference to the circumstances under which the expenses prescribed in this directive may be paid or reimbursed from public funds.*

...

**Part III
Travel Modules**

...

**3.3 Module 3 - Travel in Canada and Continental USA
- Overnight Stay**

The provisions outlined in this Travel Module apply when a traveller is away from the workplace on government business travel overnight, in Canada or in the Continental USA.

...

3.3.10 Rest Periods

Unless mutually agreed otherwise, itineraries shall be arranged to provide for:

- (a) *a suitable rest period, and/or*
- (b) *and overnight stop after travel time of at least nine consecutive hours.*

Travel time is the time spend in any mode of transportation en-route to destination and/or awaiting immediate connections. This includes the time spent travelling to and from a carrier/terminal.

A suitable rest period shall not be unreasonably denied.

...

PARTIE IV
Special Travel Circumstances

4.1 Escort Officers

4.1.1 A suitable rest period for employees who are employed as Escort Officers shall be 16 hours for travel time between 8 to 24 hours; for travel time greater than 24 hours, a suitable rest period shall be 24 hours.

...

[10] The Executive Committee of the NJC considered the employees' grievances at its meeting on March 25, 2004 and decided the following (Exhibit F-4):

[Translation]

...

Appendix "D" of the Collective Agreement sets out the travelling conditions for Correctional Officers required to escort an inmate outside the officer's Headquarters area. Moreover, the Travel Directive stipulates that the Directive does not apply to persons whose travel is governed by other authorities. Thus, the Executive Committee agrees that the NJC has no jurisdiction to review the grievances of employees who are governed by the Collective Agreement during escorts.

...

[11] Only one witness appeared at the hearing. Daniel Lemay, CSC national coordinator of transfers was called as a witness for the employer.

[12] Mr. Lemay described the procedures for transferring inmates between penitentiaries across Canada that were implemented by the CSC before and after 1988. Until 1988, transfers were made over a period of three consecutive days. Correctional Officer teams from the Pacific, Ontario and Atlantic regions relayed one another and escorted each inmate for one day. A specific Correctional Officer-to-inmate ratio was required during transfers. A carrier could accommodate up to 25 inmates, accompanied by 25 Correctional Officers. A Correctional Supervisor was responsible for coordinating the entire operation.

[13] This three-team system entailed the following expenditures:

- Pacific team:

-Transportation and accommodations for two days, regular salary (first day) and overtime (second day).

- Ontario team:

- Transportation for one day (regular salary).

- Atlantic team:

- Transportation and regular salary for one day.

N.B. Correctional Officers filling positions left vacant by agents assigned to the transfers were paid overtime.

[14] Since 1988, transfers are carried out over a two-day period, four times a year. Correctional Officers assigned to these transfers are selected from a list of Correctional Officers in the Montreal region who have volunteered for the job. From the list of 75 volunteer Correctional Officers, those Correctional Officers who have accumulated the least amount of overtime are given priority, and a minimum number of female Correctional Officers are assigned.

[15] Correctional Officers assigned to a transfer start their shift at 6 a.m. at the Regional Reception Centre at Ste-Anne-des-Plaines and finish upon their arrival at the hotel at the end of the first day (11 p.m. in the current cases). They leave their hotel the following morning at 10 a.m. for the airport and are back at the Regional Reception Centre at 1 a.m. on the third day.

[16] In the current cases, the grievors were able to rest for 11 hours, from 11 p.m. to 10 a.m. the following day. Costs were incurred for accommodations (one night), six meals and taxi or bus travel between the airport and the hotel.

[17] Inmates coming from the east are first brought to the Regional Reception Centre at Ste-Anne-des-Plaines by other transfer teams, either by private carrier or Royal Canadian Mounted Police aircraft.

[18] The witness explained that extending the rest period to 16 hours would entail additional costs and prolong the transfer to three days. This would mean additional overtime, accommodation and meal costs, on top of the cost of chartering the plane for a third day.

Summary of argumentsFor the grievors

[19] The Treasury Board Secretariat/NJC *Travel Directive* is part of the Collective Agreement, as indicated in clause 41.03(a) of the Collective Agreement. The Directive also specifies, under the General provisions, that it is deemed to be part of the collective agreements between the parties to the NJC. The parties to the Collective Agreement that apply to these grievances are parties to the NJC.

[20] The Correctional Officers who filed the grievances escorted the inmates during transfers carried out in July and October 2003. The Collective Agreement twice refers to situations in which inmates are escorted outside the officers' Headquarters area: in Appendix "D" and in the *Travel Directive*.

[21] Appendix "D", paragraph 3(b), states that a Correctional Officer will be given an overnight stopover on a journey involving at least 9 hours and whenever it is expected that the journey will exceed 12 hours from the time of departure from the institution to the time of return. This matches the circumstances faced by the escorts involved in these grievances.

[22] Furthermore, the *Travel Directive* specifies that it applies to Public Service employees travelling on government business. Government business means all travel authorized by the employer. Module 3 of the Directive specifies the conditions that apply when government business involves overnight travel. Section 3.3.10 of the Directive indicates that a suitable rest period and/or an overnight stop after travel time of at least 9 consecutive hours shall be provided. Section 4.1.1 in Part IV of the Directive indicates that a suitable rest period during the escorts shall be 16 hours for travel time between 8 and 24 hours. Government travel for the transfer of inmates in July and October 2003 met these criteria.

[23] The *Travel Directive* specifies that the overnight stopover (Appendix "D" of the Collective Agreement) shall be of a suitable duration, set at 16 hours under the conditions addressed in the grievances. Both documents are part of the Collective Agreement, and their provisions are complementary, not contradictory. The principle that a collective agreement must be interpreted in its entirety, with proper consideration given to every clause in relation to the others, must be applied. On this

basis, the grievances must be allowed, and the employees entitled to a rest period of 16 hours for travel time between 8 and 24 hours.

For the employer

[24] Even though the Directive is part of the Collective Agreement, it does not apply to government travel for people governed by other authorities under the restriction specified in the Directive's Application provision. Appendix "D" of the Collective Agreement states the provisions that shall apply when Correctional Officers escort inmates outside their Headquarters area. The travel conditions are set out in paragraph 3 of Appendix "D", and the overnight stopover period is set out in paragraph 3 (b).

[25] Appendix "D" of the Collective Agreement specifies the travelling conditions when escorting inmates, and indicates the exception contained in the Directive's Application provision because this government travel is governed by other authorities. Consequently, the Directive cannot be applied to inmate escorts whose travelling conditions are set out in Appendix "D" of the Agreement.

[26] Hence, the Correctional Officers cannot rely on the travelling conditions stated in the Directive when they are escorting an inmate outside their Headquarters area, whether in relation to the appropriate period of rest or the number of hours of such a period. Part IV of the Directive, which specifies the travelling conditions for "Escort Officers", applies to employees who are employed as "Escort Officers". Escort officers exist in other departments, for instance, at the Department of Citizenship and Immigration. At CSC, the "Escort Officers" position does not exist, and the job of escorting inmates is part of the duties of Correctional Officers.

[27] The procedure for transferring inmates over a two-day period has been in effect since 1988, and neither the Collective Agreement nor the Directive has been amended to date. The last bargaining session in 2001 did not result in any amendments in relation to the subject matter of these grievances.

[28] The employer complied with the provisions of the Collective Agreement by correctly applying the exclusion in the Application provision of the Directive. The employer granted the Correctional Officers the travelling conditions specified in Appendix "D" of the Collective Agreement for the escort of inmates. The NJC Executive

Committee determined that the *Travel Directive* did not apply to Correctional Officers escorting inmates. Based on this, the adjudicator should dismiss the grievances.

Reply of the bargaining agent

[29] The bargaining agent is not in a position to renegotiate the terms of the Collective Agreement, but can argue that the Directive's provisions, which are an integral part of the Agreement, should be applied. No evidence was presented by the employer to show that the terms "Escort Officers" used in Part IV of the Directive refer to a specific position in other departments. On this point, it was demonstrated that the Correctional Officers escorted inmates while on government travel, as indicated in the grievances. The NJC Executive Committee did not hear the bargaining agent before render its decision.

Reasons

The *Travel Directive*

[30] The Treasury Board *Travel Directive* stems from an agreement reached with the NJC of the Public Service. The Collective Agreement specifies that this Directive forms part of the Collective Agreement in clause 41.03(a) (Exhibit F-3). The General provisions of the Directive indicate that it is deemed to be an integral part of collective agreements reached between the parties to the NJC. These provisions are unambiguous and require that the *Travel Directive* forms an integral part of the Collective Agreement.

[31] As a result, based on the principle of interpretation applicable to collective agreements, the Directive's provisions must be taken together with the other provisions of the Collective Agreement and its appendixes to determine the benefits available to Correctional Officers. These benefits must be determined in light of the Collective Agreement as a whole and by assessing the applicable provisions in relation to one another. In these grievances, the government travel provisions are set out in the *Travel Directive* and in Appendix "D" of the Collective Agreement, and these provisions must be interpreted as a whole in defining the travelling conditions that apply during the transfer of inmates outside the Headquarters area of Correctional Officers.

[32] The *Travel Directive* applies to all government travel authorized by the employer and made by Public Service employees. The Directive is general in scope and contains an exception (Exhibit F-2):

APPLICATION

. . . It does not apply to those persons whose travel is governed by other authorities.

[33] This restriction, which forms an integral part of the Collective Agreement, must be interpreted within the general framework of the Collective Agreement. The “other authorities” mentioned fall of necessity under the Collective Agreement; the Collective Agreement can apply only to its signatories. In this context, “other authorities” can refer only to other parts of the Collective Agreement, i.e., the Agreement itself, the appendixes and the addendum contained therein.

[34] Since the Directive addresses only conditions of government business travel, it can apply only to the conditions to which Correctional Officers are subject when on government business travel. In this sense, the restriction on the scope of its application can be applied only to government business travel whose conditions would be determined by other parties to the Collective Agreement. In regard to travel to escort inmates, Appendix “D” of the Collective Agreement states as follows (Exhibit F-3):

Appendix “D”

INMATE ESCORTS

For the duration of the Correctional Services Group Collective Agreement (Non-Supervisory and Supervisory) which will expire on May 31, 2002, the Employer agrees to the following:

. . .

- 1. To the extent practicable, the Employer will endeavour to avoid assigning Correctional Officers on inmate escorts on other than their regular working days.*
- 2. When an officer is required to escort an inmate outside of the Headquarters area the employee will be compensated as follows:*

(a) the total period during which the officer is escorting the inmate or has the inmate under

visual surveillance will be considered as time worked and the officer will be compensated at the applicable straight time and/or overtime rate;

- (b) an officer who is required to escort inmates at a time which is outside the officer's normal regular scheduled hours of work will be compensated at the applicable overtime rates;*
- (c) an officer who escorts an inmate for a period of less than eight (8) hours will receive his or her regular pay for the day, that is eight (8) hours. However, on these occasions, where practicable, an officer may be required to perform other correctional officer duties for the balance of the eight (8) hour period;*
- (d) on a statutory holiday or on a day of rest the employee will be compensated at the applicable overtime rate for the actual hours worked but in any event, no less than the equivalent of eight (8) hours at the straight-time rate;*
- (e) all hours included between the time of reporting to the institution until the time of return shall be considered as hours worked when these hours are consecutive without interruption by overnight stopover for a suitable rest period;*
- (f) when an officer's journey is interrupted by an overnight stopover the officer will be paid up to the time of the officer's arrival at his or her destination including normal travelling time to register at a hotel and will be paid for normal travelling time from the hotel to the officers point of departure. Thus, all hours between the normal time of registration at the hotel until the time of departure from the hotel will not be considered as hours worked;*
- ...*
- (g) on an inbound or outbound journey, without an inmate, the officer will be compensated for the first eight (8) hours as if the officer had been working and the remaining time in travel to be compensated at the applicable overtime rate to a maximum of twelve (12) hours at the straight-time rate;*
- (h) on the return journey after a stopover and when escorting an inmate, the officer will be compensated as in paragraph (a) above;*

-
- (i) *when a Correctional Officer, who has been performing escort duty outside the officer's Headquarters area, does not have a reasonable rest period between the completion of the officer's escort duty and the start of his or her next scheduled shift, the officer will not be required to perform his or her duties for that day, however, the officer will receive a day's pay and the eight (8) hours will be deducted from the compensation earned during the period of escort.*
3. *When an officer is required to escort an inmate outside of the officer's Headquarters area the officers will be subject to the following travelling conditions:*
- (a) *an officer will be reimbursed for reasonable expenses incurred as normally defined by the Employer;*
- (b) *an officer who is required to escort an inmate on a journey involving at least nine (9) hours will be given an overnight stopover whenever it is expected that the journey will exceed twelve (12) hours from the time of departure from the institution to the time of return to the institution;*
- (c) *whenever it is expected that an officer may be required to drive more than eighty (80) kilometers (fifty (50) miles) in any day beyond the number of kilometers normally defined by the Employer the officer will be given an overnight stopover.*

[35] The wording of this "Appendix" is unambiguous and clearly states the conditions that will govern Correctional Officers escorting inmates. In other words, Appendix "D" sets out special conditions that shall apply only to travel during which the Correctional Officers must escort inmates. Therefore, Government travel for transfers inside Canada is subject to the special conditions under Appendix "D", because tasks of escorting inmates are being performed by Correctional Officers. Appendix "D" sets out all of the special circumstances applicable to these escorts:

- They normally occur during regular working days;
- Compensation is defined and calculated according to specific criteria; and
- Specific conditions for travel outside the officer's Headquarters area are included.

[36] Appendix “D” answers the issue raised by the grievors in terms of the period of rest to which they are entitled during transfers outside their Headquarters area. Paragraph 3(b) in Appendix “D” provides for an overnight stopover when the journey is of a minimum of 9 hours and more than 12 hours will elapse between the time of departure from the institution to the time of return. Thus, this period of rest must apply to the grievances in this case that meet these criteria.

[37] The provisions of Appendix “D” cannot be further specified or elaborated by those stated in the *Travel Directive* since the provisions of Appendix “D” govern government travel when inmates are escorted. Appendix “D” manages government travel when the task of escorting inmates is being performed. Appendix “D” also addresses the exclusion contained in the *Travel Directive*, because it constitutes another authority within the meaning of the restriction specified in the Directive’s Application provision.

[38] Consequently, the restriction on the scope of application of the Directive applies and precludes resort to the provisions of the Directive, including those specified in Part IV (Special Travel Circumstances; 4.1 Escort Officers) to determine or clarify the conditions of travel when inmates are being escorted. The exclusion applies to the Directive as a whole, and does not allow for the application of some of its parts and not others.

[39] The evidence as a whole shows that the Correctional Officers involved in these grievances were subject to the travelling conditions set out in Appendix “D” of the Collective Agreement. This evidence shows that:

- *they were reimbursed for reasonable expenses incurred;*
- *they were given a period of overnight rest (from 11 p.m. to 10 a.m.) for journeys involving more than 9 hours, with a period of more than 12 hours between the time of departure and arrival at the Regional Reception Centre at Ste-Anne-des-Plaines; and*
- *they received all the compensation provided for under the Collective Agreement.*

[40] The decision rendered on March 25, 2004 by the NJC Executive Committee of the Public Service of Canada is of no assistance in interpreting the applicable

provisions of the Collective Agreement because it addresses a jurisdictional issue that is not relevant to the case before me.

[41] For all of the above reasons, I make the following order in respect of the files in the list appended hereto:

(The Order appears on the next page)

Order

[42] The grievances are dismissed.

January 30, 2006

P.S.L.R.B. Translation

**Léo-Paul Guindon,
adjudicator**

PSSRB Files

Grievors

Inmate Transfers in July 2003

166-02-34225	Joseph Clerveaux
166-02-34226	Domingo Correia
166-02-34227	Gerald Delaleu
166-02-34228	Y.B. Despeignes
166-02-34229	Gilles Fournier
166-02-34230	Olivier Gagnon
166-02-34231	Stephanie Gagnon
166-02-34232	Richard Gervais
166-02-34233	Michel Gonnin
166-02-34234	Gaétan Gravel
166-02-34235	Robert Lévesque
166-02-34236	Stéphane Mapachee
166-02-34237	Sébastien Parent
166-02-34238	Serge Pelletier
166-02-34239	Réjean Renaud

Inmate Transfers in October 2003

166-02-34243	Daniel Audy
166-02-34244	Guylaine Bélanger
166-02-34245	J.C. Bilodeau
166-02-34246	Pierre Bolduc
166-02-34247	Norbert Boulay
166-02-34248	Martin Cadieux
166-02-34249	Joseph Clerveaux
166-02-34250	Domingo Correia
166-02-34251	César Cruz
166-02-34252	Daniel Daoust
166-02-34253	Alain Gervais
166-02-34254	Richard Lacasse
166-02-34255	Robert Lévesque
166-02-34256	J.P. Morrisson
166-02-34257	Serge Picard
166-02-34258	Clark Vincent
166-02-34259	David Vincent