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*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

**GABRIEL CHAMBERLAND, RICHARD LÉTOURNEAU AND HÉLÈNE
DESJARDINS**

Grievors

and

**TREASURY BOARD
(Canada Border Services Agency)**

Employer

Indexed as
Chamberland et al. v. Treasury Board (Canada Border Services Agency)

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

REASONS FOR DECISION

Before: John A. Mooney, adjudicator

For the Grievors: Guylaine Bourbeau, Public Service Alliance of Canada

For the Employer: Karl G. Chemsî, counsel

Heard at Quebec, Quebec,
April 17 and 18, 2008.
(PSLRB Translation)

TRANSLATION)

I. Grievances referred to adjudication

[1] Gabriel Chamberland, Richard Létourneau and H  l  ne Desjardins (“the grievors”) held positions as customs inspectors. Mr. Chamberland and Ms. Desjardins worked with the Canada Border Services Agency (CBSA) when their grievances were filed. Mr. L  tourneau worked with the Canada Customs and Revenue Agency (CCRA) when he filed his first grievance and with the CBSA when he filed his second grievance. The positions that Mr. Chamberland and Mr. L  tourneau held were classified at the PM-02 group and level, and the position that Ms. Desjardins held was classified at the PM-03 group and level (their positions have since been reclassified). Before December 12, 2003, the CBSA was part of the CCRA.

[2] Mr. Chamberland filed two grievances, one on December 19, 2003 and the other on January 14, 2004. Mr. L  tourneau also filed two grievances, one on November 19, 2003 and the other on January 15, 2004. Ms. Desjardins filed a grievance on January 23, 2004. The grievors request that the CBSA pay them for their travel time from their residences to their workplace, the Jean Lesage Airport in Quebec (“the airport”). Specifically, they seek to be compensated for their travel time during the following periods:

Mr. Chamberland	Mr. L��tourneau	Ms. Desjardins
1st grievance - from February 17 to November 28, 2003 - from November 28 and for all future travel time	1st grievance - from February 17 to November 7, 2003 - from November 7, 2003, and for all future travel time	- from January 3 to 9, 2004 - from January 10, 2004, and for all future travel time
2nd grievance - from December 13 to 19, 2003 - from December 20, 2003, and for all future travel time	2nd grievance - from December 13 to 19, 2003 - from December 20, 2003, and for all future travel time	

[3] In short, Mr. Chamberland and Mr. L  tourneau request that the CBSA pay them for their travel time from February 17, 2003, and Ms. Desjardins requests the same, from January 3, 2004. All three are requesting that the CBSA compensate them for their future travel time.

[4] The grievors presented their grievances up to the final level of the grievance process without obtaining satisfaction. Mr. Chamberland and Mr. L  tourneau referred their grievances to adjudication on May 10, 2006 while Ms. Desjardins referred hers on October 12, 2006.

[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 (*PSSRA*).

[6] When they filed their grievances, the grievors were covered by the collective agreement between the CCRA and the Public Service Alliance of Canada (Program Delivery and Administrative Services, expiry date October 31, 2003 (“the collective agreement”) (Exhibit F-1)). On March 14, 2005, that collective agreement was replaced by the collective agreement between the Treasury Board and the Public Service Alliance of Canada (Program and Administrative Services (all employees), expiry date June 20, 2007 (Exhibit E-8)). The Treasury Board (“the employer”) became the employer when the CBSA was created on December 12, 2003.

II. Summary of the evidence

[7] All three grievors testified, and the employer called one witness. The grievors submitted 28 exhibits in evidence, while the employer submitted 8 exhibits.

[8] Several background facts in this grievance, as mentioned in the testimony of the witnesses, are not contested. The grievances are based on the changes that the CCRA made to the compensation of employees’ travel time and to the grievors’ workplace.

[9] Clause 32.04 of the collective agreement (Exhibit F-1) states that employees are entitled to compensation for their travel time when they are required to travel outside their headquarters area:

32.04 *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 32.05 and 32.06. Travelling time shall include time necessarily spent at each stop-over enroute provided such stop-over is not longer than three (3) hours.*

[10] The grievors rotated between the CCRA office located at 130 Dalhousie Street and the airport, working one week at one site and one week at the other.

[11] The former travel policy (Exhibit E-3) defined “headquarters area” as follows (page 49):

Headquarters area - *The area within 16 kilometres of the workplace . . .*

[12] That distance was measured in a straight line. The grievors’ workplace was the Dalhousie Street office. Because the airport was within that perimeter, the grievors were not compensated for their travel time when they went to the airport.

[13] On October 1, 2002, the CCRA adopted a new travel policy, which is included in the *Financial Administration Manual* (Exhibit F-5). The policy specified that the distance in kilometres establishing the boundaries of the headquarters area would from then on be measured in kilometres by the road route. The new definition of “headquarters area” reads as follows:

(m) Headquarters Area - *means an area surrounding the workplace having a perimeter that is at a distance of 16 km from the workplace, measured by the most direct, safe and practical road route.*

[14] The airport was now located outside the redefined headquarters area. The distance from the Dalhousie Street office to the airport is 16.55 kilometres (Exhibit F-6). The result of that change was that the CCRA had to reimburse each employee on rotation for his or her travel time to the airport.

[15] The CCRA decided to end the rotation system and to change the grievors’ workplace. The CCRA advised Mr. Chamberland (Exhibit F-20) and Mr. Létourneau (Exhibit F-7) that from February 17, 2003, their workplace would be the airport. The CCRA similarly advised Ms. Desjardins that the airport was her new workplace as of December 22, 2003 (Exhibit F-15). According to the CCRA, the grievors’ workplace was the airport from then on. It therefore ceased paying them for travel time when they travelled to the airport.

[16] Mr. Létourneau testified. He explained that he has been working for the federal public service since 1988. He began working at the Dalhousie Street office in July 1998. He rotated between the Dalhousie Street office and the airport. He also went to highway warehouses and to ships to clear goods through customs.

[17] Mr. Létourneau explained how the change in his workplace occurred. On December 2, 2002, André Nadeau, Acting Director, Quebec region, called the employees of the Dalhousie Street office to a meeting. At the meeting, Mr. Nadeau explained that the new travel policy had entailed additional costs. To reduce costs, the CCRA was going to end the rotation system and change the workplace of certain Dalhousie Street office employees. Some employees would be permanently assigned to the airport. Management would first accept employees who volunteered, but if there were not enough volunteers, management would choose employees having the least seniority. Mr. Létourneau did not have much seniority, so he was obliged to accept the reassignment. Mr. Nadeau gave the persons who attended the meeting a document describing the planned changes (Exhibit F-6).

[18] Following his reassignment, Mr. Létourneau performed the same work at the airport as he did when he rotated between there and the Dalhousie Street office. He continued to go to warehouses and ships to clear goods through customs.

[19] Mr. Létourneau is of the opinion that the premises at the airport are unsuitable. There are no lockers or separate toilets for men and women. No office was assigned to him. There is no meeting room and no place to store seized items.

[20] According to Mr. Létourneau, the Dalhousie Street office is still his workplace since it has all the administrative support for employees, such as time sheets and administrative forms. Seizures and related appeals are also dealt with there. Meetings of the occupational health and safety committee are also held there. The condition of the premises is acceptable. Each employee has an office and workspace. There are separate toilets and locker rooms for men and women, as well as an acceptable kitchen. There is also a vault to store seized items, along with several safes in which to store confidential documents or valuable items.

[21] Mr. Létourneau referred me to several documents that, according to him, support the fact that his workplace is the Dalhousie Street office. For example, the forms entitled *Annual Travel Authority*, which he filled out on April 16, 2003 (Exhibit F-9) and on March 30, 2004 (Exhibit F-8), show that the cost centre number was 3921-530-0-0, the number assigned to the Dalhousie Street office. The *Annual Travel Authority* form, which he filled out on April 27, 2005 (Exhibit F-12), is even clearer because, in addition to showing the same cost centre number, it states that the traveller's workplace is "[translation] Quebec office, 130 Dalhousie Street." The same cost centre number is stated in the letter of offer of employment sent to him on January 24, 2005 (Exhibit F-11). The *Travel Expense Claim* form, which he filled out on November 2, 2006 (Exhibit F-13), also states that his workplace is the Dalhousie Street office. Mr. Létourneau

stated in that form that his workplace was the airport, but the person who processed the claim struck out the airport's address and replaced it with the address of the Dalhousie Street office.

[22] Mr. Létourneau stated that he waited more than 10 months before filing his grievance because he thought that the airport facilities would be improved. He finally realized that they would not be improved and decided to file a grievance.

[23] On cross-examination Mr. Létourneau stated that the distance between his residence and the airport is approximately 73 kilometres, while the distance from his residence to the Dalhousie Street office is approximately 79 kilometres. He also stated that he travels directly from his residence to the airport to work.

[24] On cross-examination Mr. Létourneau also stated that he performed his work at the airport but that he would sometimes work at the Dalhousie Street office. When pressed by counsel for the employer to say how many times he would go to the Dalhousie Street office, Mr. Létourneau could not give a precise answer. He stated that he went there from time to time and claimed travel expenses when he did.

[25] Mr. Létourneau made a distinction between a workplace and a work location. According to him, a workplace is where everything required to perform one's work is available.

[26] Mr. Létourneau also stated that he did not file a grievance to obtain suitable lockers or changing rooms or to improve work conditions at the airport.

[27] Ms. Desjardins then testified. She began working for the CCRA in 1988. In 2000, she accepted an appointment as a customs inspector at the Dalhousie Street office. In 2002 and 2003, she accepted assignments with the Flexible Response Team (FRT).

[28] Ms. Desjardins did not attend the meeting called by management on December 2, 2002, but she read the document that had been handed out (Exhibit F-6). She was concerned about the subject dealt with at the meeting because even though she was assigned to the FRT at that time, her substantive position was still at the Dalhousie Street office.

[29] According to Ms. Desjardins, her workplace is still the Dalhousie Street office because all administrative work, such as administrative form processing, budget administration and staff hiring, is performed at that office. Staff is also trained at that office, and employee uniforms are managed there.

[30] Ms. Desjardins referred me to several documents that mention the Dalhousie Street cost centre, including the *Annual Travel Authority* forms, which she filled out on April 19, 2004 (Exhibit F-16) and on April 27, 2005 (Exhibit F-17); the letter of offer of employment that was sent to her on January 24, 2005 (Exhibit F-18); and the *Travel Expense Claim* form, which she filled out on November 15, 2006 (Exhibit F-19). In the last document, she had written that her workplace was the airport, but the person who processed the claim struck out the airport's address and replaced it with the address of the Dalhousie Street office.

[31] In addition, Ms. Desjardins was of the view that her workplace was the Dalhousie Street office because the CCRA did not take any staffing action to transfer her to the airport.

[32] Ms. Desjardins described the operations and facilities of the FRT to show that it is a true workplace. The FRT had just been created when she accepted a secondment to it. The FRT established its own physical and administrative structures and hired the required staff. The FRT's premises were located at 94 Dalhousie Street. The FRT was administered entirely from that location. The FRT's cost centre number was different from that of the office at 130 Dalhousie Street. With respect to the facilities on the premises, there were closets, a dining room and all the necessary work tools.

[33] On cross-examination Ms. Desjardins stated that she lives 32 or 33 kilometres from the airport. The distance from her residence to the Dalhousie Street office is longer by a few kilometres. Ms. Desjardins went directly to the airport to work.

[34] Ms. Desjardins testified that she worked at the Dalhousie Street office to replace employees who were on holidays. She performs 95 percent of her work at the airport.

[35] In his testimony, Mr. Chamberland explained that he has worked for the CBSA and the organizations that preceded it since 1981. He has worked in various regions, including Rock Island, Quebec, from 1986 to 1989 and Pohénégamook, Quebec, from 1989 to 1991. He began working at the Dalhousie Street office in 1997. He accepted some temporary secondments to the FRT between April 1, 2001 and March 31, 2002. He has been assigned to the airport since February 17, 2003 (Exhibit F-20).

[36] Mr. Chamberland accepted the airport assignment because it gave him a chance to exercise the new authority that he had just been given and to use new work tools.

[37] Mr. Chamberland described the airport facilities where he works. Management did not assign any offices to the customs inspectors, which complicates matters when inspectors make arrests. It is hard to find a computer to write an arrest report. There is no vault to store seized

drugs or confidential documents. Customs inspectors are required to place those items in a safe. He had never worked in such a facility in the past. Even at Rock Island and Pohénégamook, he had had a suitable place to work.

[38] At the airport, approximately 30 persons work shifts. At the Dalhousie Street office, working hours are from 08:00 to 16:00, Monday to Friday. Management transferred extra work from the Dalhousie Street office to the airport. In addition to his regular work, Mr. Chamberland processes marine traffic files. In addition, if there is an emergency at the Dalhousie Street office outside normal office hours, airport employees are called on to help. If there is an emergency somewhere else, airport employees go directly there without going to the Dalhousie Street office.

[39] Mr. Chamberland filed a grievance because, according to him, he was entitled to a travel allowance for going to the airport since his workplace is the Dalhousie Street office. He referred me to several documents bearing the Dalhousie Street office's cost centre number, including the staff management form that he signed on August 24, 2007 (Exhibit F-21), the *Annual Travel Authority* forms that he signed on March 30, 2004 (Exhibit F-22), April 17, 2003 (Exhibit F-23) and April 27, 2005 (Exhibit F-24), and a letter of offer of employment that was sent to him on January 24, 2005 (Exhibit F-25).

[40] On cross-examination, Mr. Chamberland stated that he travels directly to the airport to work. He lives 11 kilometres from the airport. The Dalhousie Street office is farther, but he can take public transit to get there.

[41] When counsel for the employer asked Mr. Chamberland if he performed 95 percent of his work at the airport, he answered that he spent less time there than that. When pressed by counsel for the employer, Mr. Chamberland could not be more precise about how often he worked at the airport.

[42] Mr. Chamberland stated that he had delayed contesting his assignment because he was waiting for suitable facilities to be put in place at the airport. He was also waiting for management to carry out a staffing action to confirm his reassignment, but that never happened.

[43] Louis Berberi testified for the employer. He has been a border services superintendent since November 2001. His responsibilities include supervising staff, managing operations and settling disputes. He has been supervising airport employees since 2003.

[44] Mr. Berberi described the work that the grievors perform at the airport. They mainly deal with air traffic. They question travellers and persons in charge of cargo to determine if the entry of those persons or goods into Canada poses a risk to the country. If they feel that there is a risk, they may conduct a more thorough examination.

[45] There are currently 35 employees at the airport and 130 at the Dalhousie Street office. Employees perform similar tasks at both locations, such as dealing with commercial goods entering Canada (as opposed to goods carried by travellers). However, there are major differences between the two offices. Employees at the airport mainly deal with air traffic while employees at the Dalhousie Street office mainly deal with marine transportation. The airport supports all the other offices in the Quebec region, including the Dalhousie Street office, outside normal work hours. When there is extra work at the Dalhousie Street office, help is requested from the airport employees, and vice versa.

[46] Mr. Berberi explained the main reasons that led to the end of the rotation system for employees. Before 2003, 16 customs inspectors rotated between the airport and the Dalhousie Street office. The two superintendents were posted at the Dalhousie Street office, which made staff management difficult. In addition, the rotation system did not allow for the proper administrative follow-up of files. Management was also of the view that having the same customs inspectors at the airport on a permanent basis would increase their knowledge of local airport realities, i.e., clients, persons working there and the types of activities that were taking place. Management also made the change because the CCRA had adopted a new national policy on performance that required establishing a more structured management system involving timelines and specific criteria. The rotation system did not seem to fit in with those new requirements.

[47] Accordingly, management considered ending the rotation system and held a meeting with employees on December 2, 2002 to discuss the matter. In late December 2002 or early January 2003, management decided to end the rotation system and to create two permanent teams, one at the Dalhousie Street office and one at the airport.

[48] Since the definition of headquarters area in the new travel policy was amended, the CBSA has had to pay travel expenses for airport employees who go to the Dalhousie Street office to help employees there when there is too much work. The opposite is also true; employees at the Dalhousie Street office who help out airport employees are also entitled to claim travel expenses.

[49] Mr. Berberi analyzed the time sheets for Mr. Chamberland (Exhibit E-7), Mr. Létourneau (Exhibit E-5) and Ms. Desjardins (Exhibit E-6) and concluded that from April 1, 2004 to March 31, 2006, the grievors worked on average from 1 to 2 percent of their time at the Dalhousie Street office. Mr. Chamberland worked at the Dalhousie Street office 7 times, Mr. Létourneau approximately 10 times and Ms. Desjardins 2 times.

[50] Mr. Berberi explained that the cost centre number that is indicated on the grievors' *Annual Travel Authority* forms (Exhibits F-8, F-9, F-12, F-16, F-22, F-23 and F-24) and *Travel Expense Claim* forms (Exhibits F-13 and F-19) is the number of the Dalhousie Street office but that it is strictly an administrative matter. The cost centre could have been that of the Ottawa head office.

[51] Mr. Berberi explained that the workplace change put the grievors closer to their homes. He referred me to a map showing the locations of the grievors' residences, the Dalhousie Street office and the airport (Exhibit E-1). The map shows that the distance between Mr. Chamberland's residence and the Dalhousie Street office is 17 kilometres and that the distance from his residence to the airport is 11 kilometres. The distance from Mr. Létourneau's residence to the Dalhousie Street office is 73.4 kilometres, and the distance from his residence to the airport is 70 kilometres. The distance from Ms. Desjardins' residence to the Dalhousie Street office is 28.8 kilometres, and the distance from her residence to the airport is 24.8 kilometres.

[52] Mr. Berberi stated that CBSA management had listened to employee's complaints concerning the airport facilities. The employees will be working in new facilities shortly. Lockers had been installed for them. In 2004, Mr. Berberi also negotiated an agreement with the airport for a meeting room.

[53] On cross-examination, Mr. Berberi stated that management had begun looking into creating two work teams in April 2002. He had discussed it with Pierre Lemieux, Superintendent, Quebec sector - Customs, and with Luc Tremblay, Chief of Operations, Quebec region. No formal meetings were called with the union because they were only thinking about the matter. When the CCRA issued the new travel policy, management saw an additional reason to end the employee rotation system. The district management committee decided to end it between December 2002 and January 2003.

[54] Mr. Berberi testified that permanently assigning employees to the airport had considerable budgetary advantages. The CCRA saved \$91,000 in travel allowances and expenses. The budget of the Quebec office amounted to slightly more than \$1 million in 2002.

[55] On cross-examination, Mr. Berberi stated that the employees at the Dalhousie Street office were asked whether they would prefer the Dalhousie Street office or the airport as their workplace. He did not remember if the grievors had expressed any preference.

III. Summary of the arguments

A. For the grievors

[56] The grievors' representative submitted that they are entitled to travel compensation when going to the airport. They perform the same work as before, and the Dalhousie Street office remains their workplace. The airport is only a temporary work location because its facilities are inadequate.

[57] The grievors continue to work at the Dalhousie Street office on evenings and weekends. Employee training still takes place at that office. Administrative documents such as the *Annual Travel Authority* forms (Exhibits F-8, F-9, F-12, F-16, F-22, F-23 and F-24) and the *Travel Expense Claim* forms (Exhibits F-13 and F-19) are still processed at the Dalhousie Street office and bear that office's cost centre number. The grievors' letters of offer of employment (Exhibits F-11, F-18 and F-25) also show that office's cost centre number.

[58] With respect to the airport, management did not change anything. The grievors still do not have anywhere to put their personal effects. There is no appropriate meeting room and no separate washrooms and lockers for men and women.

[59] According to the grievors' representative, the CCRA abolished the rotation system to save on operating costs.

[60] The grievors thought that the assignment was temporary. They were waiting for the CCRA to undertake a staffing action to finalize the change of work through a transfer or deployment. The CCRA never undertook any staffing action to follow up on the workplace change.

[61] Mr. Chamberland agreed to the airport assignment, but Mr. Létourneau was forced to accept the transfer and could not contest it because he did not have sufficient seniority.

[62] The grievors' representative submitted that the change in the employees' assigned workplace and the CBSA's refusal to improve the airport facilities violates clause 1.02 of the collective agreement (Exhibit F-1), which provides that the parties to the collective agreement ". . . share a desire to improve the quality of the Public Service of Canada and to promote the well-being and increased efficiency of its employees" A workplace is defined not only by the tasks performed there, but also by the conditions in which the employees work.

[63] The grievors' representative also submitted that the grievors' workplace change and the CBSA's refusal to improve the airport facilities are not in keeping with the values of trust, flexibility and respect set out in the *Travel Directive* (Exhibit F-28, page 1).

[64] The grievors' representative referred me to two decisions of the Public Service Labour Relations Board in which the adjudicator ruled that employees were entitled to travel compensation even though the employer had changed their workplace: *Vijh et al. v. Treasury Board (Revenue Canada)*, PSSRB File Nos. 166-02-26509, 26510, 26512, 26513, 26514 and 26516 (19951204), and *Leroux v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File No. 166-02-23192 (19940516).

B. For the employer

[65] Counsel for the employer submitted that the grievors are not entitled to travel compensation for their travelling time to the airport. Under clause 32.04 of the collective agreement (Exhibit F-1), employees are entitled to such compensation only if they must travel outside of their headquarters area. Clause 2.01 specifies that the headquarters area “. . . has the same meaning as given to the expression in the Employer's Travel Policy” The new travel policy, which came into force on October 1, 2002, defines the headquarters area as an area surrounding the workplace to a distance of 16 kilometres by road (Exhibit F-5, page 62). That same policy defines “workplace” as the “. . . location at or from which an employee ordinarily performs the duties of his or her position. . . .” (Exhibit F-5, page 60). The grievors' workplace is the airport, which is where they have been performing their duties since February 17, 2003. The evidence showed that they work there 95 percent of their time, or more.

[66] Counsel for the employer submitted that the shortcomings at the airport in terms of the facilities, such as the lack of lockers or a proper meeting room, are not relevant factors. Those shortcomings cannot be used to determine the grievors' workplace. He noted that even though the grievors were not satisfied with their work conditions, they never filed a grievance on that subject.

[67] The fact that some administrative duties, such as processing the *Annual Travel Authority* forms, are performed at the Dalhousie Street office is not a determining factor in identifying the workplace. Those duties could even have been performed in Ottawa. The only criterion that serves to identify the workplace is the location where the grievors actually perform their duties.

[68] The CCRA abolished the rotation system between the Dalhousie Street office and the airport for reasons of efficiency, which allowed for better follow-up on files and increased the employees' local knowledge. The fact that the new definition of the headquarters area entailed additional costs was another reason to end the rotation system. Budgetary considerations are valid reasons, and the employer does not have to apologize for using them. The employer made a sound decision on the management of public funds. The grievors are not travelling on government business when they go to the airport. They want to be paid to go to work every morning. What would a reasonable taxpayer think if he or she found out that the government paid for such travel?

[69] Counsel for the employer noted that the grievors benefited from the workplace change. The airport is closer to their residences than the Dalhousie Street office.

[70] According to counsel for the employer, paying the grievors to go to work would be contrary to the objectives of the new travel policy. In its general policy statement (Exhibit F-5, page 2), the policy states that the CCRA ensures the fair and consistent treatment of employees, who must not obtain income or other compensation under this policy that would open the way for personal gain.

[71] Counsel for the employer noted that nothing led the grievors to believe that their assignments were temporary. The letters that the CCRA sent them (Exhibits F-7, F-15 and F-20) clearly showed that the airport would from then on be their new workplace. The grievors never contested that decision.

[72] Counsel for the employer referred me to the following four decisions in which the adjudicator ruled that, for the purpose of travel allowances, the workplace was where the employee performed the duties of his or her employment: *Arcand v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-26582 (19951128); *Fuller et al. v. Treasury Board (Agriculture Canada)*, PSSRB File Nos. 166-02-15276, 15277, 16068 and 16069 (19870617); *Wurdell v. Canada Food Inspection Agency*, 2002 PSSRB 27; and *Kovacs v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File No. 166-02-11433 (19820817).

[73] According to counsel for the employer, the facts in *Vijh et al.*, cited by the grievors' representative, were very different from the facts in this grievance. In *Vijh et al.*, the workplace change was temporary, while in the case of the grievors, it is permanent. The facts were also very different in *Leroux* because, in that grievance, the employee was in training when the employer changed her workplace, which is not the case in this grievance.

[74] As far as corrective measures are concerned, counsel for the employer submitted that if I were to allow the grievance, any amount awarded as a corrective measure cannot exceed the period specified in the collective agreement for filing a grievance. On that point, he referred me to *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL). However, counsel for the employer agreed that the end of the period covered by the remedy would be the date on which I issue my decision. He added that I could not allow the grievance for future travel.

IV. Reasons

[75] Each grievor referred a grievance to adjudication under paragraph 92(1)(a) of the *PSSRA*, which reads as follows:

92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

[76] This dispute concerns the CBSA's refusal to compensate the grievors for their travel time when travelling to the airport from their residences. In my opinion, the grievors are not entitled to that compensation for the reasons that follow.

[77] The collective agreement (Exhibit F-1) specifies that employees are entitled to compensation for their travel time when they are required to travel outside of their headquarters area. Clause 32.04 provides the following:

32.04 *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 32.05 and 32.06. Travelling time shall include time necessarily spent at each stop-over enroute provided such stop-over is not longer than three (3) hours.*

[Emphasis added]

[78] Clause 2.01 of the collective agreement (Exhibit F-1) defines "headquarters area" as follows:

...

"headquarters area" has the same meaning as given to the expression in the Employer's Travel Policy...

...

[Emphasis added]

[79] Until February 17, 2003, Mr. Létourneau and Mr. Chamberland worked on rotation between the Dalhousie Street office and the airport, one week at one location and the following week at the other. Ms. Desjardins did the same until December 22, 2003. Their workplace was the Dalhousie Street office. Before October 1, 2002, they were not entitled to compensation for their travel time to travel from the Dalhousie Street office to the airport or from their residences to the airport. According to the former travel policy, the headquarters area was the area within a 16-kilometre radius of the workplace, that is, 16 kilometres in a straight line. The airport was located within that perimeter.

[80] The CCRA amended the definition of headquarters area on October 1, 2002, when the new travel policy came into force (Exhibit F-5). The headquarters area remained a radius of 16 kilometres, but the CCRA changed how that distance was measured, which from then on was by road distance. The new definition reads as follows (page 62):

*(m) **Headquarters Area** - means an area surrounding the workplace having a perimeter that is at a distance of 16 km from the workplace, measured by the most direct, safe and practical road route.*

[81] The effect of this new definition of headquarters area is that the airport is outside the headquarters area, as the distance by road is greater than the straight-line distance. The distance by road from the Dalhousie Street office to the airport is 16.55 kilometres (Exhibit F-6). The result of that change was that the CCRA had to compensate employees on rotation from the Dalhousie Street office to the airport for their travel time to the airport.

[82] The CCRA decided to end the rotation system as of February 17, 2003 and to permanently assign certain employees to the airport, including the grievors. Since that date, the CCRA refuses to pay the grievors for their travel time whenever they go to the airport because, according to the employer, the airport has become their workplace.

[83] To be entitled to compensation for travel time, the grievors must establish that their workplace is the Dalhousie Street office. The new travel policy defines “workplace” as the “location at or from which an employee ordinarily performs the duties of his or her position” (Exhibit F-5, page 60):

*(x) **Workplace** - is the location at or from which an employee ordinarily performs the duties of his or her position and, in the case of an employee whose duties are of an itinerant nature, the*

actual building to which the employee returns to prepare and/or submit reports, etc., and where other administrative matters pertaining to the employee's employment are conducted.

[Emphasis added]

[84] The evidence shows that the grievors only went to the Dalhousie Street office in exceptional cases, whether for emergencies after business hours, to replace employees on holidays or for other reasons. Mr. Berberi analyzed the time sheets of Mr. Chamberland (Exhibit E-7), Mr. Létourneau (Exhibit E-5) and Ms. Desjardins (Exhibit E-6) and concluded that from April 1, 2004 to March 31, 2006, they each worked an average of 1 to 2 percent of their time at the Dalhousie Street office. Mr. Chamberland worked 7 times at the Dalhousie Street office, Mr. Létourneau approximately 10 times and Ms. Desjardins, twice. Ms. Desjardins testified that she worked 95 percent of her time at the airport. Mr. Chamberland stated that he worked there less often than Ms. Desjardins, but even when pressed by counsel for the employer, he did not want to state precisely how long he worked there. Mr. Létourneau also refused to say how many times he went to the Dalhousie Street office, despite repeated questioning by counsel for the employer. Accordingly, the analysis and testimony given by Mr. Berberi were not contradicted by the grievors. Therefore, I conclude that the grievors' workplace is the airport because that's where they normally perform the duties of their positions. In fact, they work there most of the time, as explained above.

[85] The grievors' workplace is the location where they ordinarily perform the duties of their positions and not the location where the employer trains employees, as the grievors claimed.

[86] I cannot agree with the grievors' argument that their workplace is still the Dalhousie Street office because there are no suitable facilities at the airport. In my opinion, the poor facilities at the airport cannot affect the determination of the workplace. As I mentioned above, the workplace is the location where the grievors ordinarily perform the duties of their positions.

[87] In addition, in my opinion, it cannot be concluded that the Dalhousie Street office is the grievors' workplace because the *Annual Travel Authority* forms (Exhibits F-8, F-9, F-12, F-16, F-17, F-22, F-23 and F-24), the *Travel Expense Claim* forms (Exhibit F-13 and F-19) and the grievors' letters of offer of employment (Exhibits F-11, F-18 and F-25) show that the cost centre is the Dalhousie Street office. That is an administrative measure that does not affect the determination of the workplace.

[88] The grievors also submitted that they believed that their assignment to the airport was temporary. I cannot agree with that argument. The letters advising them of their workplace change (Exhibits F-7, F-15 and F-20) do not in any way show that it was a temporary

assignment. No evidence was submitted showing that management might have given them that impression.

[89] The grievors also submitted that their workplace remains the Dalhousie Street office because no staffing action has been undertaken. I must dismiss that argument. What is important for the purpose of the travel time specified in the collective agreement and in the travel policy is where the grievors perform their duties. In this case, they perform their duties at the airport.

[90] Mr. Létourneau testified that he performs the same work at the airport as he did before being assigned there permanently. In my opinion, that argument does not establish that his workplace is the airport. The situation today is quite different. Before the workplace change, he only worked at the airport every second week. Because of his permanent assignment to the airport, he works there most of the time. He performs the same work but does it at the airport on a permanent basis.

[91] Also, I cannot accept the grievors' argument that their workplace is the Dalhousie Street office because the CBSA's refusal to improve the airport facilities violates clause 1.02 of the collective agreement (Exhibit F-1), which provides that the parties to the collective agreement ". . . share a desire to improve the quality of the Public Service of Canada and to promote the well-being and increased efficiency of its employees. . . ." In my opinion, compliance with that provision, or the lack thereof, is not relevant to determining the grievors' workplace. Determining a workplace is a question of fact that is not influenced by the quality of the public service or the well-being of employees. Even if the working conditions at the airport were worse than what they are, it would not change the fact that the airport is the grievors' workplace because it is the location where they ordinarily perform their duties. The same applies to their argument that the employer did not respect the values of trust, flexibility and respect stated in the *Travel Directive* (Exhibit F-28, page 1).

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

(The Order appears on the next page)

V. Order

[93] The grievances are dismissed.

July 16, 2008.

PSLRB Translation

**John A. Mooney,
adjudicator**