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File: 566-32-1427

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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

RÉMY ROBICHAUD

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Indexed as

Robichaud v. Canadian Food Inspection Agency

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: [Michel Paquette, adjudicator](#)

For the Grievor: [Guylaine Bourbeau, Public Service Alliance of Canada](#)

For the Employer: [Karl Chemsy, counsel](#)

Heard at Moncton, New Brunswick,
September 3, 2009.
(PSLRB Translation)

Individual grievance referred to adjudication

[1] Rémy Robichaud, the grievor, filed a grievance concerning a dispute over the reimbursement of expenses for overnight travel in Canada. The grievance was based on an interpretation of the Travel Directive (“the Directive”) of the federal government’s National Joint Council (NJC). Mr. Robichaud works as a food processing inspector specialist for the Canadian Food Inspection Agency (“the Agency”) in Shediac, New Brunswick. His terms and conditions of employment are governed by the collective agreement between the Public Service Alliance of Canada and the Agency for the Engineering and Scientific Support Group (expiry date: December 31, 2006; “the collective agreement”).

Summary of the evidence

[2] The Agency dismissed the grievance, finding that it had not been filed within the period set out in section 15.0 of the NJC By-Laws, namely, 25 days. Following Mr. Robichaud’s testimony, the employer withdrew its objection.

[3] Mr. Robichaud worked as a seasonal inspector for the Department of Fisheries and Oceans in Shippagan, N.B., from 1981 to 1997. In 1997, his position moved to the Agency, where he continued as a seasonal employee.

[4] In 1999, Mr. Robichaud’s position in Shippagan was abolished as a result of cutbacks. However, he was offered an indeterminate position in Shediac, 230 km from Shippagan. He accepted the position but kept his residence in Shippagan after trying to sell it. He also kept his Shippagan address for his mail and in his personnel file with the employer.

[5] Mr. Robichaud lived in furnished cottages and apartments in Shediac during the week and returned to Shippagan on the weekends. Starting in summer 2003, he lived in a trailer during the summer and rented a furnished cottage in the winter.

[6] Since he was born in Shippagan, had spent his life there and still had a residence there, Mr. Robichaud informed management that he would like to work there again if a position opened up.

[7] In early 2004, Mr. Robichaud’s manager asked him whether he was interested in a position in Shippagan for seven months, from May to November 2004, for a joint

project with the Department of Fisheries and Oceans. Mr. Robichaud confirmed that he was interested.

[8] However, Mr. Robichaud's manager said that his budget was limited and that he could pay meal expenses only when Mr. Robichaud was on government business. At that time, Mr. Robichaud accepted a verbal agreement.

[9] For the duration of the agreement, Mr. Robichaud lived at home and ate breakfast and dinner there but was reimbursed for his lunch expenses.

[10] Mr. Robichaud returned to his position in Shediac in December 2004. During a Christmas meal with some coworkers, he learned that he could have been reimbursed more fully for his expenses during his assignment in Shippagan.

[11] Therefore, Mr. Robichaud made a claim on January 26, 2005 (Exhibit G-1) for the reimbursement of \$12 282.40 under the Directive for the time he had worked in Shippagan. That amount included the amounts that the Agency had already reimbursed.

[12] On March 24, 2005 (Exhibit G-2), management replied that Mr. Robichaud had already been reimbursed in accordance with the Directive. It stated that the Directive entitled him to reimbursement for his lunch expenses because he had been on travel status away from his normal workplace between 08:00 and 17:00. As well, he was entitled to reimbursement for his travel expenses between Shediac and Shippagan at the start of the assignment and between Shippagan and Shediac at the end of the assignment.

[13] Mr. Robichaud was also told that, since he had lived at his personal residence, he was not entitled to reimbursement for private non-commercial accommodation and related incidental expenses. Nor was he entitled to reimbursement for breakfast and dinner expenses, since he was not on travel status during those meals.

[14] Mr. Robichaud filed a grievance on April 1, 2005.

Summary of the arguments

[15] Mr. Robichaud's representative referred to the Directive in her arguments. First, she referred to the principles of the Directive and said that they applied to the assignment in Shippagan. Those principles read as follows:

The following principles were developed jointly by the bargaining agent representatives and the employer representatives on the National Joint Council. These principles are the cornerstone for the management of government travel and shall guide all employees and managers in achieving fair, reasonable and modern travel practices across the public service.

Trust - *increase the amount of discretion and latitude for employees and managers to act in a fair and reasonable manner.*

Flexibility - *create an environment where management decisions respect the duty to accommodate, best respond to employee needs and interests, and consider operational requirements in the determination of travel arrangements.*

Respect - *create a sensitive, supportive travel environment and processes that respect employee needs.*

Valuing people - *recognize employees in a professional manner while supporting employees, their families, their health and safety in the travel context.*

Transparency - *ensure the consistent, fair and equitable application of the policy and its practices.*

Modern travel practices - *introduce travel management practices that support the principles and are in keeping with travel industry trends and realities; develop and implement an appropriate travel accountability framework and structure.*

[Emphasis in the original]

[16] Mr. Robichaud's representative then spoke of the purpose and scope of the Directive and mentioned that Mr. Robichaud would have preferred to remain in Shippagan but that he had to work in Shediac after his position was abolished. She added that Mr. Robichaud did not make his claim for his own gain. The purpose and scope of the Directive are defined as follows:

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.

[17] Mr. Robichaud's representative also reviewed the definition of private non-commercial accommodation and noted that Mr. Robichaud has been residing in Shediac 5 days per week for 10 years. The definition of accommodation reads as follows:

Private non-commercial accommodation (logement particulier non commercial) - *private dwelling or non-commercial facilities where the traveller does not normally reside.*

[Emphasis in the original]

[18] Mr. Robichaud's representative noted that he had not obtained advance authorization for certain expenses and added that the Directive allows post-authorization, which is what occurred. The part of the Directive entitled "Authorization" reads as follows:

1.1 Authorization

1.1.1 The employer has the responsibility to authorize and determine when government travel is necessary, and to ensure that all travel arrangements are consistent with the provisions of this directive. Following consultation between the employer and the employee, the determination of travel arrangements shall best accommodate the employee's needs and interests and the employer's operational requirements.

1.1.2 Government travel shall be authorized in advance in writing to ensure that all travel arrangements are in compliance with the provisions of this directive. In special circumstances, travel shall be post authorized by the employer.

1.1.3 Expenses resulting from misinterpretations or mistakes are not a basis for reimbursement or non-reimbursement. However, such situations shall be reviewed on a case-by-case basis.

[Emphasis in the original]

[19] The representative added that the Directive had to apply because Mr. Robichaud's workplace changed for seven months:

...

1.9 Workplace change (applies within the headquarters area only)

...

1.9.2 When an employee is assigned from a permanent workplace to a temporary workplace, for a period of 30 consecutive calendar days or more, the provisions of this directive shall apply unless the employee is notified, in writing, 30 calendar days in advance of the change in workplace. In situations where the employee is not notified of a change of workplace in writing, the provisions of the directive shall apply for the duration of the workplace change up to a maximum of 60 calendar days.

...

[Emphasis in the original]

[20] She also added that private non-commercial accommodation is recommended as follows for periods of travel status of more than 30 consecutive days, as in this case:

...

3.3.1 Accommodation

...

Although travellers generally stay in commercial accommodation, private non-commercial accommodation is encouraged. A traveller who chooses private non-commercial accommodation shall be reimbursed the rate as specified in Appendix C. . . .

For periods of travel status of more than 30 consecutive calendar days at the same location, accommodation at corporate residences, apartments, private non-commercial accommodation . . . is encouraged. . . .

...

[Emphasis in the original]

[21] Finally, she stated that incidental expenses and meals must be reimbursed in accordance with the Directive, as follows:

...

3.3.7 Incidental expense allowance

A traveller shall be paid an incidental expense allowance that covers a number of miscellaneous expenses not otherwise provided for in this directive for each day or part day in travel status as per Appendix C.

The following exception applies: Seventy-five percent (75%) of the incidental expense as specified in Appendix C shall be paid starting on the 31st consecutive calendar day of travel status while at the same location when corporate residences or apartment hotels are available to a traveller in the area surrounding the workplace, or when the traveller chooses to stay in private accommodation.

When a traveller visits locations in Canada and the U.S.A. on the same day, the incidental expense allowance paid shall be that for the location where the day commences.

...

3.3.9 Meals

A traveller shall be paid the applicable meal allowance for each breakfast, lunch and dinner while on travel status.

Meal allowances shall be reimbursed in accordance with the rates specified in Appendix C.

The following exception applies: Seventy-five percent (75%) of the meal allowances as specified in Appendix C shall be paid starting on the 31st consecutive calendar day of travel status at the same location when corporate residences or apartment hotels are available to a traveller in the area surrounding the workplace, or when the traveller chooses to stay in private accommodation.

A meal allowance shall not be paid to a traveller with respect to a meal that is provided. In exceptional situations where a traveller has incurred out of pocket expenses to supplement meals provided, the actual incurred costs may be reimbursed, based on receipts, up to the applicable meal allowance.

Where a traveller incurs meal costs that are higher than the established meal allowances in situations outside the traveller's control, the actual and reasonable expenses incurred shall be reimbursed, based on receipts.

Reimbursement of meals for shift workers shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift.

...

[Emphasis in the original]

[22] In conclusion, Mr. Robichaud's representative stated that Mr. Robichaud was in travel status 230 km from his headquarters area for more than 30 days and that he

was covered by the Directive. Therefore, he is entitled to the reimbursements claimed. She requested that the grievance be allowed.

[23] The employer's representative began by stating that I must interpret the spirit of the Directive. He continued by noting that, when Mr. Robichaud was transferred from Shippagan to Shediac in 1999, he never claimed relocation expenses and instead kept his residence in Shippagan. That was his choice.

[24] The employer's representative stated that it was because of Mr. Robichaud's interest in returning to Shippagan that his manager approached him for the project with the Department of Fisheries and Oceans. The employer was very clear when it proposed the assignment that the budget allowed it to reimburse only lunch expenses when the employee was on government business. The employer's representative stated that the manager would probably not have agreed to send Mr. Robichaud on assignment had he known that he had to apply the Directive in its entirety.

[25] The employer's representative also argued that one of the major principles of the Directive is that employees should not be put in a shortfall position. Mr. Robichaud was not aware of any shortfall either before or during the assignment, since he claimed only his lunch expenses. Section 1.5.2 of the Directive is very clear, as follows:

1.5.2 The traveller shall:

(a) become familiar with the provisions of this directive;

(b) consult and obtain authorization including blanket travel authority, where applicable, to travel in accordance with the directive;

(c) inform the employer or its suppliers of his/her needs that may require accommodation;

(d) complete and submit travel expense claims with necessary supporting documentation as soon as possible after the completion of the travel. In travel situations exceeding one month, the traveller may submit interim travel expense claims prior to the completion of the travel; and

(e) be responsible for cancelling reservations as required, safeguarding travel advances and funds provided, and making outstanding remittances promptly.

[26] However, even after seven months, Mr. Robichaud did not seem to have experienced a shortfall since he did not claim any other expenses.

[27] It was only after a meal with some coworkers that the situation no longer seemed fair and equitable and that Mr. Robichaud claimed a \$12 000 reimbursement for all expenses. That is contrary to the purpose and scope of the Directive, which states that there must be no personal gain, which would be the case here.

[28] The employer's representative next submitted that the definition of private non-commercial accommodation refers not to a city or region but rather to a dwelling where Mr. Robichaud does not normally reside. According to the employer, Mr. Robichaud's residence in Shippagan is the dwelling where he normally resides, which means that he is not entitled to reimbursement for accommodation expenses.

[29] The same is true of meals and incidental expenses, according to the employer. Mr. Robichaud ate at home in the morning and the evening. Section 3.2 of the Directive ("no overnight stay") should apply. Therefore, section 3.2.9, which reads as follows, should apply:

3.2.9 Meals

A traveller shall be paid the applicable meal allowance for each breakfast, lunch and dinner while on travel status.

Meal allowances shall be reimbursed in accordance with the rates specified in Appendix C or D, as applicable.

A meal allowance shall not be paid to a traveller with respect to a meal that is provided. . . .

. . .

[Emphasis in the original]

[30] According to the employer, Mr. Robichaud received his meals for free, and therefore, he is not entitled to an allowance.

[31] In the alternative, if section 3.3 of the Directive is applied ("overnight stay"), the result is the same because private non-commercial accommodation does not include his own residence, and he ate breakfast and dinner at home. He did not incur any expenses, and he must not make a personal gain.

[32] The delay in claiming reimbursement shows that Mr. Robichaud did not feel aggrieved. The principle is that no costs were incurred that were out of the ordinary, and the grievance should be dismissed.

Reasons

[33] The dispute arose while Mr. Robichaud was working for the Agency in Shediac. He was denied the reimbursement of travel expenses for a seven-month assignment at a temporary workplace, namely, Shippagan, outside his normal headquarters area.

[34] Article 63 of the collective agreement provides that agreements concluded by the NJC, including the Directive, may be incorporated by reference into the collective agreement, which is the case here.

[35] Section 1.9.2 of the Directive makes it clear that it applies when an employee is assigned from a permanent workplace to a temporary workplace for a period of more than 30 consecutive calendar days, as Mr. Robichaud was from May to November 2004. However, in Mr. Robichaud's case, the situation is more complicated because he still had his residence at the place where he was temporarily assigned.

[36] The employer authorized the travel in advance as required by section 1.1.2 of the Directive.

[37] As for accommodation, private non-commercial accommodation is one of the types of accommodation encouraged for periods of travel status of more than 30 consecutive calendar days at the same location, which is the type of accommodation that Mr. Robichaud used.

[38] The definition of private non-commercial accommodation includes a private dwelling where the traveller does not normally reside. Starting in 1982, Mr. Robichaud always identified his dwelling in Shippagan as his residence and thus as the location where he normally resided, which was still the case when he was assigned in 2004. That fact combined with the Directive's stated purpose that its provisions not open the way for personal gain lead me to conclude that he is not entitled to reimbursement for staying in non-commercial accommodation. In *Clarke v. Treasury Board (Department of Indian Affairs and Northern Development)*, PSSRB File No. 166-02-13543 (19830518), the adjudicator reached the same conclusion, as follows:

...

... Further, the argument on his behalf at the hearing was that so long as the grievor was away from Fredericton he would have been on travel status. Such a finding would

permit him to stay anywhere in the Moncton area, including his own home and be able to validly claim reimbursement at the non-commercial rate. I cannot accept such a notion. . . .

. . .

[39] As for meals, Mr. Robichaud was reimbursed for his lunches in accordance with the Directive since he was in travel status when he ate lunch. As for breakfast and dinner, section 3.3.9 of the Directive clearly states as follows that an allowance shall not be paid with respect to a meal that is provided for free:

. . .

A meal allowance shall not be paid to a traveller with respect to a meal that is provided. In exceptional situations where a traveller has incurred out of pocket expenses to supplement meals provided, the actual incurred costs may be reimbursed, based on receipts, up to the applicable meal allowance.

. . .

[40] Finally, for incidental expenses, it is clear from the following definition that, by staying at his own residence, Mr. Robichaud did not incur most of these types of expenses, and I have no evidence before me on this point. Therefore, in accordance with the principle stated in the Directive that there must be no personal gain, he is not entitled to reimbursement.

. . .

***Canada and Continental USA** (Canada et États continentaux des États-Unis) - an allowance to cover the costs of items which can be attributed to a period in travel, but for which no other reimbursement or allowance is provided under this directive and to help offset some of the expenses incurred as a result of having to travel. It includes but is not limited to such items as gratuities, laundry, dry cleaning, bottled water, phone calls home, grass cutting, snow removal, home security check, plant watering, mail services, pet care, telecommunications hook-ups and service, shipping of some personal effects.*

. . .

[Emphasis in the original]

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

(The Order appears on the next page)

Order

[42] The grievance is dismissed.

November 10, 2009.

PSLRB Translation

**Michel Paquette,
adjudicator**