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*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

SCOTT BURDEN and MARTIN CYR

Grievors

and

PARKS CANADA AGENCY

Employer

Indexed as

Burden and Cyr v. Parks Canada Agency

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

REASONS FOR DECISION

Before: Michele A. Pineau, adjudicator

For the Grievors: Kim Patenaude, counsel

For the Employer: Lesa Brown, counsel

Heard at Ottawa, Ontario,
June 11, 2009 and by teleconference on January 14, 2010.

REASONS FOR DECISION

I. Grievances referred to adjudication

[1] Scott Burden and Martin Cyr (“the grievors”) are indeterminate seasonal employees employed by the Parks Canada Agency (“the employer”). The grievors are represented by the Public Service Alliance of Canada (“the union”). This matter concerns two grievances, which allege that the employer has failed to apply the terms of the Isolated Post Policy (ISP) to them as it relates to travel and transportation expenses with respect to non-elective medical or dental treatment.

[2] On April 1, 2005, the *Public Service Labour Relations Act (PSLRA)*, 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*).

II. Summary of the evidence

[3] The parties filed an agreed statement of facts that reads as follows:

AGREED STATEMENT OF FACTS

1. *The parties are bound by the provisions of the Parks Canada Isolated Post Policy. This policy is deemed to be part of the collective agreement between Parks Canada Agency and the Public Service Alliance of Canada. This policy is effective April 1, 2003.*
2. *The Employer, Parks Canada Agency (PCA), is a separate employer listed at the time the grievance was filed under Schedule 1, Part II of the Public Service Staff Relations Act (PSSRA) and now, as of April 1, 2005 in Schedule V of the Financial Administration Act.*
3. *The Union, Public Service Alliance of Canada (PSAC), is an employee organization certified by the Public Service Staff Relations Board, now the Public Service Labour Relations Board to represent specified employees of the PCA.*
4. *Both grievors are disputing the PCA’s interpretation of the Isolated Post Policy, specifically Part II, Expenses and Leave, Travelling and Transportation Expenses, 2.1 Non-Elective Medical or Dental Treatment.*
5. *The parties agree that both grievors have met the standards set out in section 2.1.2 of the Policy. At issue*

is the application of section 2.1 of the Policy to indeterminate seasonal employees while on seasonal lay off.

6. Disputes arising from the alleged misinterpretation of [sic] misapplication of the Isolated Post Policy are subject to the Parks Canada grievance procedure.

Scott Burden

7. Scott Burden is a represented indeterminate seasonal employee at L'Anse Aux Meadows National Historic Site in Western Newfoundland & Labrador Field Unit. This location qualifies as an isolated post as per the criteria outlined in Part V and Appendix A of the Policy. Mr. Burden is classified at the GS-MPS-04 group and level and has worked for Parks Canada since June 2001.
8. Mr. Burden is disputing the Agency's interpretation of the Isolated Post Policy as it relates to Part II, Expenses and Leave, Travelling and Transportation Expenses, 2.1 Non-Elective Medical or Dental Treatment.
9. In July 2003, Mr. Burden's daughter had an acute medical condition which became chronic and, at one point, required hospitalization in St. Anthony. Unfortunately, she was not properly diagnosed until on or about October 7th or 8th. At that point, the pediatrician in St. Anthony felt she should be seen by an Ear, Nose and Throat specialist in St. John's Newfoundland.
10. The referral was made on or about October 11, 2003, however, the earliest possible appointment was October 27, 2003. Mr. Burden's season ended on October 13, 2003. He was therefore on seasonal lay-off at the time of his daughter's scheduled medical appointment.
11. Mr. Burden spoke to his site supervisor, Debbie Anderson, who advised him verbally and in writing that he would be entitled to benefits under the Isolated Post Policy even though he would be off-strength.
12. The Manager, Administrative Services, Wilbert Parsons, e-mailed the Site Supervisor informing her that the Isolated Post benefits are not available to employees on seasonal lay-off status.
13. Mr. Burden travelled with his daughter to St. John's on October 26, 2003. The specialist advised him that her

condition was too severe to do anything at the time and prescribed another four (4) weeks of a different treatment. Mr. Burden travelled to St. John's with his daughter again on November 27, 2003 for a re-evaluation by the specialist.

14. In January 2004, Mr. Burden contacted Debbie Anderson regarding his rights to benefits. Management reviewed all facts pertaining to the situation, including consultation with Labour Relations in National Office, and it was determined that the Isolated Post Policy had been correctly applied.
15. Mr. Burden submitted his grievance on April 6, 2004, concerning the denial of benefits under the Isolated Post Policy. He requested to be paid for all costs incurred in relations to the denial of benefits under this policy.
16. Mr. Burden's grievance was denied at the first level of the grievance process. It was transmitted to the final level of the grievance process on May 14, 2004. The grievance was denied at final level on October 8, 2004.

Martin Cyr

17. Mr. Cyr is a represented indeterminate seasonal employee at the Mingan Archipelago National Park Reserve of Canada, Mingan Field Unit. This location qualifies as an isolated post as per the criteria outlined in Part V and Appendix A of the Policy. Mr. Cyr is classified at the GL-MAN-03 group and level and has worked for Parks Canada since May 1988.
18. Mr. Cyr is disputing the Agency's interpretation of the Isolated Post Policy as it related to Part II, Expenses and Leave, Travelling and Transportation Expenses, 2.1 Non-Elective Medical or Dental Treatment.
19. In Mr. Cyr's particular Field Unit, some travel expenses related to non-elective medical or dental treatment had been reimbursed to employees while they were on seasonal lay off in the past. However, all employees, including Mr. Cyr, were informed by Memorandum on June 17, 2002 that they were not entitled to the reimbursement of travel expenses for non-elective medical or dental appointment while they are on seasonal lay off.
20. On November 29, 2002, Mr. Cyr travelled with his child to Sept-Iles, Québec to attend an appointment for orthodontic treatment.

21. *Mr. Cyr's season ended October 5, 2002. He was on seasonal lay off at the time of his child's scheduled orthodontic dental appointment.*
22. *Mr. Cyr's travel expense claim was denied since his travel occurred while he was on seasonal lay off.*
23. *Mr. Cyr submitted a grievance on December 15, 2002 concerning the denial of benefits under the Isolated Post Policy. He requested to be paid for all costs incurred in relation to the denial of benefits under this policy.*
24. *Mr. Cyr's grievance was denied at the first level of the grievance process. It was transmitted to the final level of the grievance process on January 7, 2003.*
25. *Mr. Cyr's grievance was denied at the final level on March 30, 2004.*

III. Summary of the arguments

A. For the grievors

[4] The union argues that the ISP came into effect on April 1, 2003, and that it is part of the collective agreement, which is the agreement between the Parks Canada Agency and the Public Service Alliance of Canada that expired on August 4, 2003. It argues that the same principle that applies to the interpretation of statutes should apply to the interpretation of the collective agreement or to policies that form part of the collective agreement. In other words, the policy should be construed in a large and liberal manner in keeping with the scheme of the policy and the intention of the parties.

[5] The union argues that the purpose of the policy is to facilitate the recruitment and retention of staff in isolated locations and to compensate them for the cost of living and working in isolated posts. The policy allows employees to travel to and from isolated posts without incurring additional expenses for matters such as non-elective medical and dental treatment. The union argues that the policy contains no wording that excludes the payment of the travel allowance for non-elective medical and dental treatment to employees who are on seasonal layoff, contrary to certain parts of the policy, which expressly limit the payment of allowances to specific categories of employees.

[6] The union states that the exclusion of seasonal employees on layoff from receiving the allowance claimed by the grievors is not clearly expressed, as it is for vacation travel under the ISP. Otherwise, it must be assumed that all categories of employees are included in the allowance benefits unless specifically excluded.

[7] The union argues that employees commit to small isolated communities and that they should not be penalized during the off-season if their families need medical attention. In the case of Mr. Burden, his daughter fell ill during the working season, but he could not obtain treatment during that season and had to wait until the season ended. Thus, Mr. Burden should not have to incur the costs associated with that travel.

[8] The union explains that vacation travel for seasonal employees is pro-rated for a good reason: seasonal employees do not work the same number of annual hours as full-time employees. They accumulate vacation credits only in accordance with the number of hours worked. The vacation travel section of the policy is the only one that distinguishes the entitlement of seasonal employees. That kind of rationale does not apply to travel for non-elective medical and dental benefits because treatment is required immediately. The union argues that ISP benefits are an important part of recruiting and retaining employees in isolated posts, and therefore, the ISP should be interpreted as broadly as possible.

[9] In response to the adjudicator's question concerning her jurisdiction to decide these grievances, the union responds that the parties first applied to the Federal Court to resolve this matter. In the meantime, the employer took the position that the interpretation of the ISP was a grievable matter, and by agreement, the parties jointly referred the grievance to the Public Service Labour Relations Board, while accepting the fact that the adjudicator might decide that she does not have jurisdiction.

B. For the employer

[10] The employer argues that indeterminate seasonal employees are a unique category of employee. Once a season ends, a seasonal employee no longer performs the duties of the position. During the off-season, employees are free to do as they wish. They may choose to remain in the isolated post for personal reasons, but they are not obliged to stay and may relocate to a larger centre in the off-season. They are temporarily "struck off strength" so that they do not receive pay or benefits during the off-season. Nor can they take leave with or without pay. Their relationship with the

employer is suspended and is reactivated when they are recalled to work. The intent of the policy is to facilitate the delivery of the employer's programs. Seasonal employees are involved in the delivery of services only when they are working.

[11] Employees on leave without pay cannot be compared to seasonal employees because they maintain a continuous employment relationship and must obtain management approval for their leave. They are accountable for their time while on leave and must meet the criteria of the collective agreement for taking such leave. During the off-season, seasonal employees are responsible for their own dental and medical expenses as the benefits of the ISP cease to apply. Accordingly, the conditions of employment of employees on leave without pay do not compare with those of seasonal employees.

[12] In the case of Mr. Burden, his work season ended on October 13, 2003, and his seasonal layoff began on October 14, 2003. He was not on staff or accumulating service credits when he travelled to attend a medical appointment with his daughter. He was on his personal time because the appointment occurred during the seasonal layoff. In the case of Mr. Cyr, his work season ended October 5, 2002. He was no longer performing duties for the employer when he travelled on November 29, 2002. The fact that seasonal employees are not referenced throughout the policy does not necessarily make the whole policy applicable to them.

[13] The use of such terms as "part-time," "seasonal" and "indeterminate" employees demonstrates that the intention was to treat each category differently. Unlike other benefits, the non-elective medical and dental benefits cannot be pro-rated based on the length of employment. The employer argues that the proposition that seasonal employees have the same benefits as full-time employees is unreasonable. Section 2.7.3 of the ISP is the only provision that grants a benefit to seasonal employees during the off-season. If the intention had been to grant other benefits to seasonal employees, it would have been clearly mentioned in the ISP. The ISP does not apply to seasonal employees unless there is a specific reference made to them.

[14] In response to the adjudicator's question concerning her jurisdiction to decide these grievances, the employer takes the position that article 6 of the collective agreement must be read as a whole, and that clause 6.01 specifically incorporates the ISP as part of the collective agreement. Thus, the interpretation of the ISP is subject to the grievance procedure and is adjudicable under section 92 of the *PSSRA* (now section

209 of the *PSLRA*). This grievance procedure replaces a determination by the National Joint Council as to the interpretation of the ISP because, Parks Canada Agency being a separate employer, its employees do not have access to it.

IV. Reasons

[15] In light of the parties' arguments and the fact that the ISP is incorporated as part of the collective agreement, I am satisfied that I have jurisdiction over the interpretation of its subject matter.

[16] Article 6 of the collective agreement provides as follows:

ARTICLE 6 AGENCY POLICIES

6.01

(a) *The following Agency policies, as existing on the date of signing of the Agreement and as amended from time to time in accordance with this Article, shall form part of this Agreement:*

...

(ii) *Isolated Posts*

...

(b) *The Agency agrees to amend the above policies to match changes in rates and entitlements as may be made from time to time in respect of the similar National Joint Council (NJC) Directives.*

...

6.04 *Any disagreements regarding the interpretation and administration of the above noted policies may be addressed through the grievance procedure contained in this collective agreement. In the event that an employee is dissatisfied with the decision of the Agency, the matter may be referred for resolution in accordance with the Agency's Independent Third Party Review Process (ITPR).*

6.05 *The Agency, with the agreement of the Alliance, may otherwise modify the above policies.*

[17] The relevant sections of the ISP are the following:

General

Collective Agreement

This policy is deemed to be part of the collective agreement between the Parks Canada Agency and the Public Service Alliance of Canada. Employees are to be afforded ready access to this policy.

...

Part II - Expenses and leave

...

2.1.1 Employees who are granted leave without pay for the following reasons are also entitled to the benefits of this section: illness. . . .

2.1.2 Subject to this section, when employees or their dependants obtain medical or dental treatment at the nearest location in Canada where adequate medical or dental treatment is available, as determined by the attending medical or dental practitioner, and they satisfy their FUS [field unit superintendant] by means of a certificate of the attending medical or dental practitioner that the treatment

a) was not elective,

b) was not available at their headquarters, and

c) was required without delay,

the FUS shall authorize reimbursement of the transportation and travelling expenses in respect of that treatment.

...

2.7 Part-time and Seasonal Employment

...

2.7.3 When because of operational requirements, an indeterminate seasonal employee who resides at the headquarters cannot be granted the benefits of this section during the operational season, the employer shall, at the employee's request, grant the benefits of this section during the off-season.

[18] Mr. Burden is requesting that he be compensated for the expenses incurred to travel with his daughter to St. John's on October 26, 2003, for diagnostic purposes, and on November 27, 2003, for a re-evaluation by the specialist. It is admitted that Mr. Burden spoke to his site supervisor, Debbie Anderson, before the end of the seasonal employment period and that she advised him that he was entitled to the

benefits under the policy, even though the first medical appointment could not be scheduled before October 27, 2003.

[19] In resolving both grievances, I take the view that the benefits of the ISP in dispute are available only during seasonal employment, with one exception: when, because of operational requirements, the employer cannot grant the employee's request during his or her seasonal employment. I find that the situation of seasonal employees is not comparable to those employees on leave without pay, as that is discretionary leave that is not seasonally related. Seasonal employees are recalled every year for a specific period, and there is no evidence that practice is discretionary in nature. While the purpose, the scope and the policy is to facilitate the recruitment and retention of staff delivering government programs in isolated locations, this is not sufficiently persuasive to give another meaning to what is otherwise a clear provision of the ISP.

[20] There is no evidence in this case that Ms. Anderson's approval of the grievor's request was made because operational reasons prevented him from attending the medical appointment. The parties agree that Mr. Burden was unable to obtain a medical appointment during his seasonal employment because an appointment could not be scheduled with the specialist before October 27, 2003. Mr. Burden did not ask for and was not granted the extension of benefits because of operational requirements.

[21] While I agree that these are most unfortunate circumstances for Mr. Burden, my function is to apply what I consider the agreement of the parties, and I am powerless to change the agreement to accommodate Mr. Burden's personal situation.

[22] A similar reasoning applies in the case of Mr. Cyr. He attended a medical appointment during the off-season. There is no evidence that he requested that this appointment be held during his seasonal employment and that it was postponed because of operational requirements. Mr. Cyr no doubt relied on the employer's previous interpretation of paying this benefit. However, in view of the clear meaning of section 2.7.3 of the ISP, I find that the employer's decision to discontinue these payments did not constitute a change to the agreement but rather its proper interpretation.

[23] For all of the above reasons, I make the following order:
(The Order appears on the next page)

V. Order

[24] The grievances are dismissed.

April 21, 2010.

**Michele A. Pineau,
adjudicator**