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**Files:** 166-02-36945 and 36946

**Citation:** 2011 PSLRB 6



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**MARIETTE BEAULAC AND ANNIE SURPRENANT**

Grievors

and

**CANADA BORDER SERVICES AGENCY**

Employer

Indexed as

*Beaulac and Surprenant v. Canada Border Services Agency*

***EXPEDITED ADJUDICATION DECISION***

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

**Before:** [Michele A. Pineau, adjudicator](#)

**For the Grievors:** [Guylaine Bourbeau, grievance and adjudication officer](#)

**For the Employer:** [Benoit Riel, senior labour relations advisor](#)

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

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Heard at Ottawa, Ontario,  
January 21, 2011.  
(PSLRB Translation)

**I. Grievances referred to adjudication**

[1] The grievors, Mariette Beaulac and Annie Surprenant, are customs officers employed by the Canada Border Services Agency ("the Agency" or "the employer," depending on the context). They occupy positions at the PM-02 group and level and are assigned to the Estrie Region directorate. The bargaining agent for the collective agreement that is the subject of the dispute is the Public Service Alliance of Canada.

[2] On February 10, 2003, Ms. Beaulac filed a grievance contesting the employer's decision not to reimburse her for reasonable travel costs for the courses that she was taking as part of the master's degree program in public administration offered by the École nationale d'administration publique (ÉNAP). On February 11, 2003, Ms. Surprenant filed a grievance to the same effect. As corrective action, the grievors request reimbursement for their reasonable travel costs, including parking and meals, from February 1, 2001.

[3] Since the grievances were filed, 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 on April 1, 2005. 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*).

[4] It should be noted that the parties have agreed to deal with the grievances by way of expedited adjudication. This decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

**II. Background of the grievances**

[5] The parties filed the following agreed statement of facts for both grievances:

[Translation]

*Agreed Statement of Facts*

***Mariette Beaulac (166-2-36945)***

***Annie Surprenant (166-2-36946)***

***and***

***The Treasury Board (Canada Border Services Agency)***

*[1] When their grievances were filed, Mariette Beaulac and Annie Surprenant, the grievors, occupied positions as customs inspectors (PM-02) for the Canada Customs and Revenue Agency (CCRA).*

*[2] From February 2001 until March 2003, the grievors took courses as part of the master's program in public administration offered by the École nationale d'administration publique (ENAP). The courses were given on Monday evenings and Tuesday mornings in Sherbrooke.*

*[3] For the purposes of that program of study, the employer agreed, under the CCRA Education Assistance Guidelines:*

*1-To reimburse tuition fees, to a maximum of \$300 for each course;*

*2-To allow leave with pay during working hours, to a maximum of 60 hours per course. Education leave with pay (code 6220) was used to justify the absences.*

*[4] On November 12, 2002, the grievors asked the employer whether travel costs (kilometrage, meals and parking) incurred for the courses taken at the ENAP could be reimbursed.*

*[5] In January 2003, the employer informed the grievors that they were not eligible for the reimbursement of travel costs for the courses.*

*[6] Ms. Beaulac filed a grievance on February 10, 2003, and Ms. Surprenant filed a grievance on February 11, 2003, contesting the employer's decision not to respect article 51 of the collective agreement, starting in February 2001. As corrective action, they ask that the employer comply with article 51 of the collective agreement by reimbursing the reasonable costs incurred starting in February 2001. Ms. Beaulac claims a reimbursement of \$2540, and Ms. Surprenant claims a reimbursement of \$1837 for travel costs incurred starting in February 2001.*

*[7] Therefore, these grievances involve two collective agreements in which the wording of article 51 is identical:*

*-The Program and Administration Services collective agreement entered into by the CCRA and the Public Service Alliance of Canada (PSAC) (expiry date October 31, 2000) applied from June 23, 2000, until March 21, 2002;*

*-The Program and Administration Services collective agreement entered into by the CCRA and the PSAC (expiry date October 31, 2003) applied from March 22, 2002, until March 13, 2005.*

*[8] On December 12, 2003, the Governor in Council, under order 2003-2064, and in compliance with the Public Service Rearrangement and Transfer of Duties Act, transferred certain portions of the Canada Customs and Revenue Agency (CCRA) to the Canada Border Services Agency (CBSA). The CCRA is now called the Canada Revenue Agency (CRA) and remains a separate agency named in Schedule V to the Financial Administration Act (FIA).*

*[9] The portions transferred to the CBSA included the transfer of public service positions and employees under the Public Service Employment Act. The CBSA is part of the core public administration named in Schedule IV to the FIA.*

[6] At the hearing, the parties filed a series of exhibits in support of the agreed statement of facts and noted certain additional details.

[7] The grievors' representative explained that, although the facts giving rise to the grievances date back to 2001, the grievors did not become aware of the factors in their dispute until 2003. Allegedly, they learned from other students employed by the Agency that they were being reimbursed for previously authorized travel costs for the same courses that the grievors were taking. Therefore, the grievors submitted a calculation of their travel costs since 2001, when they began their courses. The costs were refused, and as a result, the grievances were filed.

[8] The grievors pointed out that, at the beginning of the grievance process, the Agency appeared open to allowing reimbursement if they were able to provide evidence of a case in which the education assistance policy had been applied as they suggested.

[9] During the relevant time, some parts of the Canada Customs and Revenue Agency, including the directorate in which the grievors worked, were transferred to the Canada Border Services Agency. The Canada Border Services Agency continued to apply the education assistance policy and refused to allow the grievances.

[10] The employer's representative pointed out that no evidence supported the grievors' allegation that other Agency employees had obtained reimbursement of their

travel costs in the circumstances described by the grievors. Granted, there was a momentary error in information posted on the Agency's intranet site, InfoZone, but it was corrected, and no evidence was adduced that the grievors relied on that information to their detriment. The employer allowed the grievors education leave for skills development, not career development leave with pay (for a seminar, convention or study session) as provided for in article 51 of the collective agreement.

### **III. Summary of the arguments**

[11] The grievors argue that their grievances were filed under the collective agreement, not under the policy entitled, *Guidelines - Education Assistance* ("the policy"). They registered at the ÉNAP and received reimbursement for tuition as well as leave with pay during working hours, to a maximum of 60 hours per course. The costs of their travel to take the courses were actual, reasonable costs that they incurred as part of attending the courses. The grievors claim full application of clause 51.03 of the collective agreement so that they are reimbursed for their travel costs.

[12] The employer argues that, to be reimbursed for the costs they claimed, the grievors should first have submitted a written application and obtained the employer's approval. The policy is clear that the costs claimed by the grievors are not eligible for reimbursement. The employer argues that, when the grievors did not obtain reimbursement of the costs they claimed, they then turned to the collective agreement in an attempt to justify their claim. The employer adds that the policy was applied to the grievors as it was to all other employees submitting applications for education leave. Education leave is discretionary and is not the same as the leave provided for in article 51 of the collective agreement.

### **IV. Reasons**

[13] The grievors contest the employer's decision not to reimburse them for travel costs related to their studies. They state that they are eligible for the reimbursement of those costs under clause 51.03 of the collective agreement, which concerns career development leave with pay.

[14] The employer maintains that the grievors obtained education leave that is not part of the provisions of clause 51.03 of the collective agreement and that, as a result, the grievors are not eligible for the reimbursement of travel costs for their studies.

[15] Article 51 of the collective agreement reads as follows:

...

**ARTICLE 51**

**CAREER DEVELOPMENT LEAVE WITH PAY**

*51.01 Career development refers to an activity which in the opinion of the Employer is likely to be of assistance to the individual in furthering his or her career development and to the organization in achieving its goals. The following activities shall be deemed to be part of career development:*

*(a) a course given by the Employer;*

*(b) a course offered by a recognized academic institution;*

*(c) a seminar, convention or study session in a specialized field directly related to the employee's work.*

*51.02 Upon written application by the employee, and with the approval of the Employer, career development leave with pay may be given for any one of the activities described in clause 51.01. The employee shall receive no compensation under Article 28, Overtime, and Article 32, Travelling Time, during time spent on career development leave provided for in this Article.*

*51.03 Employees on career development leave shall be reimbursed for all reasonable travel and other expenses incurred by them which the Employer may deem appropriate.*

...

[16] Clause 51.02 of the collective agreement provides that an application for career development leave is to be made in writing and is subject to the employer's approval. In this case, I have no evidence that the grievors submitted a written application for career development leave. The document available to me in Ms. Beaulac's case is an application and authorization for a three-year university training program. No application for reimbursement, other than for the estimated costs of the studies, was foreseen. Although the ÉNAP is a recognized academic institution (clause 51.01(b)), that is not enough to change an application for authorization to take university courses into career development leave within the meaning of the collective agreement.

[17] Even though the education leave obtained by the grievors includes the

reimbursement of tuition fees as well as leave with pay during working hours, in my opinion, without clear wording, those two conditions do not trigger the reimbursement of travel costs provided for in clause 51.03 of the collective agreement. It is useful to distinguish between the objective of education leave within the meaning of the policy and the objective of career development leave within the meaning of the collective agreement. Generally, the objective of education leave is to support an employee's efforts to improve and refine his or her professional qualifications and skills by facilitating access to education. By contrast, a career development activity is short-term training with the objective of acquiring knowledge to allow an employee to better perform his or her duties.

[18] The policy that the employer filed in evidence expressly refers to the objective of education leave from which the grievors benefitted. It reads as follows:

[Translation]

...

#### **4.0 Education assistance guidelines**

**4.1 Education assistance is made available so that employees may pursue accredited learning activities offered by external educational institutions. Education assistance means the reimbursement of tuition fees and other allowable costs as well as education leave with or without pay.**

...

[Emphasis in the original]

[19] The policy provides that the type of education assistance to allow is at managers' discretion, as follows:

[Translation]

...

#### **4.2 Determining education assistance to be allowed:**

*Managers are responsible for determining the type of*

*education assistance to be allowed. There is no hard-and-fast rule for making a decision about an education assistance application aside from the minimum indemnity set out in some collective agreements. Managers must take into account the benefits that the skills development will have, both for the CCRA and for the employee, before approving an education assistance application.*

...

[20] In this case, the grievors' manager determined that they were eligible for the reimbursement of tuition fees as well as leave with pay during working hours and no more. The grievors did not complain about that situation until they learned that other employees were apparently being reimbursed their travel costs. Unfortunately, the grievors were unable to provide evidence of their allegations.

[21] The policy could not be clearer that the costs claimed by the grievors are not eligible for reimbursement:

[Translation]

...

*The following costs are not eligible for reimbursement:*

...

- *transportation and parking, unless ensuring equitable access is involved;*

...

[22] The PSSRA does not authorize me to alter either the collective agreement or the employer's policies. My role is to interpret and to apply the collective agreement. In this case, my opinion is that the employer correctly interpreted the collective agreement when it determined that the provisions of article 51 of the collective agreement did not apply to the grievors. The grievors have not convinced me otherwise.

[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.

January 26, 2011.

PSLRB Translation

**Michele A. Pineau,  
adjudicator**