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File: 166-02-37744 to 37758

Citation: 2012 PSLRB 31



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

**MICHAEL LANNIGAN, CLARENCE CORMIER, BRUCE READE, PIERRE VAUTOUR,
VALMOND BABINEAU, SCOTT LUTES, JASON ULTICAN, DERICK CORMIER,
MICHAEL JAMES LEBLANC, GUSTAVE JOSHUA AND DENIS SAVOIE**

Grievors

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

Lannigan et al. v. Treasury Board (Correctional Service of Canada)

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

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievors: John Mancini, Union of Canadian Correctional Officers - Syndicat
des agents correctionnels du Canada - CSN

For the Employer: Martin Desmeules, counsel

Heard at Moncton, New Brunswick, February 14, 2012.
Written submissions filed February 20, 2012.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Michael Lannigan, Clarence Cormier, Bruce Reade, Pierre Vautour, Valmond Babineau, Scott Lutes, Jason Ultican, Derick Cormier, Michael James Leblanc, Gustave Joshua and Denis Savoie (“the grievors”) are or were correctional officers working for the Correctional Service of Canada (“the CSC” or “the employer”) at the Dorchester Institution in Dorchester, New Brunswick (“Dorchester”). Between August 2003 and May 2004, they filed 15 grievances against the employer’s decision to deny them meal allowances or its incorrect mileage reimbursements for when they were working on the employer’s “Hospital Squad.”

[2] The grievors are asking for the payment of those unpaid meals and of all the mileage between their homes and the hospitals where they worked on the Hospital Squad. The employer stated that it paid them correctly. The applicable collective agreement is between the Treasury Board and the Union of Canadian Correctional Officers — Syndicat des agents correctionnels du Canada — CSN (“the bargaining agent”) for the Correctional Services Group bargaining unit (CX) (expiry date: May 31, 2002) (“the collective agreement”).

[3] All the grievances involve the same issues. The parties agreed that the evidence would be presented on Mr. Lannigan’s two grievances but that my decision would apply to all the grievances. All the grievors are asking to be paid “money owed for meals” or “full kilometric allowances claimed” or both.

[4] The employer denied all grievances at all levels of the grievance procedure at which an answer was provided. On May 10, 2010, the National Joint Council (“the NJC”) also denied the grievances for lack of jurisdiction. For the NJC, the collective agreement’s provision entitled “Inmate Escorts” applied, and the NJC Travel Directive (“the Travel Directive”) did not.

[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.

II. Summary of the evidence

[6] The parties adduced six documents in evidence. Mr. Lannigan, one of the grievors, testified. The grievors also called Derick Cormier as a witness. At the time of the grievances, Mr. Cormier was the grievance coordinator for the bargaining agent at Dorchester. Since 2005, he has been the regional grievance coordinator for the bargaining agent for the employer's Atlantic Region. The employer called Roger Savoie and Roger Poirier as witnesses. Mr. Savoie is Deputy Warden at Dorchester. At the time of the grievances, he worked at the Westmorland Institution. Mr. Poirier is the Regional Controller for the Atlantic Region for the employer. At the time of the grievances, he was Chief of Finance Operations for the Atlantic Region.

[7] There are six CSC institutions in the Atlantic Region. Some provide specialized functions or services for the whole region. For example, Springhill Institution receives inmates for the region, Renous Institution provides escort services for inmate transfers between institutions and Dorchester offers hospital surveillance services. Those services are provided by the Hospital Squad, comprising 18 correctional officers from Dorchester who volunteer for that duty.

[8] The grievors were or are still members of the Hospital Squad. However, most of the time, they perform their duties at Dorchester, and occasionally, in a hospital. When an inmate from the Atlantic Region is hospitalized, members of the Hospital Squad are assigned to work at that hospital to supervise the inmate, to ensure his or her safety, the safety of the hospital's staff and of the public, and to supervise the inmate's movement between the hospital's different departments.

[9] The Hospital Squad does its work in a hospital in either New Brunswick or Nova Scotia. However, most of the time, the hospital work is done at the Moncton Hospital. Occasionally, officers are assigned to other hospitals, such as in Halifax or in Saint John. No hospitals are located within the grievors' headquarters area.

[10] According to Mr. Lannigan and Mr. Cormier, hospital surveillance work is different from inmate escort duties. To the contrary, Mr. Savoie testified that hospital surveillance work is part of inmate escort duties since it involves watching inmates on a temporary absence from institutions. That work is done on two shifts. The first is from 06:30 to 19:00.

[11] Mr. Lannigan testified that, before 2003, correctional officers were paid for mileage from their homes to the hospitals and for three meals a day when they worked a 12.5-hour shift. He also testified that Mr. Poirier informed him in mid-2003 that he could no longer claim his breakfast when he worked on the Hospital Squad. Mr. Lannigan did not remember the exact date on which he received that information, but he believed that it was a week or two before he submitted an expense claim on July 6, 2003. The claim covered hospital work done between November 2, 2002 and March 26, 2003. Mr. Lannigan testified that he did not claim his breakfast because he knew that it would have been denied. He grieved (File No. 566-02-3916) on August 7, 2003.

[12] Before 2003, the grievors were paid a kilometric allowance from their homes to the hospitals. Mr. Poirier testified and wrote in a memo dated March 8, 2004 that major changes were made to the Travel Directive in October 2002. As a consequence, the grievors were thereafter paid only for the difference in kilometres between going to the hospital and going to Dorchester. In practice, it meant that the employer stopped paying the grievors their mileage to the Moncton Hospital, which is closer to their homes than Dorchester. When they went to the Halifax or Saint John hospitals, the employer began to deduct the distance that they would have driven from their homes to Dorchester from the mileage that was paid to them.

[13] Mr. Savoie and Mr. Poirier testified that the employer does not have to apply the Travel Directive for hospital surveillance work; Appendix "D" "Inmate Escorts" of the collective agreement then applies. However, since Appendix "D" contains no kilometric rates or meal rates, the employer "borrows" the principles and the reimbursement rates from the Travel Directive. Mr. Poirier testified that breakfasts were no longer paid to the grievors for surveillance work at the Moncton Hospital because they could have eaten breakfast before going there. The employer had a contract with the Moncton Hospital that provided lunch and dinner to the grievors on the day shift. On the night shift, the employer paid the grievors for their lunches and dinners, borrowing the amount to be paid from the Travel Directive.

[14] After the hearing, I wrote to the parties, asking them to clarify if mileage is paid to correctional officers called back for an overtime shift at Dorchester, and if so, which policy, guideline or directive is used by the employer to reimburse mileage. The parties

confirmed that mileage is paid in the amounts set out in the Travel Directive from the grievors' homes to the workplace when they are called to work overtime on a day of rest.

III. Summary of the arguments

A. For the grievors

[15] Surveillance work in the Hospital Squad is different from escort work. Escort work involves escorting inmates from one point to another, while Hospital Squad work involves surveillance work at a hospital. Hospital surveillance work is not an extension of escort work. The Travel Directive applies to hospital surveillance work, while Appendix "D" of the collective agreement applies to escort work.

[16] The Travel Directive is part of the collective agreement and has the same value as any other article of it. Since the rest of the collective agreement does not refer to a kilometric or meal allowance when on travel status, the Travel Directive stands alone on this topic. When working on the Hospital Squad, the grievors were on travel status since they worked outside their headquarters area. They should have been paid for meals and mileage, according to sections 3.2.9 and 3.2.11 of the Travel Directive. During a 12-hour shift, they eat three meals, so they should have been reimbursed for three meals. They also used their cars to travel from their homes to the hospitals, so they should have been reimbursed for mileage.

[17] The grievors argued that the grievances are continuous since the issues raised continued to exist after they were filed. The grievors asked me to rule on the questions raised by these grievances and to reserve jurisdiction on the amount payable to each grievor.

[18] The grievors referred me to section 2:3128 of Brown and Beatty, *Canadian Labour Arbitration*, fourth edition. They also referred me to the following decisions: *Baker v. Treasury Board (Correctional Service of Canada)*, 2008 PSLRB 34; *Currie v. Deputy Head (Department of Fisheries and Oceans)*, 2010 PSLRB 10; and *Galarneau et al. v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 1.

B. For the employer

[19] The employer argued that Hospital Squad work is escort work. Escort work involves all surveillance work while inmates remain outside an institution. The escort duties continue when the inmates are at a hospital. Thus, the employer does not have to apply the Travel Directive to reimburse meals and mileage to correctional officers working on the Hospital Squad because it is escort work, which is covered by Appendix “D” of the collective agreement. The employer used the Travel Directive as a guide for reimbursing travel expenses even though it did not have to apply or adhere to it.

[20] The purpose of the Travel Directive is to compensate employees’ losses and expenses. The employer paid for the grievors’ losses and expenses by paying them only for the additional mileage driven to a hospital and by not paying them for breakfasts when they worked at the Moncton Hospital. That interpretation of sections 3.2.9 and 3.2.11 of the Travel Directive is reasonable and should be respected by the adjudicator.

[21] The employer withdrew the timeliness objection that it filed on July 29, 2010. However, it reminded me that no remedy should be applied for more than 25 days before the filing of a grievance. On that point, the employer referred me to *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.) (QL). However, the employer agreed with the grievors’ argument that these grievances are continuous.

[22] The employer also referred me to the following decisions: *Clerveaux et al. v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 7; and *Hovey and Gayger v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 56.

IV. Reasons

[23] The first question that these grievances raise is whether correctional officers’ work on the Hospital Squad is inmate escort work. If it is, travel expenses should be reimbursed as per Appendix “D” of the collective agreement. If it is not, the grievors argued that travel expenses should be reimbursed as per the Travel Directive. The following provisions of the collective agreement and of the Travel Directive are relevant to that first question:

Collective Agreement

...

41.01 Agreements concluded by the National Joint Council (NJC) of the Public Service on items which may be included in a collective agreement, and which the parties to this Agreement have endorsed after December 6, 1978 will form part of this Agreement, subject to the Public Service Staff Relations Act (PSSRA) and any legislation by Parliament that has been or may be, as the case may be, established pursuant to any Act specified in Schedule II of the PSSRA.

...

41.03

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

Travel Directive

...

...

APPENDIX "D"

INMATE ESCORTS

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

...

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

(a) an officer will be reimbursed for reasonable expenses incurred as normally defined by the Employer;

...

Travel Directive (effective date: October 1, 2002)

...

Application

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

...

[24] The collective agreement does not define “inmate escort.” However, Appendix “D” states that employees are reimbursed for reasonable expenses incurred as defined by the employer when they escort inmates outside their headquarters area. The Travel Directive also states that it does not apply to travel governed by other authorities. Since the collective agreement is one of those authorities, it is clear that the employer is not obliged to apply the Travel Directive for inmate escort work. My conclusion is supported by *Clerveaux et al.*

[25] The employer referred me to paragraphs 3 and 28 of *Hovey and Gayger* for the definition of inmate escort. Those paragraphs read as follows:

[3] On March 7, 2000 the Safety Officer issued the report which was forwarded to the Public Service Staff Relations Board on April 6, 2000. The report reads:

...

Two guards, Msrs. Gayger and Hovey were requested to escort inmate B to Chilliwack General Hospital for an 11:30 appointment. They refused to do this task unless one guard was armed and stated the following 2 reasons to support their refusal.

...

[28] Mr. Hovey received training on escort duties on the job and at the Staff College. The responsibilities of the escorting officer are to retain possession of the inmate, prevent escapes, and protect the inmate and the public. These responsibilities flow primarily from the Criminal Code of Canada which requires him by law to keep the inmate safe and secure and to protect the public. There are also provisions for criminal liability; if he does not do his job well enough, he could be fined or jailed.

[26] With all due respect to the employer, that citation does not help one understand what constitutes escort work, since the duties outlined in paragraph 28 of *Hovey and Gayger* applies to correctional officers' work at all times, outside or inside the walls of an institution. Witnesses from both sides testified in general terms that work on the Hospital Squad implied retaining possession of the inmate, preventing escapes, and protecting the inmate and the public. However that, for the grievors' witnesses, was not inmate escort work, but for the employer's witnesses, it was.

[27] The *Concise Oxford Dictionary* defines the word "escort" as "a person or a vehicle (or group of these) accompanying another to provide protection..." In *Roget's International Thesaurus, Sixth Edition*, synonyms for escort include the following: conduct, have in tow, guide, lead, convey or guard. Escorting involves motion. The word corresponds directly to correctional officers moving inmates from a penitentiary to another point. That other point could be anything, anywhere, but definitely includes another penitentiary or a hospital. It involves moving inmates. I should also add that Appendix "D", paragraph 2(e) implies that an escort starts and stops at the institution because an escort is a trip to and from another place, a round trip.

[28] The evidence shows that some institutions in the Atlantic Region provide specialized functions or services for the whole region. Renous Institution provides inmate escort services for the transfer of inmates between institutions, and Dorchester offers hospital surveillance services. The employer, in its specialization of functions between institutions, itself distinguishes "escorting" and "hospital watch" as two distinct functions.

[29] Based on all of that, I conclude that surveillance work on the Hospital Squad is not inmate escort work as per Appendix "D" of the collective agreement. Consequently, Appendix "D" does not apply to these grievances, and the grievor's travel expenses must be reimbursed according to the Travel Directive. The definition of travel status in the Travel Directive fits the grievors' case.

[30] The remaining question is to determine whether the employer violated the collective agreement. To answer that question the Travel Directive must be analyzed, specifically the provisions dealing with meals and mileage reimbursement.

[31] Because the NJC decided that it did not have jurisdiction over these grievances, they were not dealt with as they should have been, according to clause 20.01 of the collective agreement, which reads as follows:

20.01 In cases of alleged misinterpretation or misapplication arising out of agreements concluded by the National Joint Council (NJC) of the Public Service on items which may be included in a collective agreement and which the parties to this Agreement have endorsed, the grievance procedure will be in accordance with Section 7.0 of the NJC By-Laws.

[32] The NJC grievance process differs significantly from the normal grievance process as it focuses on the intent of a given directive and not on a strict consideration of its wording. Generally, in the normal grievance process, intent is considered only when the wording lacks clarity. The NJC grievance process is summarized in the following extract from its website (<http://www.njc-cnm.gc.ca/doc.php?sid=37&lang=eng>):

Grievance Process

The National Joint Council grievance procedure is a grievance procedure within the meaning of the Public Service Labour Relations Act (PSLRA). The parties to Council have agreed that any employee who feels aggrieved by the interpretation or application of an NJC directive or policy must process his/her grievance through the NJC procedure.

- *Grievances must be supported by the bargaining agent concerned. If a grievance is not resolved through the NJC process, the employee, with the agreement and support of his/her bargaining agent, may proceed to adjudication under the PSLRA.*
- *Employees in excluded positions do not have the right to grieve through the NJC procedure.*

The NJC procedure differs from the normal grievance procedure in three ways:

1. *The NJC procedure involves only three steps regardless of the department or agency of the grievor.*
2. *The third step of the procedure is the NJC Executive Committee. The Executive Committee consists of three Employer Side members and three Bargaining Agent side members.*

3. *Grievances are decided on the basis of the intent of the directive or policy concerned and are not decided by strict consideration of the wording of the directive or policy.*

[33] The Travel Directive, like the other NJC directives, was jointly developed and drafted by or on behalf of all the bargaining agents and the employers who are members of the NJC. According to its website, the NJC includes 18 bargaining agents, the Treasury Board and 4 "separate employers" as official members. In fairness to those members, their delegated representatives should have the opportunity to examine a grievance involving one of their directives and to decide that grievance, keeping in mind what they meant when they wrote the directive. In my opinion, this is why clause 20.01 of the collective agreement exists and prescribes a different procedure for grievances involving an NJC directive.

[34] Considering everything, these grievances have not been dealt with as they should have been according to the collective agreement. They should be decided by the NJC after hearing representations from the bargaining agent and from the employer. If the grievors are not satisfied with the NJC's decision, they will then have 40 days to refer their grievances to adjudication as per the *Public Service Labour Relations Board Regulations*, SOR/2005-79.

[35] The grievors argued that these grievances are continuous since the issues continued to exist after they were filed. The employer withdrew its timeliness objection filed on July 29, 2010 but argued based on *Coallier* that no remedy should be applied for more than 25 days before the filing of a grievance. Considering my conclusion that these grievances should be decided by the NJC, it is too early at this stage to deal with this issue.

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

(The Order appears on the next page)

V. Order

[37] The grievances are allowed in part.

[38] I order that the grievances be returned to the NJC, to be considered by it under the terms of its Travel Directive.

March 7, 2012.

**Renaud Paquet,
adjudicator**