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File: 566-02-4080

Citation: 2013 PSLRB 146



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

PAULA HAWKINS

Grievor

and

**TREASURY BOARD
(Department of Fisheries and Oceans)**

Employer

Indexed as
Hawkins v. Treasury Board (Department of Fisheries and Oceans)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Stephan J. Bertrand, adjudicator

For the Grievor: Douglas Hill, Public Service Alliance of Canada

For the Employer: Lesa Brown, counsel

Heard at St. John's, Newfoundland,
August 27, 2013.

I. Individual grievance referred to adjudication

[1] This matter concerns a grievance filed by Paula Hawkins (“the grievor”) on February 10, 2009, against the decision of her employer, the Department of Fisheries and Oceans (“the employer”), to deny her request for dependent-care expenses, pursuant to section 3.3.5 of the National Joint Council Travel Directive (“the directive”). At the time of presenting her grievance, the grievor was employed as an EG-02 habitat research technician with the Science Branch of the employer’s Newfoundland Region.

II. Summary of the evidence

[2] The parties did not call any witnesses but filed an agreed statement of facts containing a number of documents, referred to in it as appendices “A” to “I”. The agreed statement of facts reads as follows:

1. *The Collective Agreement between Treasury Board and the Public Service Alliance of Canada for the Technical Services Group, expiry date 21 June 2007 (the Collective Agreement) applies to this grievance. A copy of the Collective Agreement is attached as **Appendix A**.*
2. *Article 7 of the Collective Agreement provides that the Travel Directive forms part of the Collective Agreement. A copy of the Travel Directive (the Directive) is attached as **Appendix B**.*
3. *Section 3.3.5 of the Travel Directive states:*
 - 3.3.5 *An employee who is required to travel on government business shall be reimbursed actual and reasonable dependent-care expenses up to a daily maximum of \$35 Canadian, per household, with a declaration or up to a daily maximum of \$75 Canadian, per household, with a receipt when:*
 - (a) *The employee is the sole caregiver of a dependant who is under 18 years of age or has a mental or physical disability; or*
 - (b) *Two federal employees living in the same household are the sole care givers of a dependant who is under 18 years of age or has a mental or physical*

disability and both employees are required to travel on government business at the same time.

The dependent-care allowance shall apply only for expenses that are incurred as a result of travelling and are additional to expenses the employee would incur when not travelling.

- 4. At all material times, the grievor occupied the position of an EG-02 Habitat Research Technician with the Science Branch of the Newfoundland Region of the Department of Fisheries and Oceans.*
- 5. At all material times, the grievor's spouse occupied the position of SC-DED-02 Seaman with the Canadian Coast Guard, Newfoundland Region.*
- 6. As part of her duties, the grievor was assigned to serve as a member of the scientific staff, on board the CCGS Teleost Trip No. 807, from April 20 to May 5, 2008.*
- 7. As per standard practice, the grievor applied for and received approval for travel status for the duration of her trip aboard the CCGS Teleost. This request did not include a request for child care expenses. A copy of the approved request is attached as **Appendix C**.*
- 8. During the period the grievor was on board the CCGS Teleost, her spouse was scheduled to report for duty aboard the CCGS George R. Pearkes. He was working on board the vessel from April 23 to May 21, 2008.*
- 9. During the time that both the grievor and her spouse were away from the home, they arranged for a caregiver to care for their child. Their child is a dependent as per the Directive.*
- 10. The grievor and her spouse were both at sea on separate vessels during the two time periods in question.*
- 11. The grievor requested reimbursement for dependent care expenses for 11 nights and provided a receipt for the expenses incurred. A copy of this receipt is attached as **Appendix D**. Specifically, the grievor requested reimbursement for \$825.00 in child care expenses (11 nights @ \$75 per night).*

12. Ms. Hawkins was subsequently assigned to serve as a member of the scientific staff aboard CCGS Teleost Trip No. 811, from July 4 to 19, 2008.
13. As per standard practice, the grievor applied for and received approval for travel status for the duration of her trip aboard the CCGS Teleost. This request did not include a request for child care expenses. A copy of the approved request is attached as **Appendix E**.
14. During this second period that the grievor was on board the CCGS Teleost, her spouse was again working onboard the CCGS George R. Pearkes from June 18 to July 16, 2008.
15. The grievor submitted a second request for reimbursement for child care expenses for 13 nights and provided a receipt for the expenses incurred. A copy of this receipt is attached as Appendix E. Specifically the grievor requested reimbursement for \$975.00 in child care expenses (13 nights @\$75.00 per night).
16. Management denied both of the grievor's requests for reimbursement of dependent care expenses.
17. On February 10, 2009 the grievor filed a grievance regarding the "employer's failure to provide compensation for dependent care expenses, as per Section 3.3.5 of the Travel Directive". The grievance presentation form is attached as **Appendix F**.
18. On April 29, 2009, the department issues a first level grievance reply to the grievance advising the grievor that her grievance was denied on the basis that she did not qualify for the reimbursement of dependent care expenses as she did not meet either of the two conditions prescribed at section 3.3.5 of the Directive. A copy of the grievance reply is attached as **Appendix G**.
19. On June 26, 2009, the department issued a second level reply to her grievance. A copy of the grievance reply is attached as **Appendix H**. The grievance was denied on the basis that she was ineligible to receive reimbursement of her dependent care expenses under the Travel Directive.

*20. On March 3, 2010, the NJC Executive Committee issued a decision denying the grievance on the basis that the grievor had been treated within the intent of the Travel Directive. A copy of this decision is attached as **Appendix I**.*

21. The bargaining agent subsequently referred the grievance to adjudication on July 15, 2010.

[Emphasis in the original]

[3] The sole issue raised by the grievance is whether the grievor was entitled to be compensated for dependent-care expenses under clause 3.3.5(b) of the directive.

[4] At the conclusion of the hearing, the parties also agreed to file the work description of the grievor's husband and to submit additional written arguments on the relevance, if any, of that work description.

III. Summary of the arguments

A. For the grievor

[5] The grievor argued that the directive ought to be interpreted and applied in accordance with its guiding principles, which are stated in its preamble. She specifically referred me to the language used under headings such as "Flexibility," "Respect" and "Modern travel practices," which contains words such as "needs and interests," "sensitive," "supportive," "fair," "realities" and "appropriate."

[6] According to the grievor, each criterion found in clause 3.3.5(b) of the directive was met in this case, as she and her husband were both federal employees living in the same household, they were the sole caregivers of a dependent who was under 18 years of age and they were both required to travel on government business during the periods referred to in the agreed statement of facts. She alleged that that entitled her to be compensated for the dependent-care expenses provided under that clause.

[7] The grievor indicated that clause 3.3.5(b) of the directive does not require both employees to be on travel status. It simply states that each of them must be required to travel on government business at the same time, which, according to her, had occurred. She added that the fact that her husband was deemed to be within his

headquarters area, pursuant to section 4.2.2, did not signify that he was not required to travel on government business. Section 4.2.2 reads as follows:

4.2.2 For any period during which the employer requires the employee to be aboard a self-contained vessel (e.g. a ship, dredge or barge with sleeping and eating facilities), an employee shall be deemed to be within the headquarters area, whether or not the vessel is actually within the headquarters area. In this context, "period" shall mean the extended period during which the employee is assigned to the vessel, and shall not be limited to the actual physical performance of particular tasks during a watch.

[8] The grievor acknowledged that the language used in section 4.2.2 of the directive would prevent her husband from claiming certain travel expenses, such as meals and accommodation allowances, but contended that dependent-care expenses ought to be treated differently because while aboard a ship that is travelling, her husband could not go home in cases of emergency, something he could do if he were aboard a ship at shore.

[9] The grievor referred me to page 6 of her husband's work description, which states that he could be "... required to be away from home for periods of up to six weeks at a time," and that his work involved "... long periods away from home due to the ship being at sea for up to six weeks." According to the grievor, the fact that the ship her husband boarded was required to travel at sea implied that he was required to travel on government business, since he was aboard that ship.

[10] The grievor argued that section 3.3.5 of the directive should be interpreted in a broad, liberal and inclusive manner, especially given the language used in the directive's preamble.

[11] The grievor sought to be compensated for both of her dependent-care claims, totalling \$1 800.00.

B. For the employer

[12] While the employer conceded that both the grievor and her husband were, at all material times, federal employees living in the same household and that they were the sole caregivers of a dependent who was under 18 years of age, it rejected the notion that both were required to travel on government business during the applicable periods.

[13] The employer argued that only the grievor was required to travel on government business at the relevant times, which explained why only she had applied and been approved for travel status, including a claim for the compensation of incidental expenses representing an amount of \$553.60 for the two periods in question. According to the employer, there is no evidence that the grievor's spouse was considered on travel status or that he requested compensation for travel expenses, including incidentals, during those periods.

[14] The employer suggested that the starting point when determining whether an employee is required to travel on government business is whether or not that employee is on travel status, which, according to the directive, occurs only when an employee is on authorized government travel (see the definition of travel status in the directive). According to the employer, being required to travel on government business is the same as being on authorized government travel and hence on travel status. On that point, the employer referred me to paragraphs 30 and 31 of *McDermot v. Treasury Board (Department of National Defence)*, 2009 PSLRB 69.

[15] The employer further argued that section 4.2.2 of the directive makes it clear that while a ship may be travelling, the employees aboard the ship, i.e., its crew, such as the grievor's husband, are not. According to the employer, they are deemed within the headquarters area at all times and therefore cannot be considered on travel status or required to travel on government business, as the ship becomes their workplace. The employer forewarned me that to interpret this provision otherwise could have serious financial ramifications for the federal government, as every federal employee aboard a moving ship or vessel could claim entitlements to a number of travel expenses while performing their normal duties and responsibilities aboard the vessel.

C. The grievor's rebuttal

[16] According to the grievor, two types of government travel are contemplated by the directive: government travel while in travel status, and government travel while not in travel status. She contended that her husband's situation corresponded to the latter type and suggested that one could be required to travel on government business while not in travel status, especially when one's work description requires him or her to travel as part of his or her duties and responsibilities.

IV. Reasons

[17] As I stated earlier in this decision, the sole issue raised by this grievance is simple. It requires a determination on my part as to whether the grievor is entitled to be compensated for dependent-care expenses under clause 3.3.5(b) of the directive. That clause reads as follows:

3.3.5 An employee who is required to travel on government business shall be reimbursed actual and reasonable dependent-care expenses up to a daily maximum of \$35 Canadian, per household, with a declaration, or up to a daily maximum of \$75 Canadian, per household, with a receipt when:

...

(b) two federal employees living in the same household are the sole caregivers of a dependent who is under 18 years of age or has a mental or physical disability and both employees are required to travel on government business at the same time.

The dependent-care allowance shall apply only for expenses that are incurred as a result of travelling and are additional to expenses the employee would incur when not travelling.

[18] Section 4.2.2 of the directive also bears some relevance to this set of circumstances. It reads as follows:

4.2.2 For any period during which the employer requires the employee to be aboard a self-contained vessel (e.g. a ship, dredge or barge with sleeping and eating facilities), an employee shall be deemed to be within the headquarters area, whether or not the vessel is actually within the headquarters area. In this context, "period" shall mean the extended period during which the employee is assigned to the vessel, and shall not be limited to the actual physical performance of particular tasks during a watch.

[19] Moreover, the directive provides for the following definitions:

Government travel (*voyage en service commandé*) - - all travel authorized by the employer and is used in reference to the circumstances under which the expenses prescribed in this directive may be paid or reimbursed from public funds.

Travel status (*déplacement*) - occurs when an employee or traveller is on authorized government travel.

[20] In order to be entitled to the compensation provided by clause 3.3.5(b) of the directive, an employee must satisfy three conditions: (i) two federal employees are living in the same household; (ii) they are the sole caregivers of a dependent who is under 18 years of age or has a mental or physical disability; and (iii) both employees are required to travel on government business at the same time.

[21] Only the third condition is contentious in this proceeding, in particular whether the grievor's husband, whose work description requires him to perform duties and responsibilities aboard a ship, was required to travel on government business on the two occasions in question. For a number of reasons, I do not believe he was.

[22] First, I disagree with the grievor's contention that the fact that her husband was aboard a ship that was travelling, which prevented him from going home in cases of emergencies, something he could do while aboard a ship at shore, justifies treating dependent-care expenses differently than other travelling expenses, such as meal, accommodation and incidental allowances. This is not about whether employees can respond to personal issues or emergencies; it is about providing care to a dependent. The reality is that someone will have to provide care to a dependent, irrespective of emergencies. If the grievor had been required to travel on government business, which appears to be the case, and if her husband had been on shift work, she would have incurred dependent-care expenses but would not have been entitled to be compensated for those expenses under clause 3.3.5(b) of the directive. The real issue is whether the grievor's husband was also required to travel on government business during the two applicable periods, not whether he could return home to respond to an emergency.

[23] Second, I agree with the employer that if an employee is required to travel on government business, it follows that that employee must be on authorized government travel and therefore, by definition, on travel status. The manner in which the Public Service Labour Relations Board interchangeably referred to "travelling on government business" and "travel status" in paragraphs 30 and 31 of *McDermot* certainly supports that position. It is only logical to deduce, given the wording of the directive, that if an employee is not considered on travel status, he or she is not on authorized government travel, which implies that he or she cannot be required to travel on government business. I am unable to accept the grievor's position that one can be required to travel on government business while not being on travel status. I simply

cannot contemplate a situation in which an employee would be required to travel on government business while not being on authorized government travel; nor have I been referred to any persuasive examples of such situations. To suggest that an employee can be required to travel on government business while not authorized, simply seems to defy logic. I am of the view that it is not by pure coincidence that both definitions that deal with travel in the directive refer to the word “authority.”

[24] I disagree with the grievor’s contention that the directive contemplates two types of government travel, namely, government travel while in travel status, and government travel while not in travel status. Such a position is simply not borne out of the directive. It would be akin to suggesting that one can be required to travel while not authorized to in the first place.

[25] Third, I am also satisfied that nothing in the work description of the grievor’s husband suggests that he was required to travel on government business while performing his duties aboard a moving vessel or ship. Though his work description does state that he may be required to be away from his home for periods of up to six weeks at a time and that his work may involve long periods away from his home due to the ship being at sea, there is no suggestion in that work description that he will be required to travel on government business. After all, the opening paragraph of his work description specifies that he will be expected to perform his duties aboard a Fisheries and Oceans Canada ship and section 4.2.2 of the directive confirms that while aboard a vessel he is deemed to be within his headquarters area, whether or not the vessel in question is actually within the headquarters area.

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

(The Order appears on the next page)

V. Order

[27] The grievance is dismissed.

November 21, 2013.

**Stephan J. Bertrand,
adjudicator**