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Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

IAN HAMILTON AND LINDA HUTCHINSON

Grievors

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Hamilton and Hutchinson v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: Margaret T.A. Shannon, adjudicator

For the Grievors: Abudi Awaysheh, Public Service Alliance of Canada

For the Employer: Christine Langill, counsel

Heard at Ottawa, Ontario,
March 21 and June 7, 2013.

I. Individual grievances referred to adjudication

[1] Ian Hamilton and Linda Hutchinson ("the grievors") had at all times material to these grievances accepted secondments to AS-05 course manager positions at the Correctional Management Learning Centre ("the CMLC"), operated by the Correctional Service of Canada ("CSC"). The secondments were for a period of three years, during which time the grievors would not report to their designated regular places of employment. Mr. Hamilton was employed as an educator (ED) at the Joyceville Institution operated by the CSC in Kingston, Ontario. Ms. Hutchinson was employed as a PE-03 with the Department of National Defence at National Defence Headquarters in Ottawa. The grievors seek reimbursement for travel and meals to their seconded place of work in Cornwall, Ontario, pursuant to the National Joint Council (NJC) Travel Directive ("the travel directive").

[2] At all times material to these grievances, Mr. Hamilton was a member of the Education and Library Science Group bargaining unit and subject to the collective agreement between the Treasury Board and the Public Service Alliance of Canada, Group: Education and Library Science (all employees) which expired on June 30, 2011. Ms. Hutchinson was a member of the Program and Administrative Services Group bargaining unit and was subject to the collective agreement between the Treasury Board and the Public Service Alliance of Canada, Program and Administrative Services (all employees) which expired on June 20, 2011. Both collective agreements contain identical language incorporating NJC Agreements, including the travel directive, as part of the collective agreement.

II. Summary of the evidence

[3] At all times material to this grievance, Mr. Hamilton resided in Brockville, Ontario, a distance of approximately 77 kilometers from the CMLC. In May 2007, Mr. Hamilton accepted a secondment to the CMLC and signed an agreement that specifically stated that ". . . travel to the CMLC from home and back is not reimbursed" (see Exhibit 2, Tab 9). Like Mr. Hamilton, Ms. Hutchinson also accepted the offer of a secondment to the CMLC and signed a secondment agreement with the same provision in it concerning reimbursement for travel to the CMLC from her home as is found in Mr. Hamilton's secondment agreement (see Exhibit 2, Tab 10). Both secondment agreements were extended over the following years.

[4] On December 4, 2008, the grievors received an email from Denis Barbe, the acting director of the CMLC, advising them that they might be entitled to the reimbursement of their travel expenses to the CMLC from their homes and to the payment of meal allowances for those days that they attended work at the CMLC. Mr. Barbe attached a memo concerning the application of the travel directive to CSC employees in Quebec. Mr. Barbe advised the grievors that they ". . . maybe affected by this interpretation. Lot of people are getting money now and it is thousands of $. . . [s*ic* throughout]" (see Exhibit 2, Tab 18).

[5] Following Mr. Barbe's email, the grievors submitted travel claims to him for the time that they were assigned to the CMLC. Mr. Hamilton filed seven claims for mileage and meal allowances for the period that he was on government business travel between home and work retroactive to the date he started his secondment at the CMLC. His total claim was for $34 819.41 (see Exhibit 2, Tab 6). Ms. Hutchinson filed 14 claims for mileage and meal allowances for the period that she was on government business travel retroactive to the date she started at the CMLC. The total of her claim was $20 036.10 (see Exhibit 2, Tab 7). For each grievor, the seconded work location at the CMLC was closer to home than their regular place of work.

[6] All the claims were then approved for payment by Mr. Barbe on March 30 and 31, 2009 and forwarded to accounts payable for processing. The CSC consulted the Treasury Board Secretariat (TBS) to determine whether the Quebec memo forwarded to the grievors by Mr. Barbe applied in their cases. The TBS's advice in February 2009 was that because the grievors had signed secondment agreements that specifically excluded the payment of travel costs they incurred as a result of the relocations of their places of work, and because they were not on travel status, the claims should be denied. The CSC conveyed that advice to the grievors. Mr. Barbe attempted to intervene on their behalf on March 31, 2009, but the decision to deny the claims stood (see Exhibit 1, Tab 10).

[7] Steven Fiore, Manager of Financial Planning and Budgeting for the CSC, testified about the process by which it was determined that the grievors were not entitled to reimbursement for travel expenses between their homes and the CMLC in Cornwall and for meal allowances during the period of their secondments there. He testified that he has the authority to deny the payment of a travel claim that is not properly authorized or that is outside of the scope of the travel directive. The purpose of the travel

directive is to set the standard for what is eligible for reimbursement when travelling on government business.

[8] The travel directive is intended to ensure that government employees are not out of pocket for expenses when travelling on government business. Neither grievor was out of pocket, and in fact, their travelling patterns between home and work had been greatly reduced and had in fact resulted in a savings to them.

[9] The definition of an employee on government travel or business means that that employee travels to a location, other than the employee's normal place of work, to represent a government department or to carry out duties on behalf of that department. In the case of the grievors, when they signed their secondment agreements, their place of work became the CMLC, and they were merely travelling to and from work each day, which did not meet the definition of government business. In certain circumstances, travel to work may incur the reimbursement of travel expenses, such as when the work location has been changed due to the unavailability of a workplace or when the employer assigns an employee to a different work location for operational reasons. In both examples, the change in work location is beyond the control of the employee. The Quebec memo to which the grievors referred and that Mr. Barbe forwarded to them was specific in its application to the CSC's Region of Quebec and was intended to address operational needs that that region was facing. It was not a national directive intended to apply to all CSC employees.

[10] Based on all that information, after much consultation, Mr. Fiore denied the grievors' claims for reimbursement (Exhibit 1, Tab 9 and Exhibit 2, Tab 18) despite the fact that Mr. Barbe authorized the payment and intervened on their behalf. Payments for travel are supposed to be pre-authorized except in certain circumstances that did not apply to the grievors. Mr. Barbe authorized the payment after the fact, not before the travel occurred, contrary to what is required by the travel directive. In Mr. Fiore's opinion, Mr. Barbe contravened the *Financial Administration Act (FAA),* R.S.C., 1985, c. F-11, when he authorized the payments to the grievors, against the TBS ruling and in violation of the existing policy.

[11] The CSC's finance department had the authority to overrule Mr. Barbe's authorization of the payments to the grievors, which is what happened, based on the fact that the grievors were not out of pocket, that they were not on government business, that they had both signed secondment agreements clearly stating that they

would not be entitled to expenses for travelling to the CMLC, and that the expenses incurred were related to travel to and from work and meals while at work.

III. Summary of the arguments

A. For the grievors

[12] Before the hearing, the grievors were never informed that their travel claims were not authorized. The NJC's decisions issued in response to the final level grievances make no reference to whether the claims were properly authorized. Mr. Fiore's testimony was the first time that the issue of whether the claims were authorized was articulated to the grievors. That was an abuse of authority by the employer as the Public Service Alliance of Canada (the bargaining agent) would have dealt with the grievances differently had it known that authorization of the travel claims was the issue.

[13] As the acting director of the CMLC, Mr. Barbe was duly authorized to approve payments on account. He approved these claims, and they should be paid. The fact that they were approved after the fact is not a bar to their payment as the travel directive explicitly states that travel can be post-authorized when pre-authorization is not possible or if an employee travels a great deal.

[14] The employer has the latitude to accept claims if the travel occurred without proper authority. The bargaining agent was not informed that the acting director exceeded his authority. The grievors' arguments throughout the grievance hearing processes were focused on how long an employee could be on travel status.

[15] After initiating the requests for reimbursement by sending his email (Exhibit 1, Tab 9 and Exhibit 2, Tab 18) to the grievors, and after having approved the payments on March 30 and 31, 2009, after the TBS interpretation was received in February 2009, Mr. Barbe wrote a memo supporting his decision, citing recruitment and morale issues at the CMLC (Exhibit 1, Tab 10). His memo speaks to equal treatment of employees and to the inconsistent application of the travel directive. He had approved the payment for the betterment of the workplace.

[16] There is no reason to exclude the application of the travel directive to the grievors commuting to and from their homes to the CMLC when their requests were authorized after the fact. The secondment agreements cannot be relied on as they were

an attempt by the employer to contract out of the collective agreements applicable to the grievors. The bargaining agent was not a party to the secondment agreements. Any agreement that changes the terms and conditions of employment of bargaining group members requires the bargaining agent's approval.

[17] An adjudicator has the authority to order the reimbursement of travel expenses under the travel directive even if the expenses were not approved by the employer (see *Baird et al. v. Treasury Board (Department of National Defence)*, 2012 PSLRB 117). The employer had the discretion to authorize the payments in that case and chose not to. When the grievors were assigned to the CMLC, they were assigned to a temporary workplace as defined in *Allain and Fraser-Layes v. Canadian Food Inspection Agency*, 2009 PSLRB 54. A temporary workplace is not permanent. The grievors were expected to return to their permanent workplaces at the expiries of the secondment agreements; consequently, the CMLC was a temporary workplace, which qualified them for travel status while commuting to and working there.

[18] The case of *Lamothe et al. v. Canadian Food Inspection Agency,* 2007 PSLRB 60, is the authority for the authorization of such payments if the expenses were incurred to provide better service to clients and if the employer benefitted. The grievors' attendance and presence at the CMLC in this case benefitted the employer such that the expenses should have been approved and paid. The adjudicator's reasoning in *Lamothe et. al.* should be adopted and applied to this case despite the fact that it was overturned on judicial review by the Federal Court and the Federal Court of Appeal.

[19] *Clerveaux et al. v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 7, at para 32 and 33, defines government travel. The travel directive does not apply to those persons whose travel is governed by other authorities. There is no reason to exclude the application of the travel directive to commuting to the workplace when the travel has been authorized after the fact, since the definition of government travel is all travel authorized by the employer. In the current circumstances, Mr. Barbe approved the payment for the commuting travel, which brought it within the definition of government travel for which compensation is payable. The employer cannot rely on the secondment agreements to avoid payment as they constituted contracting out of the collective agreement.

[20] The denial of the travel claims is directly related to article 36 of Mr. Hamilton's collective agreement and to article 7 of Ms. Hutchinson's collective agreement, which

incorporate the travel directive. The grievors spent a great deal of time travelling to their new workplace. Unlike the situation in *Wurdell v. Canadian Food Inspection Agency,* 2002 PSSRB 27, the grievors' permanent places of work were still available. Had they known that the travel claims initiated by Mr. Barbe were not approved, the situation would have been different. The employer's refusal in the face of that approval was an abuse of authority. In the interest of fairness, the employer should be directed to pay the travel expenses. The grievors had no expectation that they would be entitled to travel allowances at the outset, but when reimbursement was later offered, it could not then be taken away. It is analogous to someone giving something for free and then taking it away. Several reasons were given over the course of the grievance process for taking reimbursement away. One was not that Mr. Barbe did not have the authority to give it to the grievors.

[21] For those reasons, the grievances should be allowed, and the grievors' claims as submitted and approved by Mr. Barbe should be paid.

B. <u>For the employer</u>

[22] Under *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.), the grievors had to be clear in their reference to adjudication as to what issues were to be decided. They could rely only on issues raised in the grievance process. In these cases, it is unclear exactly on what they are relying. In the course of the hearing, their representative raised the issue of estoppel. In order to be successful when arguing promissory estoppel in this case, a clear and unambiguous promise had to have been made to the grievors that they would be reimbursed for travel between their homes and the CMLC. Mr. Barbe's email stating that they "maybe" entitled to benefit from the Quebec Region memo did not state with certainty that they would be so entitled. Even though *Legare v. Canada (Treasury Board)* (1987), 76 N.R. 353 (C.A.), states that promissory estoppel is based on an interpretation of what was said, the grievors had to show detrimental reliance on a promise. In this case, the grievors are seeking a retroactive payment two years after they competed for and accepted positions at the CMLC under the condition that they were not entitled to the payment that they seek.

[23] Neither grievor questioned their entitlement to travel benefits when they accepted the jobs at the CMLC. Both grievors remained in their homes and benefitted from a shorter commute. Ms. Hutchinson also seeks reimbursement for meal allowances, even though she testified that, for the most part, she went home for lunch.

It was clearly stated in the initial secondment agreements and their subsequent renewals that the grievors were not entitled to the payment of travel expenses as a result of the changes to their workplaces.

[24] The Quebec memo, which gave rise to these claims, was specific as to whom it would apply to and under what conditions. It was effective for a limited time. Even if the memo were to apply to the grievors, neither complied with the requirements for making a claim under it. The evidence is clear that the TBS did not approve the memo. No evidence was led as to whether the NJC had approved it. There is no evidence that it was uniformly applied and that it was known to the TBS. The burden was on the grievors to prove that it was (see *Chafe et al. v. Treasury Board (Department of Fisheries and Oceans),* 2010 PSLRB 112, at para 71).

[25] Under the travel directive, there is no basis for paying an employee to travel to and from his or her normal workplace. Commuting is not government business. Only authorized travel may be reimbursed. According to the "Purpose and Scope" of the travel directive, ". . . [t]he 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. . . ." It is the employer's responsibility to authorize and determine when government travel is necessary. As stated in paragraph 1.1.3 of the travel directive, a misinterpretation of, or a mistake involving, the administration of the travel directive does not create a basis for reimbursement but must be reviewed on a case-by-case basis. The CSC engaged in a lengthy review of the grievors' claims, consulted the TBS, sought further information from the grievors to support their claims and determined that it was not appropriate to pay them.

[26] Mr. Fiore testified that the grievors' workplace did not temporarily change so as to bring them within section 1.9 of the travel directive which provides for a 29-day maximum assignment. The employer did not assign them to the CMLC. Each applied to a position and was successful in a competition. The CMLC became their new workplace for the duration of their secondments and any extensions. It was not anticipated that the secondments would be for periods of 30 days or less. The relocation to the CMLC from their permanent work locations did not constitute a work change under section 1.9 of the travel directive and did not warrant paying for travel costs. They reported to work at their regular place of work for the duration of their secondments.

[27] For those reasons, the grievances should be denied.

IV. Reasons

[28] Mr. Hamilton's and Ms. Hutchinson's collective agreements set out their terms and conditions of employment as agreed to by the grievors' bargaining agent and the employer. The travel directive sets out what an employee travelling on government business can expect by way of standards for that travel and the entitlements that travel brings. Article 7 of the Program and Administrative Services collective agreement incorporates the travel directive. Similarly, Article 36 of the Education and Library Science collective agreement incorporates the travel directive. Therefore, the terms and conditions of travel for government business are terms of the collective agreement.

[29] Government travel is defined as all travel authorized by the employer and is used in reference to the circumstances under which the allowances or expenses prescribed in the travel directive may be paid or reimbursed from public funds. In the event that an employee's workplace is changed temporarily, section 1.9 of the travel directive identifies when the employee will be entitled to the reimbursement of expenses related to travelling to that temporary workplace:

> ***1.9 Workplace Change (applies within the headquarters area only)***
>
> *1.9.1 When an employee is assigned from a permanent workplace to a temporary workplace for a period of less than thirty (30) consecutive calendar days, the provisions of this directive shall apply.*
>
> *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. . .*

The circumstances described by the grievors clearly do not fall within the scope of that section. They were not assigned to the CMLC by their employer. They applied for and received secondments to the CMLC which were for a period in excess of 30 days. Their secondment agreements clearly stated that their commutes to the new workplace would not be subject to reimbursement. That is the deal that was struck when they undertook their new assignments at the CMLC. Both had shorter commutes and

benefitted from a new experience, closer to their homes. In Ms. Hutchinson's case, she could go home for lunch, which she did.

[30] It is clear that any travel claim requires the person with authority under sections 32 and 34 of the *FAA* to approve it. It is also clear that the CSC's finance department had the authority to overrule that approval when it was discovered that it did not comply with the *FAA*, the travel directive or departmental policy. The normal procedure for ensuring reimbursement for travel expenses is for the employee to ensure that the travel is pre-authorized. It is abundantly clear that that did not happen in this case as the secondment agreements explicitly excluded the payment that the grievors seek and as their claims seek reimbursement for two years retroactively.

[31] Mr. Barbe's attempt to assist his employees was well meant but was beyond the scope of his authority and the secondment agreements entered into by the grievors and the CSC. He did not promise the grievors that they would be reimbursed their commuting costs; he merely pointed out that, according to the Quebec memo, there was a possibility that they could be reimbursed. It was not a clear and unambiguous promise upon which the grievors relied. They had already started at the CMLC and had been there for some time when the Quebec memo was brought to their attention. They had already received the benefits of shorter commutes and the opportunity to work at the CMLC. There is insufficient evidence to support the claims of promissory estoppel and detrimental reliance loosely advanced by the grievors' representative and as set out in *Legare*.

[32] Had I accepted that conditions existed that established a case of promissory estoppel, I would have denied their enforcement based on *Burchill* as it was clear that it was a new ground raised by the grievors at the hearing and not one that had been addressed through the grievance process.

[33] There is also insufficient evidence to support the grievors' representative's argument that the travel directive should be extended to cover their commute to their new work location. To quote their representative, "The grievors had no expectation that they would be entitled to travel allowances at the outset . . . ." It is the expectation that every public service employee is responsible for reporting to work at his or her regular work location unless for reasons specified in the travel directive that work location has been changed. Normal commuting to attend work does not constitute

travel for government business. The secondment agreements clearly reinforced that fact.

[34] In these circumstances, the grievors' regular place of work while employed by the CMLC was the Cornwall campus. It defies logic that they should be compensated for mileage to and from their homes to their new place of work (which coincidentally was closer than their regular work locations in Kingston and Ottawa) when on temporary assignments that they eagerly and actively sought out. It also defies logic that a person who goes home for lunch, because the workplace to which he or she was seconded is closer than his or her regular work location, then claims the meal on the basis that, while working at the new place of work, he or she is on travel status.

[35] When there is no expectation of reimbursement, when promissory estoppel cannot be established, and when both the travel directive and the *FAA* do not support the reimbursement, I cannot order it. The grievors are not out of pocket. Ordering the reimbursement they seek would unjustly enrich them based on a mistake made by their manager.

[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 dismissed.

August 1, 2013.

Margaret T.A. Shannon,
adjudicator