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Public Service Labour Relations Act

Before an adjudicator

BETWEEN

DR. PETER OUTRIDGE

Grievor

and

**TREASURY BOARD
(Department of Natural Resources)**

Employer

Indexed as

Outridge v. Treasury Board (Department of Natural Resources)

In the matter of an individual grievance referred to adjudication

Before: Michael McNamara, adjudicator

For the Grievor: Sara Boulé-Perroni, Labour Relations Officer, PIPSC

For the Employer: Zorica Guzina, Counsel

Heard at Ottawa, Ontario,
September 4, 2013.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the new Board") to replace the former Public Service Labour Relations Board ("the former Board") as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s.2) as that *Act* read immediately before that day.

II. Summary of the Evidence

[2] Dr. Peter Outridge is a research scientist (SE-RES-03) employed with the Department of Natural Resources (NRCan). He is grieving the employer's refusal to approve his leave to attend a scientific conference under Article 19 of the collective agreement. As a remedy, he would like his vacation leave restored in recognition of the employer's breach of the terms in the collective agreement.

[3] The grievor testified first. He has a Bachelor of Science degree from 1980 and a PHD degree from 1990 and has worked as a professional scientist since 1981. He has had more than 70 published documents, and has established himself in leadership roles in a number of forums. His field of work now is Bio Geo Chemistry.

[4] Dr. Outridge was an active member of ArcticNet, a group putting on this scientific conference, "the largest annual Arctic science meeting in Canada and the major ArcticNet networking event of the year." As a member of ArcticNet, the grievor was expected to attend the conference and he has attended the conference numerous times in the past. In 2010 his attendance was also important because for the first time, Dr. Outridge was supervising a student who would be attending and presenting a paper on his master's thesis at the conference. This was an important career step, both for the grievor and for the student.

[5] In the past his attendance has been approved and there were no apparent deadlines to have his leave and attendance approved. On November 23, 2010, at the request of his manager, Dr. Vigneault, Dr. Outridge submitted an application to attend

this conference. The conference was scheduled for December 14 to 17, 2010. The grievor did not apply earlier because his attendance was being paid for by the conference organizer, ArcticNet, and because there was no other additional costs for the employer.

[6] On December 13, in the afternoon, and the day before the conference was to begin, the grievor was notified that his attendance was not approved. Dr. Outridge responded to this notice immediately with additional information and comments, outlining further involvement in a panel discussion and participating or acting as a judge of the poster competition as well as being a participant in a Theme 1 impact assessment meeting. These additional comments were not addressed by his Director, Dr. David Scott in his reply later that day, only that there was a regrettable delay in notifying Dr. Outridge that his request to attend the conference was being denied.

[7] Vacation leave was subsequently approved so that the grievor could attend the conference.

[8] In cross examination, Dr. Outridge explained that for the 2008 conference, which he also attended, the meetings were held outside of town and involved travel arrangements and this took time to approve and arrange.

[9] Dr. David Scott is currently the executive Director of the Canadian Polar Commission and in 2010 was employed by NRCan in the Northern Canada Division, Geological Survey of Canada, Earth Sciences Sector. Dr. Outridge was also employed there under the supervision of Bernard Vigneault who reported to David Scott.

[10] Dr. Scott was responsible for 85 to 90 employees and their strategic responsibility was identifying current activities and future trends in the North and providing advice to other areas of the NRCan.

[11] Dr. Scott explained the online process, SPS, used to manage project deliverables.

[12] In 2006, conferences were added to SPS. This software was always open for staff to access and staff were always able to add requests to attend conferences.

[13] In 2010, the staff was required to use this process to attend a conference.

[14] It is always expected, regardless of location, that an application is required to attend a conference.

[15] The request must include a rationale and is subject to approval. In 2008, Dr. Outridge's application indicated that he would be co-chairing sessions on Climate Control and Arctic Contaminants, as well as a workshop on Mercury in the Arctic. For the 2010 conference Dr. Outridge's application indicated that his PhD student would be presenting a paper on his thesis work. Dr. Outridge would also be participating in general science sessions as well as planning sessions for the next round of ArcticNet in 2012.

[16] As part of the approval process by the Assistant Deputy Minister (ADM), there must be a clear understanding of why employees would be attending an event.

[17] In 2006, where four or more people were requesting to attend an event, the application would be made through the SPS vehicle.

[18] The approval process involved receiving requests, reviewing requests, a discussion surrounding the requests and finally a memo to the ADM for review and approval. The briefing note for the ADM would include names and purpose for attendance as well as expected associated costs.

[19] For the 2010 conference 9 of 11 requests were approved, including two late requests. Overall, for all conferences in 2010/11, the number approved was 574 of 665 requests, an indication that there was not an automatic approval process.

[20] Dr. Scott emphasized the fact that requests should highlight and stress an "active" role for proposed participants. A clear degree of involvement is differentiated, a more comprehensive explanation is required for approval to be granted.

[21] In Dr. Outridge's application, the "Purpose of Attendance" was identified as: "My PHD student, J. Bailey (also an NRCan RAP student) will present a paper on his thesis work. I will be participating in general science sessions as well as planning sessions for the next round (2012-19) of ArcticNet."

[22] Dr. Scott also offered an example of a request from another employee whose application was accepted:

As a policy analyst responsible for the arctic science and support file within SID, this conference provides an excellent opportunity to develop science and policy contacts in OGD's in academic institutions. The high calibre and wide range of policy relevant presentations link to many different ESS files. The conference offers insight into future partnership and program development opportunities for ESS. It is important for understanding the greater context in which ESS activities are situated.

[23] In short, Dr. Scott stated that Dr. Outridge needed a better application.

[24] It is up to the applicant to provide concise functions emphasizing what benefits will flow to ESS/NRCAN. Is there an active role for the participant in organizing or delivering a special session helping to move the objective of ArcticNet ahead? In Dr. Outridge's application, it is not obvious that any of these goals or outcomes would be achieved.

[25] Dr. Scott did not see any benefit to the research program.

[26] This was discussed with Dr. Vigneault. There was not an adequate rationale, the DG/ADM would expect more than this.

[27] There was a big difference between this 2010 application and Dr. Outridge's 2008 application where his involvement was more active and he was co-chair of several events with relevance to NRCAN.

III. Summary of the arguments

A. For the grievor

[28] The grievor argued that it is his responsibility to get involved and especially to participate in relevant conferences.

[29] As such, he is a Network Investigator for ArcticNet and has attended six of their conferences. When the employer sought out his application, he submitted it, on November 23, 2010. This application was denied, in writing on the afternoon of December 13, the day before the conference was to begin.

[30] Clause 19.03 of the collective agreement states:

Conferences and Professional Development

The parties to this Agreement recognize that attendance at professional or scientific conferences, symposia, and workshops and other gatherings of a similar nature constitutes an integral part of an employee's professional activities and that attendance and participation in such gatherings is recognized as an important element in enhancing creativity in the conduct of scientific research or professional development. In this context, the parties also recognize the importance of research networking with national and international peers and active participation in the business and organization of relevant scientific and professional societies.

(a) Professional or Scientific Conferences

(i) An employee will attend professional or scientific conferences when it is deemed by management that such attendance will benefit the research program or the employee's career development.

(ii) Each employee will have the opportunity to attend conferences, symposia, workshops, and other gatherings of a similar nature which the employee deems relevant and beneficial to the research program or to the employee's career development. The Employer shall make a reasonable effort to approve the employee's request subject to operational requirements.

[31] The grievor argues that these clauses were drafted to allow attendance, that employees have the specific information needed to assess attendance and that the only restriction against attendance is operational requirements. Employer discretion should be exercised reasonably, as outlined by the Ontario Court of Appeal in *Metropolitan Toronto (Municipality) v. C.U.P.E.*, [1990] O.J. No. 537 (C.A.), where at paragraph 47 the court stated:

In other words, it is not patently unreasonable for an arbitrator to oblige management to exercise its discretion reasonably, where to do so unreasonably would be to create a conflict with or undermine the rights conferred by some other provision in the collective agreement.

[32] The importance of the grievor's attendance cannot be understated. It is vital to his career progression, is professionally relevant and raises the specter of the Northern Canada Division in a large forum.

[33] It is also an area that the employee deems relevant, as is stated in clause 19.03(a)(ii).

[34] There was no cost to the employer.

[35] There were no operational requirements preventing his attendance.

[36] His application was late but it was submitted when requested, even though the deadline had passed. Therefore timeliness was obviously not an issue.

[37] Discretion was not exercised in the context of collective agreement.

[38] Therefore, Dr. Outridge was unable to attend as a government scientist.

B. For the Employer

[39] The employer argues that its decision was based on the language in clause 19.03 of the collective agreement, and that section 229 of the *Public Service Labour Relations Act* prevents any other interpretation of the language.

[40] The language in clause 19.03(a)(i) says: “An employee will attend professional or scientific conferences when it is deemed by management that such attendance will benefit the research program or the employee’s career development.”

[41] Therefore, management must approve (deem) that such attendance will have a benefit.

[42] In this case, even though management requested an application from the grievor, management determined that the application did not provide sufficient justification to be approved.

[43] Employees are expected to be active participants and this was not clearly specified or outlined in Dr. Outridge’s application.

[44] There was flexibility in the deadlines, the employer took more than one late application for approval but deemed Dr. Outridge’s application not worthy.

[45] Even the amended application by Dr. Outridge was deemed not sufficient.

[46] Participation is not mandatory and the employer has the discretion to approve or deny approval.

[47] The elements of clause 19.03(a)(i) must be satisfied before reading clause 19.03(a)(ii).

[48] There was an elaborate process for the employer to review and recommend attendance at conferences and the management team was accountable to higher levels of authority to justify recommended attendance. In this case, based on the facts, a positive recommendation was not possible.

IV. Reasons

[49] Simply put, Dr. Peter Outridge applied to attend a scientific conference and his application was denied. Both parties rely on clause 19.03 of the collective agreement to support their relative positions.

[50] Clause 19.01 provides the general context for the application of article 19 and recognizes that in order to promote professional expertise, employees need, from time to time, to have the opportunity to attend or participate in career development activities such as conferences, symposia or workshops. The employer does not take issue with this.

[51] Clause 19.03 further expands upon the above theme and states as follows:

The parties to this Agreement recognize that attendance at professional or scientific conferences, symposia, workshops and other gatherings of a similar nature constitutes an integral part of an employee's professional activities and that attendance and participation in such gatherings is recognized as an important element in enhancing creativity in the conduct of scientific research or professional development. In this context, the parties also recognize the importance of research networking with national and international peers and active participation in the business and organization of relevant scientific and professional societies.

[52] Again, the employer takes no issue with the validity of the ArcticNet conference itself, having approved several employees to attend. I also note that the grievor's late submission of his application was not a factor in the employer's denial of approval. Several late applications were approved by the employer and it did not argue, either in

its replies to the grievance or at adjudication that the late submission was a reason for the denial.

[53] Where the parties differ is on the issue of whether or not the grievor properly justified his proposed attendance at the ArcticNet conference in question and whether the employer acted reasonably in considering the grievor's request.

[54] I accept that, based on the wording of the collective agreement, employees must justify their proposed attendance at conferences. Clause 19.03(a)(i) of the collective agreement states that an employee's attendance at conferences is possible only if management deems that such attendance will benefit the research program or the employee's career development. In his first submission, the grievor stated that his PhD RAP student would be presenting a paper on his PhD thesis and that the grievor would be participating in general science sessions and planning sessions. In his second submission of December 13, 2010, the grievor gave further information indicating that he had been invited to be a judge of the poster competition, participate in the Theme 1 impact assessment (IRIS) meeting, in addition to having his RAP student giving a presentation on his ESS supported thesis work. He was also been invited to participate in a panel discussion on employment prospects for scientists in the public service.

[55] I have compared the grievor's applications from 2008 and 2010, including the additional information he provided after receiving the late-in-the-day rejection response from the employer. In 2008 his application indicated that he was an ArcticNet Network Investigator and that he would be co-chairing two sessions at the conference. The 2010 application states that his supervised RAP student will be presenting a paper on his PhD thesis and as well, the grievor would be attending general science sessions. He adds in his December 13 email to Dr. Scott that he would be judging a poster competition, would participate in an impact assessment meeting and would also be a member of a panel discussion on employment prospects for scientists in the public service. The grievor would be attending, participating, networking, planning and judging events at the conference. In reviewing the rationale presented by the other 10 applicants there were four who were presenting and six who were attending as a learning and networking experience. Management has stated that the grievor's rationale for attending was not sufficient to be recommended for approval. The grievor's reasons for attending are at least as reasonable and his application properly justified his attendance. Management supports his work in

allowing him to take on the role of supervising a student. It should follow that the student's presentation should be attended by his supervisor.

[56] I disagree with the grievor's contention that the only restriction on the granting of this leave is operational requirements. As outlined above, clause 19.03(a)(i) sets out the requirement that management must be of the opinion that attendance will benefit the employer or the employee's career development. In any event, the employer never referred to operational requirements in its denial of approval and did not seek to do so at the hearing of this matter.

[57] In its argument before me, the employer argued that it had discretion to approve or deny the application for attendance, which is true. However, that discretion, as it well knows and as sub-clause 19.03(a)(ii) makes clear, is not untrammelled and must be applied in a reasonable and non-arbitrary manner. In his letter of December 13, 2010, the grievor points out that the employer's late response left him little time to submit a "beefed up" response. The employer acknowledges that it responded late yet made no effort to assist him in providing it with the information it sought.

[58] In the case of the grievor, he has attended this conference in the past, is a valued member of the ArcticNet team and naturally expected that he would be attending again. He submitted this application late, unaware that a deadline for applications was in place. It was not recommended for approval because of a lack of pertinent information. His email of December 13, in response to the denial, identified additional reasons for his attendance, but this further information was deemed not sufficient to change the employer's mind. The grievor relies on clause 19.03(a)(ii) in which he explains that he has identified this conference as relevant and beneficial and that the employer has not exercised its discretion reasonably.

[59] It is very clear that attendance at this conference was relevant to the grievor and that the employer acknowledged this by allowing him to use his annual leave for that purpose.

[60] There were no operational requirements to prevent the grievor from attending.

[61] It is difficult to understand why the employer did not use its discretion more proactively and approve Dr. Outridge's attendance. I find that the employer acted unreasonably in this case.

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

(The Order appears on the next page)

V. Order

[63] The grievance is allowed.

[64] The employer shall reinstate the annual leave used by the employee to attend the conference.

August 20, 2015.

**Michael McNamara,
adjudicator**