



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**NORMAND MARLEAU**

Grievor

and

**TREASURY BOARD  
(Veterans Affairs Canada)**

Employer

***Before:*** Jean Charles Cloutier, Board Member

***For the Grievor:*** Lucie Baillairgé, Professional Institute of the Public Service of  
Canada

***For the Employer:*** Michel LeFrançois, Counsel

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Heard at Montréal, Quebec,  
February 9, 1998.

## DECISION

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This decision is further to the hearing of a grievance sent to adjudication by Normand Marleau, a nurse (NU-HOS-02) working for the Department of Veterans Affairs in Ste-Anne de Bellevue, Quebec. He is requesting reimbursement of costs related to returning to his home after working a call back period that was contiguous to his normal hours of work and he is basing his claim on clause NU-2.02 of the master agreement between the Treasury Board and the Professional Institute of the Public Service of Canada.

The statement of grievance reads as follows:

*[Translation]*

*I do not agree with the employer's decision to reimburse me only for one-way transportation costs incurred as a result of a call back to work made at 7A in the evening on January 3, 1995, as it contravenes the master agreement, specifically clause NU-2, and the adjudication decision in Lapierre and Dufour.*

The corrective action requested reads as follows:

*[Translation]*

*I am asking for reimbursement of transportation costs to and from the workplace. Without prejudice to my rights and privileges.*

Clause NU-2.02 (Exhibit G-1) reads as follows:

*NU-2.02 When an employee is required to report for work and reports under the conditions described in clauses 9.03 and 10.01, and is required to use transportation services other than normal public transportation services, he shall be reimbursed for reasonable expenses incurred as follows:*

- (a) mileage allowance at the rate normally paid to an employee when authorized by the Employer to use his automobile when the employee travels by means of his own automobile; or*
- (b) out-of-pocket expenses for other means of commercial transportation.*

The following clause also applies to the dispute:

*10.01 When an employee is called back to work or when an employee who is on stand-by duty is called back to work by the Employer any time outside his normal working hours he shall be entitled to the greater of:*

- (i) *a minimum of three (3) hours' pay at the applicable overtime rate, or*
- (ii) *compensation at the applicable overtime rate for each hour worked.*

For its part, the employer relied on the Travel Directive (which is incorporated in the collective agreement under clause 36.03 (Exhibit G-1)), and specifically, paragraph 7.1.1 (Exhibit E-1), which reads as follows:

### ***Transportation Costs***

#### ***7.1 Overtime***

*7.1.1 In a situation involving authorized overtime where the employee is required to use transportation services other than normal and reasonable public or government-arranged transportation, the use of a taxi or, when a private vehicle is available, the higher kilometric rate, shall be authorized from the employee's home to the workplace and/or return if required and necessary parking charges shall be reimbursed:*

*(a) for overtime which is contiguous to the employee's normal hours of work and, as a direct consequence of the time of travel, the employee's normal mode of transportation is precluded; or*

*(b) for overtime which requires the employee to report to work for a period of time not contiguous to normal hours of work.*

The facts are as follows.

Mr. Marleau's testimony can be summarized as follows.

On January 3, 1995, Normand Marleau's normal hours of work were from 7:30 a.m. to 3:30 p.m. (day shift). During the evening of January 2, 1995, Mr. Marleau received a call asking him to come in for the shift from 11:30 p.m. to 7:30 a.m. on January 3, 1995. This overtime is paid at the applicable overtime rate. The practice at the Hôpital Ste-Anne de Bellevue is for employees who are interested and available (stand-by list) to sign up on a list. Mr. Marleau had indeed placed his name on this list. Mr. Marleau lives in Ste-Marthe, Soulanges County, approximately 40 kilometers from Ste-Anne de Bellevue. There is no public transportation between these two communities. Normally Mr. Marleau uses his own vehicle to get to work. Mr. Marleau

stated that taxi costs for transportation between his home and the hospital are approximately \$45 one way.

Counsel for the employer called as a witness Jean Lajeunesse, Chief, Staff Relations and Compensation at the Hôpital Ste-Anne de Bellevue. He corroborated the facts as to Mr. Marleau's hours of work on January 2 and 3, 1995.

Counsel for the grievor objected to the submission in evidence of three internal memoranda (Exhibits E-2, E-3 and E-4). I reserved judgment on his objection. I examined these pieces of evidence but I do not consider them to be conclusive.

Witness Lajeunesse stated that the decision made to pay only the costs for the trip to the hospital and not the return trip was based on the employer's interpretation of paragraph 7.1.1 of the Travel Directive. In response to questions from counsel for the grievor, witness Lajeunesse admitted that clause NU-2.02 does not mention contiguous hours.

### Arguments

The argument of counsel for the grievor is summarized as follows.

Clause NU-2.02 is a clause specific to the Nursing Group.

Wages are paid in accordance with clause 10.01. The evidence is that the grievor was required to report for work outside his normal hours of work. Mr. Marleau was called back to work and, under clause NU-2.02, he is entitled to be reimbursed for reasonable expenses incurred, either (a) in using his automobile, or (b) in using a means of commercial transportation. He chose the less expensive of the two options, that is, (a). This clause refers to reasonable expenses and not additional expenses. Further, it does not in any way exclude a period of overtime that is contiguous to the normal hours of work. Clause NU-2.02 is a specific clause that applies only to the Nursing Group to which the grievor belongs [*Dufour and Lapierre* (Board files 166-2-23487 and 23488)].

Counsel for the grievor referred me to the following decisions: *Johnston* (Board file 166-2-10027); *Chandler et al* (Board files 166-2-4139 to 4142); *Derbyshire* (Board

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file 167-2-5); *Re Steel Co. of Canada Ltd., Hilton-Works and United Steelworkers, Local 1005* (1980), 27 L.A.C. (2d) 252.

The argument of counsel for the employer is summarized as follows.

Mr. Marleau's grievance should be dismissed because he is not entitled to reimbursement under clause NU-2.02. The *Dufour and Lapierre* decision is incorrect. The whole matter was misunderstood and improperly applied. The Travel Directive should apply because it is part of the master agreement on the same basis as clause NU-2.02. Even though the grievor put his name on a stand-by list, he was still entitled to refuse to work this overtime shift. Clause NU-2.02 does not talk about to and from the workplace but rather reporting for work. Nor does it cover call back periods that are contiguous to the normal hours of work. Clause NU-2.02 is definitely a clause specific to the Nursing Group, but the Travel Directive is also part of the same collective agreement and applies to the same group: accordingly, neither clause takes precedence over the other.

Counsel for the employer referred me to the following decisions: *Re Government of Province of British Columbia and British Columbia Government Employees' Union (Podger)* (1990), 14 L.A.C. (4th) 308; *Windley* (Board file 166-2-22140); *Francoeur* (Board file 166-2-25922); *Bodkin et al* (Board files 166-2-18108 *et al*).

#### Decision

Based on a thorough review of *Dufour and Lapierre*, mentioned above, I determined that it deals with reimbursement of transportation costs when a call back period is contiguous to the normal hours of work, which is also Mr. Marleau's situation.

Clause NU-2.02 does not make any mention of a call back period contiguous to the normal hours of work. However, it does not exclude it either.

As stated in Clause NU-2.02, Mr. Marleau was required to report for work under the conditions described in clause 10.01. He is therefore entitled to reimbursement if reasonable expenses incurred in reporting for work.

Paragraph (a) of clause NU-2.02 grants a "mileage allowance" at the rate normally paid to an employee when authorized by the employer to use his automobile, which is Mr. Marleau's situation.

I concur with the opinion expressed by Adjudicator Marguerite-Marie Galipeau in *Dufour and Lapierre (supra)* in which it is stated that clause NU-2.02 is specific and is specifically applicable to the Nursing Group and that it takes precedence over the applicable general clause in the Travel Directive which is incorporated in the collective agreement. Counsel for the employer did not convince me that this interpretation was manifestly incorrect.

Accordingly, Mr. Marleau's grievance is allowed. The employer must reimburse the kilometric costs for the return trip to Mr. Marleau's home in accordance with clause NU-2.02.

I would like to add that since the bargaining agent and the employer (the Professional Institute of the Public Service of Canada and the Treasury Board) are currently negotiating the master agreement, I strongly suggest that they discuss the call back periods, payment of expenses when call back periods are contiguous and non-contiguous to the normal hours of work, and so on. This grievance is not the first to be sent to Board and I believe that a clarification of the wording of the collective agreement is necessary to improve employer-employee relations in the workplace.

**Jean Charles Cloutier,  
Board Member**

OTTAWA, March 16, 1998.

Certified true translation

Serge Lareau