File: 166-2-27705

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

BEATE RINKE

Grievor

and

TREASURY BOARD
(Agriculture & Agri-Food Canada)

Employer

Before: J. Barry Turner, Board Member

For the Grievor: Suzelle Brosseau, The Professional Institute of the Public Service of Canada

For the Employer: Harvey Newman, Counsel

Heard at Vancouver, British Columbia,
October 28, 1997.

Beate Rinke, a doctor of veterinary medicine, VM-02 classification with the Canadian Food Inspection Agency, formerly Agriculture Canada, is grieving the employer's refusal to reimburse her meal expenses under the Travel Policy referred to in Article 36 of the Master Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada (PIPSC) (Exhibit G-2). Her grievance dated November 2, 1995, reads:

> *I grieve the employer refusal to re-imburse me for all my expenses for the period of Feb 20/95 to July 7/95. This is an NJC grievance.*

Subclauses 36.03(2), (9), (12) of the Master Agreement read:

> *36.03 The following directives, policies or regulations, 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 Collective Agreement:*
>
> *(2) Travel Policy;*
>
> *(9) Relocation Policy;*
>
> *(12) Work Force Adjustment Policy;*

The grievor is requesting the following corrective action:

> *I request that the employer re-imburse me for all my expenses in this period of time.*

Timeliness

Mr. Newman argued the grievance is untimely as indicated in the undated final level response from the Deputy Head since the grievance was not submitted within the twenty-five day time frame required by clause 35.09 of the Master Agreement.

The Deputy Head's undated letter reads:

> *This is in response to your National Joint Council grievance dated November 1, 1995, which you referred to the final level of the NJC grievance procedure in the matter related to the denial of all your expenses for the period February 20, 1995 to July 7, 1995.*
>
> *I have reviewed the evidence and argument set forth by the Professional Institute of the Public Service of Canada*

> *in a hearing on January 30, 1996. I have also reviewed the circumstances of your grievance.*
>
> *The evidence indicates that this grievance is untimely. You were advised in writing first on February 8, 1995 that you would not be in travel status once you began the term employment at Sunrise Poultry. This was restated in the course of several discussions between you, Mr. Oliver and Mr. Wessel from then until May 11, 1995 when you were once again advised of these terms in writing. In addition, each of your travel claims was approved only after striking out your claims for the meal allowance. The latest of these approvals was dated August 16, 1995. You did not grieve until November 1, 1995.*
>
> *The grievance also fails on its merits, the issue of timeliness notwithstanding. You agreed to accept the term appointment to Sunrise Poultry, which was then designated as your headquarters. You were advised in no uncertain terms that you would not be eligible for entitlements under the Travel Directive. Mr. Oliver exercised his discretion however, in extending an offer to you of either the use of a government vehicle or mileage assistance at the employee requested rate for the duration of the term. This was intended to defray some of your costs for the duration of the term, and not to confer on you all of the other entitlements available in the Travel Directive.*
>
> *For all these reasons your grievance and the corrective action you requested is denied.*

Clause 35.09 of the Master Agreement reads:

> *35.09 An employee may present a grievance to the first step of the procedure in the manner prescribed in clause 35.03, not later than the twenty-fifth (25th) day after the date on which he is notified orally or in writing or on which he first becomes aware of the action or circumstances giving rise to the grievance.*

Mr. Newman argued that the meal allowance claims were consistently denied and the grievor knew this. Even though the grievor received travel assistance on an *ex gratia* basis, she was not on travel status and was not eligible for meal allowances as she claimed between February 20, 1995 and July 7, 1995.

Ms. Brosseau argued that the first time the grievor received anything in writing regarding her disallowed meal claims was from Dr. Finnan, Operations Director,

Coastal South, B.C., in his October 12, 1995 memorandum (Exhibit G-13) that the grievor first saw when she returned from vacation on October 23, 1995. Dr. Rinke grieved on November 1, 1995.

In rebuttal, Mr. Newman reiterated that the grievor never contested the disallowance of her meal claims during the period in question but continued to claim for meals that had already been denied.

I reserved my decision on the issue of timeliness.

A request for the exclusion of witnesses was made and granted.

The hearing lasted one day with two witnesses testifying and twenty-nine exhibits submitted into evidence.

Summary of Evidence

1. Beate Rinke had been with Food Inspection since 1988. On January 10, 1995 (Exhibit G-3) she was in surplus status on a temporary assignment at Sunrise Poultry, Surrey, B.C. (Exhibit G-1) pending a reasonable job offer (RJO) under the Work Force Adjustment Directive (WFAD). She had just returned from Care and Nurturing leave. In January 1995, she had a 190 kilometre daily commute to and from work, that is, 95 kilometres each way. Between January 10, 1995 and February 20, 1995 she received full entitlement to her travel allowance, including meals, for her temporary assignment.

On February 8, 1995 the grievor was offered an indeterminate position at United Poultry or a temporary one at Sunrise Poultry (Exhibit G-4) in a letter from Al Oliver, Director General, Food Production and Inspection Branch (FPIB), B.C. region. In a letter dated February 17, 1995 from Mr. Oliver (Exhibit G-5), he agreed "*to allow the grievor to continue to commute at government expense and on paid time until Friday, February 17, 1995*". This letter also expected the grievor to indicate which position she would accept by 3:30 p.m. on February 17.

The grievor testified she received Exhibit G-5 on February 17th just before leaving to go home and had no time to receive bargaining agent representation on the offer.

The grievor accepted the temporary offer at Sunrise (Exhibit G-6) but indicated she did not want her acceptance to affect any of her entitlements. She understood at the time that she would still be on full expenses. Dr. Rinke was confused between the reference in Exhibit G-5, page 2, #3, "... *You would fill the Sunrise position on a term basis and be expected to commute to this position on your own time ...*" and Exhibit G-4, page 2, paragraph 3 that she felt meant she would be at Sunrise on company time. Paragraph 3 reads:

> *If you accept the United Poultry position your date of appointment will be February 13, 1995 and your priority status would cease effective that day. On the other hand if you accept the Sunrise position your temporary assignment there will be extended until we appoint you to that position on an indeterminate basis or offer you another position in the Lower Mainland. You will retain your status as a surplus employee while working at Sunrise on a temporary basis.*

The grievor disagreed with the reference in Exhibit G-7, a February 21, 1995 letter to her from Al Oliver, paragraph 3 last sentence that reads: "*... You are expected to report there on your own time and you are not on travel status. ...*"

Dr. Rinke identified her travel expense claim for February/March 1995 (Exhibit G-8) that was altered by her department to disallow some meal claims. Her meal claims were allowed by the employer up to February 17, 1995. She first learned of these changes in late May 1995. She said she discussed her situation with Dr. D. Finnan, Director, Coastal South Region and Dan Rafferty, PIPSC representative when she asked for an explanation of the disallowed portions on her claim. Dr. Rinke identified another altered claim for April 1995 (Exhibit G-9) that allowed her kilometrage claim but not lunches. She identified another altered claim for part of July 1995 (Exhibit G-10) with lunches disallowed by Dr. Finnan while at Sunrise on July 4, 5, 6, and 7, 1995. The grievor wrote P. Wessel, Human Resources, on September 27, 1995 (Exhibit G-11) asking for an explanation regarding her claims. He advised her to write Dr. Finnan (Exhibit G-12). Dr. Rinke identified Dr. Finnan's memorandum to her dated October 12, 1995 (Exhibit G-13) advising her that during the period February 20 - July 7, 1995 she was not on travel status. She grieved on November 1, 1995. The total amount of money requested is $877.93 for meals and one trip of 95 kilometres.

The grievor reconfirmed that she was only temporary at Sunrise during the period in question and worked Monday to Friday, 0700 to 1500 hours.

During cross-examination, Mr. Newman entered the Treasury Board Travel Directive (Exhibit G-2(a)), the Treasury Board Relocation Directive (Exhibit G-2(b)), and the Work Force Adjustment Directive (WFAD) (Exhibit G-2(c)).

The grievor had been to adjudication before and was familiar with the process. She testified she had gone on Care and Nurturing leave in August 1991, was due back in October 1993 but received an extension until August 1996. Her position was declared surplus in a letter dated 16 February 1993 (Exhibit E-1). Her six months surplus period was to begin when she made herself available for work in August 1996 or earlier (Exhibit E-2). The grievor had written in September 1994 when her daughter entered school requesting an explanation of her rights as a surplus employee (Exhibit E-3). Al Oliver responded on October 31, 1994 saying as a surplus employee she was guaranteed a reasonable job offer (Exhibit E-4). The grievor wrote Dr. Finnan on 3 January 1995 (Exhibit E-5) saying she was now ready to return to work. Al Oliver wrote her on 6 January 1995 indicating her surplus status would commence January 4, 1995 until July 3, 1995 and she was to report to a temporary assignment at the Regional Office in New Westminster on January 10, 1995 (Exhibit E-6). The grievor wrote Mr. Oliver a memorandum on January 6, 1995 (Exhibit E-7) regarding whether or not she could go on temporary assignment at Sunrise Poultry or United Poultry. Mr. Oliver responded with Exhibit G-3 on 10 January 1995.

Dr. Rinke went to Sunrise Poultry on January 16, 1995 as is indicated in a memorandum to her from Dr. Finnan (Exhibit E-8) that also said travel would be on government time to Sunrise. She had a 95 kilometre one way trip to Sunrise from her home at the time. Dr. Rinke felt she was to be at Sunrise for a six month period, but wrote Mr. Oliver on 18 January 1995 asking to be given the VM-02 indeterminate position at Sunrise (Exhibit E-9). She did not know there was an outstanding grievance regarding the Sunrise indeterminate position.

She was aware she had been asked by Mr. Oliver to consider relocating in his February 8, 1995 letter to her (Exhibit G-4). The grievor said that at a December 14, 1994 meeting with her PIPSC representative and Dr. Finnan referred to on page 1,

paragraph 5 of Exhibit G-4, she felt since Sunrise was available, this is where she should go.

Mr. Newman reminded the grievor Mr. Oliver wrote her on February 17, 1995 (Exhibit G-5) saying that she "*would not be on travel status"* after February 17, 1995. The grievor felt Mr. Oliver had in fact contradicted himself on this issue and gave her little time to respond without seeking bargaining agent advice. Dr. Rinke agreed with Mr. Newman that Exhibit G-5 does not say she is to remain on travel status. She also said that even though she was entitled to be represented by her bargaining agent under section 1.4.2 of the WFAD, she did not grieve this. Section 1.4.2 reads:

> *1.4.2 Employees have the right to be represented by their bargaining agents in the application of this directive.*

Dr. Rinke added she was trying to get back to work, to be reasonable, and to follow a logical path. Although she accepted the offer to work at Sunrise in Exhibit G-6, she felt it was a conditional acceptance, and because it was a temporary assignment she felt she should still be on travel status even though Mr. Oliver said in Exhibit G-5 she would not be.

The grievor identified her 1 March 1995 letter to Mr. Oliver (Exhibit E-10) summarizing her concerns and his response (Exhibit E-11) of March 10, 1995 indicating that her headquarters location was not the Regional Office and that he had been generous by offering her transportation and driving time while she was at Sunrise.

The grievor wrote Dr. Finnan on April 12, 1995 asking if she could go to a position at Johnston Parkers to save her department money. He responded with Exhibit E-12 saying he would look into it.

Mr. Oliver responded to the grievor's suggestion on May 11, 1995 by offering the position at Johnston Parkers to her (Exhibit E-13). He reiterated on page 2, paragraph 1, the following.

> *... However, in the interest of good relations I am willing to allow you assistance with mileage while you work at Sunrise but as is currently the case you are not entitled to other expenses like meals or travelling time.*

The grievor said the whole issue is "not cut and dried" but she was trying to be reasonable and work it out. She grieved after she got to Johnston Packers.

Mr. Newman reminded me this is not a relocation grievance.

During cross-examination, the grievor explained that an employee is assigned to a headquarters area for the purposes of calculating meal allowances and travel time allowances in case one is given a temporary assignment that is more than ten kilometres from one's headquarters. She believed she was on a temporary assignment at Sunrise waiting to get her new headquarters and was therefore eligible for meal allowances.

2. Al Oliver has been at Regional Headquarters for twelve years. He testified the grievor's position at the Kohler's processing plant became surplus while she was on Care and Nurturing leave. The department was not sure when the grievor was going to return but that she would get priority status when she did, and be given a reasonable job offer (RJO) under the WFAD somewhere in Canada. He added when the grievor finally returned in January 1995, she was given a solid offer at United Poultry with no strings attached as a VM-2, and a temporary term position at Sunrise pending the solving of another personnel problem at Sunrise that had been grieved. He said an RJO could be a term position. There was no indeterminate position at Sunrise in January 1995.

Mr. Oliver explained that when the grievor returned to work since there had been some program changes during her absence, she needed some re-training before going to a permanent position. He said when she first went to Sunrise on a temporary basis, she was allowed travel expenses and had lunches paid for during a re-training period. He added that, when she accepted the Sunrise position, Sunrise became her headquarters; therefore travel costs and meals were no longer allowed. Mr. Oliver added however that, since she had a long commute to Sunrise, he allowed her to continue to claim mileage out of generosity.

He said Dr. Rinke was never told that all her expenses would be allowed while she was at Sunrise. She was in fact advised to the contrary in writing. He could not have made his position any clearer.

During cross-examination, Mr. Oliver reiterated that one of the veterinarians at Sunrise was on extended sick leave and that a Dr. Beres was in charge at Sunrise only in the absence of the sick veterinarian. He said again that Dr. Rinke could have had a term position at Sunrise or an indeterminate position at United Poultry.

Argument for the Grievor

Ms. Brosseau argued that when the grievor returned from Care and Nurturing leave she accepted a temporary assignment at Sunrise Poultry, after a couple of days at regional headquarters, and should have received all temporary benefits as a common practice for the period February 20 to July 7, 1995. She argued that accepting the other option at United Poultry was not possible because it was too far from the grievor's home in 1995 (Exhibit G-1). She argued that under subsection 1.1.2 of the Relocation Directive (Exhibit G-2(b)), distance should not have been a factor in granting the grievor a relocation benefit. Instead, the employer decided the grievor's assignment to Sunrise was a temporary one and that she was not entitled to any expenses. Subsection 1.1.2 of the Relocation Directive reads:

> *1.1.2 There is no minimum distance qualification which governs the eligibility of an employee to be authorized to relocate under the terms of the Relocation directive. However, the general rule is that a relocation should not be considered unless the new principal residence is a minimum of 40 kilometres closer to the new workplace. This rule is consistent with section 62(1) of the Income Tax Act which states, in part, "... so that the distance between his old residence and his new work location is less than 40 kilometres greater than the distance between his new residence and his new work location..."*

Ms. Brosseau referred to the WFAD subsections 1.1.1 and 1.1.2 and argued the philosophy is to help employees. Subsections 1.1.1 and 1.1.2 read:

> *1.1.1 Since indeterminate employees who are affected by work force adjustment situations are not themselves responsible for such situations, it is the responsibility of departments to ensure that they are treated equitably and given every reasonable opportunity to continue their careers as Public Service employees.*
>
> *1.1.2 Departments shall carry out effective human resource planning to minimize the impact of work force*

> *adjustment situations on indeterminate employees, on the department, and on the Public Service.*

She said Dr. Rinke chose to work at Sunrise to save expenses for the employer.

Ms. Brosseau argued that receiving Mr. Oliver's faxed letter of February 17, 1995 (Exhibit G-5) asking the grievor to decide on her work plans that same afternoon was completely unreasonable. She argued that the grievor's request for a written explanation as to why her position was declared surplus in Exhibit E-7 on January 6, 1995 and Mr. Oliver's response (Exhibit G-3) on January 10, 1995 was not reasonable for Mr. Oliver. By assigning the grievor to Sunrise the employer saved money in the long run and should therefore have paid all the grievor's travel claims while she was there between February 20 and July 7, 1995.

She asked me to grant the grievance and to remain seized of the matter pending implementation of a favourable decision.

Argument for the Employer

Mr. Newman argued that the grievance before me only relates to some expenses that were not paid between February 20 and July 7, 1995 and nothing else. He argued there is no reference in the grievance to a collective agreement violation, to a relocation, to the WFAD or to the Travel Directive. He agreed however that there was a denial of meals from the Travel Directive (Exhibit G-2(a)) under Part IV, Meals, incidentals and other expenses and that the employer was correct to have done this. He referred to subsections 4.1.1, 4.2.1, 4.3.1, and 4.3.2 (Exhibit G-2(a)) that read:

> *4.1.1 The meal allowances contained in this directive are based on the consumption of meals in restaurants and are directed at employees who are in travel status away from the vicinity of their headquarters area.*
>
> *4.2.1 For travel status of less than one day, i.e. when a round-trip journey generally takes place on the same calendar day, the appropriate meal expenses will be paid only where the employer is satisfied that the employee was actually in a position to incur restaurant meal expenses and did not make other arrangements. The employee shall submit receipts to support meal claims when so requested by the employer.*

> *4.3.1 Meal expenses incurred within the headquarters area shall not be reimbursed except as otherwise provided for in this directive. Expenses incurred in connection with attendance at meetings or events that are of personal interest shall not be reimbursed.*
>
> *4.3.2 In situations not otherwise covered by terms and conditions of employment or collective agreements, employees who are required to work through or beyond normal meal hours and who are clearly placed in situations of having to spend more for the meal than would otherwise be the case may be reimbursed, based on receipts, within the limits indicated in Appendix C or, when circumstances dictate, actual and reasonable expenses may be reimbursed when employees are placed in situations where a meal is of exceptionally high or low cost in the following circumstances:*
>
> *(a) when employees are required to attend conferences, seminars, meetings or public hearings at which weekend sessions are scheduled;*
>
> *(b) when employees are required to attend formal full-day conferences, seminars, meetings or hearings and where meals are an integral part of the proceedings;*
>
> *(c) when employer representatives are involved in collective bargaining proceedings;*
>
> *(d) when intensive task force or committee studies are enhanced by keeping participants together over a normal meal period; or*
>
> *(e) other exceptional situations resulting directly from an employee's duties, where the reimbursement of meal expenses is clearly reasonable and justifiable.*

Mr. Newman referred me to definition of Travel status under the Travel Directive that reads:

> ***Travel status*** *means absence from the traveller's headquarters area on government business travel, and at a location which, using the most direct road route, is more than 16 kilometres from the traveller's home. For the purposes of this definition, "home" includes a second residence, including a temporary, seasonal, self-contained family residence, occupied by the traveller and/or dependants immediately prior to the period of the traveller's temporary duty.*

He argued the only place Dr. Rinke performed duties after February 20, 1995 was at Sunrise Poultry since her previous substantive position at Kohler's had disappeared forever due to downsizing there. She had been declared surplus while on Care and Nurturing leave. The grievor knew this. He argued that after February 20, 1995 the grievor was not on travel status but was generously reimbursed for travel just the same. He argued she was in a temporary term position at Sunrise on a priority status waiting for an offer of an indeterminate position. She eventually got this at Johnston Packers and then lost priority status.

Mr. Newman agreed that, after the grievor's return to work in January 1995, she was in limbo for a couple of weeks until she accepted the term position at Sunrise but her expenses were allowed leading up to February 20, 1995. He also agreed that Mr. Oliver, who agreed to continue to pay the grievor's travel costs, did so at his discretion as an *ex gratia* payment because he wanted to ease Dr. Rinke back into the workplace.

Mr. Newman concluded: that the grievor was not on travel status; that there was no violation of her collective agreement; that there was no relocation here; that the employer's position had been consistent in denying meal claims after February 20; and that the grievor never pointed out to management where she was eligible for meal entitlements. He said even though Mr. Oliver showed exasperation towards Dr. Rinke, she was still not satisfied.

During rebuttal argument, Ms. Brosseau referred me to the Master Agreement between the Treasury Board and PIPSC (Exhibit G-2) as the enabling authority for me to refer; in particular, subclauses 36.03(2), (9) and (12) that read:

> *36.03 The following directives, policies or regulations, 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 Collective Agreement:*
>
> *(2) Travel Policy;*
>
> *(9) Relocation Policy;*
>
> *(12) Work Force Adjustment Policy;*

Regarding the apparent confusion as to where the grievor's headquarters was after she returned to work, Ms. Brosseau referred me to Exhibit E-6, Mr. Oliver's letter of 6 January 1995 to the grievor that reads in part in paragraph 3:

> *This is to confirm my discussions with you of an offer of a temporary assignment at the Regional Office in New Westminster starting January 10, 1995. ...*

She argued the grievor's headquarters was the Regional Office in New Westminster, and that she was only in a temporary position and then a term position while at Sunrise and therefore should have been on travel status and got her lunches paid for. She concluded that the employer's word on this issue is not one that can go unchallenged.

Ms. Brosseau referred me to *Rinke* (Board file 166-2-22122).

Decision

Regarding the issue of timeliness, after reviewing all of the circumstances and evidence surrounding this grievance, I am of the opinion that the grievance is untimely. Even though Dr. Rinke became aware sometime in May 1995 that portions of her travel expenses for February and March 1995 (Exhibit G-8) were not going to be paid, she was advised in writing by Al Oliver on February 17, 1995 (Exhibit G-5) and again on May 11 (Exhibit E-13) that she was not on travel status. She should have grieved in the February/March or May/June period. In her mind at least, it was not until she received a definitive written explanation regarding her overtime/meal expense claims from Dr. Finnan on October 12, 1995 (Exhibit G-13) that she felt the employer's position was communicated in writing. She grieved on November 1, 1995, well after the required time frame outlined in clause 35.09 of her collective agreement. Clause 35.09 reads:

> *35.09 An employee may present a grievance to the first step of the procedure in the manner prescribed in clause 35.03, not later than the twenty-fifth (25th) day after the date on which he is notified orally or in writing or on which he first becomes aware of the action or circumstances giving rise to the grievance.*

Her grievance is therefore untimely.

On the question of the merits of the grievance itself, I also believe it must fail. Firstly, Mr. Newman is correct when he says there is no relocation issue before me, as there was in the *Rinke* decision (supra) by adjudicator Burke. The Relocation Directive (Exhibit G-2(b)) therefore does not apply since the grievor was on a term assignment at Sunrise. I also agree with the employer's interpretation of subsections 4.1.1, 4.2.1, 4.3.1 and 4.3.2 of the Travel Directive (Exhibit G-2(a)).

This grievance before me is in fact fairly straightforward. Dr. Rinke returned to work after being on Care and Nurturing leave during which time her substantive position was abolished and she was declared surplus. She spent a couple of days at Regional Headquarters before going on a temporary assignment to the Sunrise Poultry processing plant in January 1995 during which time she received some professional updating since some procedures had changed during her absence on Care and Nurturing leave. The employer treated the grievor as being on travel status on temporary duty at Sunrise up until she began there on February 20, 1995 in a term position. Mr. Oliver's letter (Exhibit G-5) dated February 17, 1995 is clear on this on page 2, number 3, where he says "*... you would not be on travel status...*" There is no mention that her headquarters would be defined as the Regional office in Mr. Oliver's offer of a temporary assignment to the grievor on January 6, 1995 (Exhibit E-6). Even though Ms. Brosseau argued that she felt receiving Mr. Oliver's offer on February 17 (Exhibit G-5) in the afternoon that requested an immediate response from the grievor was completely unreasonable, Dr. Rinke never grieved this letter through her bargaining agent.

I believe that Mr. Oliver did in fact treat the grievor equitably and gave her "every reasonable opportunity" to continue her career as is called for in the WFAD subsection 1.1.1. He was also very generous with the *ex gratia* travel cost reimbursements.

For all these reasons, this grievance is denied not only because it is untimely but on the merits as well.

J. Barry Turner,
Board Member.

OTTAWA, December 11, 1997.