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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

PIERRE LEDUC

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

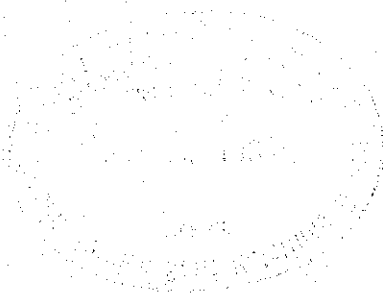


Before: Jean-Pierre Tessier, Board Member

For the Grievor: Valérie Charette, Professional Institute of the Public Service of
Canada

For the Employer: Karl G. Chemsî, Counsel

Heard at Montréal, Quebec,
July 18 to 20, 2001.



DECISION

[1] Pierre Leduc is employed by the Canada Customs and Revenue Agency (formerly Revenue Canada) as an auditor (AU-03). During the period at issue, Mr. Leduc was governed by the collective agreement entered into by the Treasury Board and the Professional Institute of the Public Service of Canada for the Auditing Group (Exhibit F-1).

[2] In April 1998, Mr. Leduc filed a grievance challenging the employer's decision not to reimburse him for his car travel expenses from November 1, 1996 to January 29, 1998.

[3] When the grievance was heard on July 18, 2000, the parties stated that they agreed on the facts and referred, for the purposes of this case, to the agreed statement of facts placed in the Board's file. That statement reads as follows:

[Translation]

AGREED STATEMENT OF FACTS

(1) *Pierre Leduc is employed by the Canada Customs and Revenue Agency (formerly Revenue Canada) as an auditor (AU-03). During the period at issue, Mr. Leduc was governed by the collective agreement entered into by the Treasury Board and the Professional Institute of the Public Service of Canada for the Auditing Group. (Exhibit F-1)*

(2) *At the time Mr. Leduc filed his grievance, the parties were governed by the National Joint Council (NJC) directives, including the Travel Directive (hereinafter referred to as the Directive). (Exhibits F-2 and F-3)*

(3) *Mr. Leduc's workplace was located at 685 Cathcart Street in Montréal. That was where he received his pay, his mail and his instructions from the employer and where certain meetings were held. However, Mr. Leduc had to travel to clients' premises to conduct his audits. In fact, he very rarely worked at 685 Cathcart Street. He was an employee "whose duties are of an itinerant nature" within the meaning of the Directive.*

(4) *After Mr. Leduc began working for Revenue Canada in 1981, the employer signed an annual travel authority for him at the beginning of each year. (Exhibit E-1)*

(5) *Mr. Leduc's main client during the relevant period, that is, from November 1, 1996 to January 29, 1998, was Teleglobe, whose offices were located at 1000 de la*

Gauchetière West, less than one kilometre from his workplace and thus within his headquarters area. (Exhibit E-2)

(6) The station where Mr. Leduc got off when he used public transportation was also at 1000 de la Gauchetière West.

(7) Prior to November 1, 1996, a local policy established by the management of the Montréal Office created a downtown area called the walking zone within which the auditors had to travel by foot, except in certain special circumstances when authorized by the employer.

(8) When they travelled within the walking zone, the auditors did not receive any allowance and could not claim any expenses unless an exception was pre-authorized by management.

(9) On November 1, 1996, the management of the Montréal Office decided to abolish the walking zone. (Exhibit F-4)

(10) On October 3, 1997, Raymond Galimi, Assistant Director, Audit, informed the employees of the Audit Section that temporary measures had been put in place following the abolition of the walking zone. (Exhibit E-3)

(11) Mr. Leduc, who lived in Brossard, located on the South Shore of Montréal, took his own vehicle to get directly to Teleglobe. He almost never went to the office at 685 Cathcart Street before or after his workday. He sometimes took the bus, for example when he had to leave the car to his spouse. When he did so, he got off directly at 1000 de la Gauchetière.

(12) Mr. Leduc did not ask for or receive authorization to use his private vehicle to get to Teleglobe during the period at issue. He believed that he was authorized by the annual authority signed by the employer.

(13) Mr. Leduc submitted a first series of travel expense claims on December 5, 1997, January 5, 1998 and January 29, 1998, in which he claimed bus tickets for travelling between his home and Teleglobe, where he was assigned, from July 28, 1997 to January 29, 1998. The employer accepted the claims and reimbursed Mr. Leduc. (Exhibit E-4)

(14) Mr. Leduc submitted a second series of travel expense claims on February 18, 1998, relying on the directives set out in the report on a meeting held on October 27, 1997 where the issue of expenses was addressed (Exhibits E-5, E-6). He thus claimed parking charges and expenses for the use of his vehicle to travel between his home and Teleglobe, where he

was assigned, from November 1, 1996 to January 29, 1998 pursuant to subsections 1. .7 [sic], 7.3.1, 7.5.1 and 2.11.7 of the Travel Directive. Mr. Leduc kept his parking receipts for the period from April 1997 to January 1998. (Exhibit F-5)

(15) The claims covering the periods from July 28, 1997 to January 29, 1998 were reduced by the amounts reimbursed by the employer for public transportation (period corresponding to the start of the temporary measures introduced by the employer).

(16) On March 17, 1998, the employer denied Mr. Leduc's claims primarily because Mr. Leduc had never been authorized to use his private vehicle to travel. (Exhibit F-6)

(17) On April 6, 1998, Mr. Leduc filed a grievance challenging the employer's decision.

(18) The grievance was dismissed at the first level of the grievance procedure for the following reasons: (1) when an employee is authorized to travel, the employee must use public transportation except where that mode is not appropriate; and (2) management had not authorized Mr. Leduc to use his private vehicle.

(19) The grievance was also dismissed at the second level of the grievance procedure for the following reasons: (1) the proximity between the workplace and the place of assignment (less than one kilometre) meant that Mr. Leduc was not eligible to have his travel expenses reimbursed; and (2) the employee had not been authorized to use his private vehicle to get to his place of assignment.

N.B. With the parties' consent, the references to Exhibits P (the complainant's exhibits) were replaced with Exhibits F (the grievor's exhibits).

[4] In addition to the statement of facts, I note that the annual travel authority (E-1) contains specific provisions concerning the choice of the mode of transportation.

[5] As well, there is nothing to indicate that Mr. Leduc claimed expenses in 1996 when the local policy on the walking zone was being applied.

The Parties' Arguments

[6] The grievor submitted that he received a travel authority at the beginning of each year, as can be seen from Exhibit E-1 (four authorities in a bundle) for 1996 and 1999.

[7] He said that, at the time covered by his claim, the employer had changed its policy on the reimbursement of travel expenses by deleting the reference to the walking zone.

[8] According to the grievor, the Memo dated November 19, 1996 (Exhibit F-4) suggested that the employer would reimburse expenses outside the walking zone.

[9] The grievor also noted that he claimed the minimum expenses, namely \$2.30 a day, plus parking. In his opinion, the directives concerning the walking zone were contrary to the policy on the reimbursement of travel expenses, since walking is not a mode of transportation.

[10] The employer replied that the issue in this case is limited to whether Mr. Leduc is entitled to the reimbursement of his car travel expenses and his parking charges.

[11] According to the employer, all the directives urge employees to use the most economical mode of transportation, and it is up to the employer to determine the mode of transportation.

Reasons for Decision

[12] Given that the parties referred to various documents relating to the travel policy and that the employer changed the directives shortly before the events in question, it is important to clearly identify what is at issue here.

[13] The relevant facts are as follows:

- (a) Mr. Leduc had an annual travel authority (Exhibit E-1) for at least four years (1996 to 1999);
- (b) his place of assignment (client's premises) was less than one kilometre from his workplace;
- (c) he usually went directly to the client's premises (place of assignment) rather than to his workplace a short distance away;
- (d) in 1996, he apparently did not claim any reimbursement for travel expenses because of a directive from the employer establishing a walking zone for travel within a short distance;

- (e) following the Memo dated October 3, 1997 (Exhibit E-3) concerning the abolition of the walking zone and the introduction of temporary measures, Mr. Leduc claimed reimbursements for bus expenses and subsequently for the expenses at issue here, namely car expenses and parking charges.

[14] I do not have to determine the lawfulness of establishing a walking zone, since that directive was no longer being applied during the period at issue. However, I note that the abolition of the walking zone took the parties back to the general policy on the reimbursement of travel expenses and the related authorities.

[15] After the walking zone was abolished, the employer expressed some concerns about the authorization of expenses. Paragraph 4 of the Memo dated November 19, 1996 (Exhibit F-4) states the following:

[Translation]

The manager will now have more flexibility to grant expenses within that area [the walking zone] while complying with the least-cost policy.

[16] The main issue is whether the annual travel authority automatically allowed the grievor to use his private vehicle.

[17] The annual travel authority (Exhibit E-1 in a bundle) explicitly states the following:

[Translation]

...

... as always, Revenue Canada reserves the right to say what mode and class of transportation are to be used for each trip. ...

When you are allowed to use a private motor vehicle. ...

...

[18] As can be seen, the annual travel authority contains a warning about the choice of the mode of transportation and a specific reminder about car use "[w]hen you are allowed to use a ... motor vehicle. ..." That warning in the annual authority enabled

the grievor to understand that it was not a general authorization giving him total discretion as to the mode of transportation.

[19] The same is true of the *Travel Directive* (Exhibit F-2), in which the employer specifies the following:

1.1.1. It is the prerogative of the Employer to determine whether, when, where, by whom and by what means travel will be undertaken and to select the mode and class of transportation. . . .

[20] For all the reasons set out above, I come to the conclusion that Mr. Leduc should have obtained specific authorization to use his private vehicle and that the travel policies make it clear that the least-cost option must be preferred.

[21] Accordingly, I cannot allow this grievance.

Jean-Pierre Tessier
Board Member

OTTAWA, October 9, 2001

PSSRB Translation