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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Bargaining Agent

and

TREASURY BOARD

Employer

Indexed as
Professional Institute of the Public Service of Canada v. Treasury Board

In the matter of a policy grievance referred to adjudication

Before: David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Sarah Godwin, Professional Institute of the Public Service of Canada

For the Employer: Simon Deneau and Christine Langill, counsel

Decided on the basis of written submissions filed April 5 and 26 and May 16 and 24, 2019.

I. Introduction

[1] When an employee is on travel status and in transit between a hotel and a worksite, does the collective agreement require that the employee be paid for that time?

[2] That is the question raised in this policy grievance filed by the Professional Institute of the Public Service of Canada (PIPSC or "the union") with respect to employees covered by two of its collective agreements with the Treasury Board.

[3] Some employees covered by these collective agreements are required to travel as part of their work duties and may travel to a destination that involves staying overnight in government-approved accommodations. Sometimes, the employee's place of accommodation is not located in close proximity to the temporary worksite.

[4] To illustrate the issues behind the policy grievance, the parties submitted detailed affidavit evidence concerning two such travel examples.

[5] The first example involved travel from Ottawa, Ontario, to Nevada in 2014. The trips lasted between 2 and 4 weeks. Once there, the employees experienced daily drives of between 45 and 60 minutes each way between their hotel and the worksites.

[6] The second example involved travel in 2014 of 1 to 3 weeks' duration from Ottawa to London, Ontario. While the distances between the hotel and the worksite were much shorter than in the Nevada example, the employees did experience transit times of between 15 and 20 minutes each way.

[7] In both cases, travel between the hotels and worksites was via a rental vehicle normally shared between two or more travellers.

[8] For PIPSC, the time spent in transit between a hotel and worksite should be compensated as travelling time per article 13 of the relevant collective agreements. Employees sometimes have limited choice of where to stay and do not control the time it takes to travel from the hotel to the worksite. It is fair, in accordance with the collective agreement, and consistent with the principles within the National Joint Council (NJC) *Travel Directive* ("the Directive") that employees should be compensated for this time.

[9] For the employer, time spent in transit between a hotel and a worksite does not meet the definition of "travelling time" and must be considered commuting time. There are no explicit or implicit provisions under the collective agreements for compensating commuting time. Moreover, the Directive gives employees a considerable degree of control over the choice of accommodation, and therefore, the employer does not control the duration of the commuting time between accommodations and worksites.

[10] As will be detailed later in this decision, the travel situations described in the affidavits are quite unique and particular.

[11] However, this policy grievance is not unique and particular. It seeks an interpretation of article 13 that would apply to **all** overnight travel taking place under these two collective agreements. In fact, as travel for work is a part of many federal government jobs, the interpretation being sought might well have implications across a wide range of federal collective agreements that contain similar or identical provisions to those found in the two collective agreements at issue in this decision.

[12] In a grievance such as this, the union has the burden of proving that the employer is violating the collective agreement.

[13] For the reasons that follow, I do not find that PIPSC has met that burden. I find that the wording of article 13, as agreed to by the parties, was constructed to ordinarily cover travel between an employee's normal workplace and residence and a destination outside the employee's headquarters area. After analyzing the language in accordance with the contract interpretation principles argued by the parties, I conclude that the article as written does not cover all travel between a temporary accommodation and a worksite. Consequently, I dismiss the policy grievance.

[14] That being said, I cannot agree with the employer's argument that the collective agreement prevents compensation in **all** such travel situations. My analysis led me to the conclusion that there may be situations where travel between a hotel and a worksite could attract compensation, and the reasons that follow explain why.

II. Policy grievance referred to adjudication

[15] The policy grievance was filed with the employer on July 8, 2015. The grievance concerns the Audit, Commerce and Purchasing (AV) and the Architecture, Engineering and Land Survey (NR) collective agreements.

[16] The grievance reads as follows: "PIPSC grieves the employer's refusal to compensate employees for travel time between accommodations and work locations while on travel status and government business."

[17] In its grievance, PIPSC seeks as a corrective measure that: "… employees be compensated for the time travelled between government approved accommodations and work locations while on travel status and government business."

[18] The employer denied the grievance in a letter dated May 5, 2016. Among other things, the rejection stated the following:

> …
>
> *The scope of Article 13 … covers travel time from an employee's headquarters area to a travel destination (e.g., either an accommodation or worksite). Time spent travelling or commuting between an accommodation and worksite is not covered by the collective agreement.*
>
> …

[19] The grievance was referred to adjudication on June 13, 2016.

[20] The referral was made to the Public Service Labour Relations and Employment Board, as it was then called. On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing its name to the Federal Public Sector Labour Relations and Employment Board ("the Board").

[21] Following consultation with the parties, the Board directed that the policy grievance be heard by way of written submissions.

III. Summary of the evidence

[22] The parties submitted an agreed statement of facts quoting from the grievance, the employer's final-level reply, and the language of the two collective agreements. Along with it were submitted four affidavits detailing the two travel examples used to

illustrate the issues behind the policy grievance. One example occurred under the AV collective agreement, the second under the NR.

[23] At the time the policy grievance was filed, the AV collective agreement in effect was the one signed by the parties on December 14, 2012 with an expiry date of June 21, 2014. The parties also submitted as evidence the AV collective agreement signed on April 28, 2017 with an expiry date of June 21, 2018.

[24] The NR collective agreement in effect when the grievance was filed was signed by the parties on January 25, 2012 with an expiry date of September 20, 2014. The parties also submitted as evidence the NR collective agreement signed on November 7, 2017 with an expiry date of September 30, 2018.

[25] In both the AV and NR collective agreements, article 13 is entitled "Travelling Time".

[26] The evidence submitted was that there are no substantive differences in the wording between the two collective agreements and that no changes were made to either article when the most recent (2018 expiry dates) collective agreements were signed.

[27] For the purposes of this decision, references are to the wording in article 13 of the AV collective agreement, expiry date June 21, 2014. The relevant clauses referred to in this decision read as follows:

> ***ARTICLE 13***
>
> ***TRAVELLING TIME***
>
> ***13.01*** *When the Employer requires an employee to travel outside the employee's headquarters area for the purpose of performing duties, the employee shall be compensated in the following manner:*
>
> *(a)* *On a normal working day on which the employee travels but does not work, the employee shall receive the employee's regular pay for the day.*
>
> *(b)* *On a normal working day on which the employee travels and works, the employee shall be paid:*
>
> *(i)* *regular pay for the day for a combined period of travel and work not exceeding seven decimal five (7.5) hours,*
>
> *and*

(ii) *at the applicable overtime rate for additional travel time in excess of a seven decimal five (7.5) hour period of work and travel, with a maximum payment for such additional travel time not to exceed twelve (12) hours' pay at the straight-time rate in any day, or fifteen (15) hours pay at the straight-time rate when travelling beyond North America,*

(c) *On a day of rest or on a designated paid holiday, the employee shall be paid at the applicable overtime rate for hours travelled to a maximum of twelve (12) hours' pay at the straight-time rate, or fifteen (15) hours pay at the straight-time rate when travelling beyond North America.*

13.02 *For the purpose of clause 13.01 above, the travelling time for which an employee shall be compensated is as follows:*

(a) *For travel by public transportation, the time between the scheduled time of departure and the time of arrival at a destination, including the normal travel time to the point of departure, as determined by the Employer.*

(b) *For travel by private means of transportation, the normal time as determined by the Employer, to proceed from the employee's place of residence or work place, as applicable, direct to the employee's destination and, upon the employee's return, direct back to the employee's residence or work place.*

(c) *In the event that an alternate time of departure and/or means of travel is requested by the employee, the Employer may authorize such alternate arrangements in which case compensation for travelling time shall not exceed that which would have been payable under the Employer's original determination.*

13.03 *All calculations for travelling time shall be based on each completed period of fifteen (15) minutes.*

…

13.06 *This Article does not apply to an employee required to perform work in any type of transport in which the employee is travelling. In such circumstances, the employee shall receive pay for actual hours worked in accordance with the Articles: Hours of Work, Overtime, Designated Paid Holidays.*

13.07 *Travelling time shall include time necessarily spent at each stop-over en route provided that such stop-over does not include an overnight stay.*

…

[28] Articles 35 of the AV and 36 of the NR collective agreements incorporate NJC agreements into those agreements, including the Directive. In their arguments, both parties referenced clauses of the Directive relevant to the interpretation of article 13.

[29] Only in the Directive is a precise definition of "headquarters area" provided:

> ***"Headquarters area*** *(zone d'affectation) - for the purposes of this directive, spans an area of 16 kms from the assigned workplace using the most direct, safe and practical road.*

[30] In turn, the Directive defines "workplace" as follows:

> ***Workplace*** *(lieu de travail)*
>
> ***Permanent/Regular*** *(permanent/régulier) - the single permanent location determined by the employer at or from which an employee ordinarily performs the work of his or her position or reports to.*
>
> ***Temporary*** *(temporaire) – the single location within the headquarters area to which an employee is temporarily asked to report or to perform the work of his or her position.*

[31] To illustrate the significance of the policy grievance, each party submitted affidavits on two particular travel fact situations.

[32] While individual grievances were filed in relation to both situations, this decision concerns only the policy grievance and does not rule on the individual grievances.

A. Travel to Nevada (U.S.A.), winter 2014

[33] For this travel example, the union submitted an affidavit from Carolyn Marcichiw, who, in January to March of 2014, was a supply specialist at the PG-04 group and level with Public Works and Government Services Canada (PWGSC). As such, she was covered by the AV collective agreement.

[34] In reply, the employer submitted an affidavit of Hugo Lalonde, who at the relevant time was a manager at the PG-06 group and level of the PWGSC's Wheeled Light Armoured Vehicle (WLAV) Division and Ms. Marcichiw's direct supervisor.

[35] In the winter of 2014, Ms. Marcichiw was asked to travel to Nevada as part of a team of employees overseeing demonstration evaluations related to the WLAV program. The team included employees from PWGSC, the Department of National Defence (DND), and the contractor for the program. She was in travel status from

January 25 to February 13, 2014 (19 days), and again from February 19 to March 9 (or 19), 2014 (as the two affiants did not agree on the end date, this trip totalled either 18 or 28 days).

[36] During these trips, the team members all stayed at the Courtyard Hotel at 3870 S Carson Street in Carson City, NV. The worksite attended most frequently was the testing site at Wabuska Hot Springs at 15 Julian Lane in Yerington, NV, but they also attended the Nevada Automotive Test Centre at 605 Fort Churchill Road in Silver Springs, NV.

[37] Ms. Marcichiw submitted that she would normally arrive at the worksite at about 7:30 a.m. and that they would stay on-site until between 4:00 and 11:00 p.m. She was paid for any overtime she worked at the site.

[38] However, getting from Carson City to the worksites took between 45 and 60 minutes each way, and she was not paid for this time. Shared rental vehicles were used. Ms. Marcichiw stated that she drove back and forth with colleagues in a government-paid rental vehicle.

[39] After returning to Ottawa from the second trip, Ms. Marcichiw asked to be compensated for the travel time between the hotel and the worksite and was directed not to submit a travel time claim for those hours. As a result, she filed a grievance that was denied at the first, second, and third levels of the grievance process. She withdrew it from adjudication because she changed departments and because PIPSC filed this policy grievance.

[40] Mr. Lalonde confirmed the employer's position in response to the grievance and submitted the employer's replies as attachments to his affidavit. In explaining why Ms. Marcichiw's compensation request was denied, he emphasized that there was no prior authorization for commuting time, which is not paid, as per consultation with other managers and labour relations staff. The grievance replies indicate that not only does the collective agreement not compensate for such commuting time but also, "… it is not at the discretion of management to decide otherwise."

[41] Ms. Marcichiw indicated in her affidavit that the hotel selected in Carson City was chosen from the government "White Pages" (the directory of government-approved hotels) and that it was the closest appropriate hotel to the worksite. The contractor

running the evaluation stayed in the same hotel. She stated that staying at the same location reduced the number of cars needed to drive to the worksite. She also took the position that during the commute, "My travel time was not my own."

[42] Through his affidavit, Mr. Lalonde testified that the employer had approved the choice of the hotel but that it had not been the only option. He indicated that another hotel option had been the Yerington Inn, at 4 N Main Street in Yerington, NV. When he travelled to Nevada, he chose to stay in Carson City for personal reasons, such as proximity to a wider selection of restaurants. Had an employee chosen the Yerington Inn, his or her commute times would have been between 20 and 40 minutes.

[43] According to Mr. Lalonde, while employees were encouraged to coordinate their travel plans and commutes, they were not required to drive together. He recalled that on some days, Ms. Marcichiw drove by herself. As a result, he disputed her claim of, "My travel time was not my own."

[44] Mr. Lalonde stated that the WLAV program often involved extended travel to locations such as Nevada, St. Louis (Missouri), London (Ontario), and Spain and that commuting times in many of these locations could be long. He was not aware of any situation in which any employee had claimed or been paid travel time for commuting time or any other situation in which Ms. Marcichiw had made such a claim.

B. Travel to London, Ontario, in winter 2014

[45] For this travel example, the union submitted an affidavit from Pierre Bergeron, who at the time was a project system engineer manager at the ENG-04 group and level at DND and therefore covered by the NR collective agreement.

[46] In reply, the employer submitted an affidavit of Steven McNutt, who was at the time a section head at the ENG-05 group and level responsible for the Light Armoured Vehicle Recognizance Surveillance System (LRSS) procurement project at DND and who at the relevant times was Mr. Bergeron's direct supervisor.

[47] In the winter of 2014, Mr. Bergeron was asked to travel to London, Ontario, as part of the LRSS procurement project. The team included civilian and military personnel. He was on travel status from January 13 to 17, 2014 (5 days), and again from February 10 to 28, 2014 (19 days).

[48] Mr. Bergeron stayed with other team members at the Hilton DoubleTree hotel at 300 King Street in London. The actual worksite was at 2035 Oxford Street East, near the London airport.

[49] For the travel between the hotel and the worksite, team members shared rental vehicles. The drive was 15 to 20 minutes each way.

[50] Mr. Bergeron stated that the Hilton was chosen because the employer had an agreement to save on accommodation costs. Similar to Ms. Marcichiw, he stated that he felt, "The time I spend travelling between accommodation and worksite is time that I do not have for myself and is exclusively for the Employer's benefit."

[51] Mr. McNutt indicated in his affidavit that DND employees, including Mr. Bergeron, were not obligated to stay at the Hilton. They had the option of staying at hotels closer to the worksite, such as the airport hotel, which was a five-minute drive away. Team members often choose hotel locations that have restaurants and amenities within walking distance so as to have a better living environment outside working hours. The hotels selected must be within the government rate and "… not disruptive to the local transportation coordinated among the team members." He also stated that when travelling with other team members, employees are "… strongly encouraged to stay at the same location for security, cost, and team coordination."

[52] Following the London trip, Mr. Bergeron claimed his daily travelling time, which the employer denied. On September 18, 2014, he filed a grievance challenging that denial. His grievance is currently being held in abeyance pending the ruling on this policy grievance.

[53] In his affidavit, Mr. Bergeron also spoke of a trip to the U.S. that involved a daily commute of about 30 minutes each way. In his affidavit, Mr. McNutt stated that he believed that it involved travel to St. Louis, Missouri. He indicated that the choice of hotel would have taken into account local security concerns, specifically the fact that protests and rioting were taking place in Ferguson, Missouri, which was near the worksite at the time of that travel. However, he also stated that there were options for similarly priced hotels closer to the site but further away from restaurants and other amenities.

IV. Issue

[54] PIPSC argued that the travelling time between hotels and worksites as experienced by Ms. Marcichiw and Mr. Bergeron is covered by article 13. It filed the policy grievance to establish that all such travel is eligible for compensation under that article. It argued that the employer's denial of the claims violated the collective agreements.

[55] Thus, the issue to be decided is simple, as follows:

> **When the employer requires employees to travel for work outside of the headquarters area, does article 13 require it to compensate them for the time spent in transit between their temporary accommodations (i.e., a hotel) and their temporary worksites?**

V. Analysis

[56] For the most part, the parties agreed on the basic principles of collective agreement interpretation to be applied. The parties' intention is to be found in the express written provisions of the collective agreement. Those basic principles require that words are to be given their ordinary meaning, provisions within an agreement or contract are to be read as a whole, effect must be given to every word, and specific provisions are to take precedence over general principles.

[57] In the event that a plain-language interpretation could lead to two or more linguistically permissible interpretations, the Board can be guided by the purpose of the provision, the reasonableness of each possible interpretation, by whether one of the possible interpretations would give rise to anomalies or an absurd result, and the administrative feasibility of the interpretation being made. For these principles, both parties cited Brown and Beatty, *Canadian Labour Arbitration, 5th edition*, at 4:2100.

[58] The applications of these principles to this case are analyzed in the following six sections. Section 1 examines the plain language meaning of article 13, in particular whether the word "residence" includes temporary residences, such as hotels. Section 2 examines the different positions of the parties when it comes to interpreting monetary provisions. This leads to section 3, which examines the employer's argument that travel between a remote hotel and worksite should be interpreted as commuting time. Section 4 returns to an examination of the words in 13.02 and the meaning of the word

"destination". Finally I analyze whether one party's interpretation leads to absurd results (Section 5) or problems of administrative feasibility (Section 6).

[59] The concluding section sums up the analysis, and explains why I have concluded that PIPSC has not met its burden of proof. However, I also examine the parties' arguments on the concept of "captive time" and explain why I also do not accept the employer's position that travelling time between a hotel and temporary worksite should **never** be compensated.

1. The plain language of article 13, and the meaning of the word "residence"

[60] To understand article 13, one must start by reading clause 13.01. Its opening sentence states that when the employer "… requires an employee to travel outside the employee's headquarters area for the purpose of performing duties …", then that employee is entitled to be compensated with travelling time, as outlined in the remainder of the clause and the article.

[61] "Headquarters area" is not defined in the collective agreements proper but in the Directive as an area spanning 16 km from the assigned workplace. All the benefits (e.g., daily allowances) in the Directive flow from being in travel status outside one's headquarters area.

[62] The Directive does not address travelling time; it is covered in article 13. But everything else in article 13 flows from the same essential criteria for what constitutes travel.

[63] The travel situations of Ms. Marcichiw and Mr. Bergeron were clearly engaged by clause 13.01 because they travelled from Ottawa to Nevada and London, respectively.

[64] Clause 13.02 then spells out more precisely what level of travelling time will be covered, depending on the type of transportation used.

[65] Clause 13.02(a) covers travel by public transportation and states that the travelling time to be compensated is that "… between the scheduled time of departure and the time of arrival at a destination, including the normal travel time to the point of departure, as determined by the Employer." This clause provided the employees with compensation for the flights from Ottawa to their destinations (Nevada and London). The latter part of it covers the time it took to get "to the point of departure", i.e., the

time it took to get to the Ottawa airport for the flights, in these cases of outbound travel.

[66] It is the wording of clause 13.02(b) that is most at issue in this grievance. To repeat, it reads as follows:

> ***13.02*** *(b) For travel by private means of transportation, the normal time as determined by the Employer, to proceed from the employee's place of residence or work place, as applicable, direct to the employee's destination and, upon the employee's return, direct back to the employee's residence or work place.*

[67] In the two fact examples underlying this grievance, the employees involved travelled between their hotels and worksites via private rental vehicles. The parties agreed that those vehicles were private means of transportation.

[68] The parties' fundamental dispute is in relation to the word "residence". The union argued that within the larger context of the article and the collective agreements as a whole, "residence" in clause 13.02 must include one's **temporary accommodation** while on travel status. Therefore, by virtue of the fact that an employee is away from his or her headquarters area (clause 13.01) and is travelling via private transportation (clause 13.02(b)), she or he is entitled to be paid for travelling time between the temporary residence (the hotel) and the destination (the worksite).

[69] The only restriction that PIPSC cited is that travelling time is paid for each completed period of 15 minutes, as specified under clause 13.03. Thus, any drive that takes less than 15 minutes would not attract compensation, and one over 15 minutes would attract it, in increments of 15 minutes.

[70] In support of this argument, the union pointed to clause 13.09, entitled "Travel Status Leave". That clause provides a form of compensatory leave for frequent travellers, specifically those who are away from their "permanent residence" in excess of 40 nights per year. Had the parties intended to restrict clause 13.02(b) to travel involving one's permanent residence, they would have added the word "permanent" to that clause, as they did in clause 13.09, according to PIPSC.

[71] The employer argued that the plain-language meaning of the word "residence" in clause 13.02(b) must be understood as **permanent residence**. Article 13 is constructed to compensate employees from the time they leave their residences (or

their normal workplaces, if they are the departure points) until they arrive at their destinations and for the equivalent return trips. For the employer, the article applies only on those travel days. The wording of clause 13.01 does not provide an employee with continuous compensation for travelling on days on which he or she does not travel to or from his or her residence or workplace.

[72] For the employer, this reading is reinforced by referencing both the English and French versions of the clause, as follows:

13.02 (b) For travel by private means of transportation, the normal time as determined by the Employer, to proceed from the employee's place of residence or work place, as applicable, direct to the employee's destination and, upon the employee's return, direct back to the employee's residence or work place.	*13.02 (b) Lorsque l'employé voyage par un moyen de transport privé, le temps normal déterminé par l'Employeur nécessaire à l'employé pour se rendre de* ***son domicile*** *ou de son lieu de travail, selon le cas, directement à sa destination et, à son retour, directement* ***à son domicile*** *ou à son lieu de travail.*

[Emphasis added]

[73] It cited the definition of *domicile* in the *Dictionnaire de français Larousse* as "*lieu où quelqu'un habite en permanence ou de façon habituelle ; résidence*". Translated, this means "location where someone lives permanently or habitually; residence." In other words, according to the employer, the use of the term *domicile* reinforces the idea that clause 13.02(b) is restricted to travel to and from one's **permanent** residence.

[74] I note that the term used in clause 13.09 in the French versions of the collective agreements is *résidence principale* — not *domicile*.

[75] The employer also argued that the Board has already interpreted "residence" to mean one's permanent home, citing *Bérubé v. Canadian Food Inspection Agency*, 2018 FPSLREB 59 at para. 54, which followed the line of reasoning used in *Mayoh v. Treasury Board (Regional Economic Expansion)*, PSSRB File Nos. 166-02-8896-8914 (19810306). After surveying seven dictionaries, the adjudicator in *Mayoh* reached the conclusion that residence "pertains to an employee's usual dwelling, home or abode, which is the place he leaves behind when he travels outside his headquarters area". It also cited *Turcotte v. Treasury Board (Canada Post)*, PSSRB File No. 166-02-12227 (19820909), [1982] C.P.S.S.R.B. No. 156 (QL), which examined the definition of *domicile* in the French version of the relevant collective agreement.

[76] I will note that the employer also cited *Peters v. Canada Customs and Revenue Agency*, 2004 PSSRB 35, but I have not considered this case because it was conducted via expedited adjudication, and it clearly states that it "cannot constitute a precedent".

[77] PIPSC challenged the relevance of *Mayoh* and *Bérubé*, arguing that both ruled on much different collective agreement language. The grievance filed in *Mayoh* concerned a clause that read as follows:

> *22.18 Other than when required by the Employer to use a vehicle of the Employer for transportation to a work location other than his normal place of work, time spent by the employee reporting to work or returning to his residence shall not constitute time worked.*

[78] According to the union, the clause at issue in *Bérubé* was virtually identical to the one in *Mayoh*, and the analysis of the travelling-time provisions should be treated simply as a statement made in passing that was not essential to the decision, therefore, not binding (made in *obiter).* Moreover, the travelling-time language at issue in *Mayoh* spoke of travel "to and from" an employee's headquarters area, which implied that it covered travel only on the day the employee moved between the headquarters area and a remote destination, while the language at issue in article 13 speaks of "travel outside the … headquarters area" and therefore can encompass travel that takes place at the travel destination. PIPSC argued that if I do find *Mayoh* and *Bérubé* applicable, I should not be bound by them, as they reached the wrong conclusion.

[79] PIPSC also stated that the adjudicator in *Turcotte* considered the word residence to have an "elastic" meaning that "… takes colour from the context in which it is used."

[80] I find that I cannot interpret the application of clause 13.02(b) based solely on the plain language of the collective agreements. Overall, I give more weight to the employer's explanation of the words "residence" and "domicile". However, I cannot ignore the fact that the clause does not clearly specify "permanent residence". When the parties chose to add the Travel Status Leave provisions at clause 13.09 to the collective agreement, they chose to use a more specific term, and that has to mean something. It is easy to distinguish this case from *Mayoh* on the basis of substantially different language; doing so is less easy with *Bérubé*. However, I must analyze this grievance based on the evidence and arguments placed before me, particularly the additional principles of interpretation argued by the parties, to which I will now turn.

2. The need for a clear statement of monetary benefits versus the need for clear exclusion

[81] The employer argued that when a monetary benefit is asserted, it is incumbent on the union to prove clearly and unequivocally that the requested monetary benefit was the intended result. Such intent is not normally imposed by inference or implication. Among other cases, it cited *Arsenault v. Parks Canada Agency*, 2008 PSLRB 17 at paras. 22 and 29, and *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55 at para. 27. The grievors in *Arsenault* challenged the employer's recovery of leave credits in relation to hours not worked on a designated paid holiday. The grievor in *Wamboldt* sought leave with pay to prepare for his adjudication hearing. In both cases, in the absence of a specific provision providing for the compensation sought, the adjudicators dismissed the grievances.

[82] PIPSC argued that there is no "higher burden" applicable to clauses involving a monetary benefit and that its burden of proof was simply to show that on a balance of probabilities, the employer breached the collective agreements. For this principle, it cited *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2018 FPSLREB 82. In that case, the absence of a specific clause limiting the start date of an allowance led to the grievance being upheld.

[83] PIPSC also argued that in the absence of a clear provision prohibiting compensation, an adjudicator can and should apply the principle of fairness. For this, it cited *Cianciarelli v. Treasury Board (Department of the Environment)*, 2017 PSLREB 32, in which the adjudicator granted the grievance, which sought to have workforce adjustment payments spread over two calendar years. It also cited *Association of Justice Counsel v. Treasury Board (Department of Justice)*, 2015 PSLREB 31, which resulted in lawyers receiving standby pay. In both cases, no specific provision provided for these results in the relevant collective agreements, but no clause prohibited the result awarded by the adjudicators. The result in *Association of Justice Counsel* was upheld by the Supreme Court of Canada (see *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55).

[84] Also for this principle of implied compensation, the union cited *Lamothe v. Canadian Food Inspection Agency*, 2007 PSLRB 60, in which the adjudicator upheld a grievance that sought payment for travelling time to attend a course. Quoting from a previous case, *Landry v. Library of Parliament* (PSSRB File Nos. 466-LP-213 and 214

(19930518), [1993] C.P.S.S.R.B. No. 90 (QL), the adjudicator in *Lamothe* adopted the following position (at paragraph 43):

> *… One cannot equate the time required to travel to a course taken at an employer's request with the time it takes an employee to travel to work. In the former case, the employee is not the master of his time and travels in order to meet a requirement of the employer, whereas in the latter case, the employee is the master of his time and can use it as he sees fit, i.e., he can choose to travel to work and then return home or he can do any other thing of his own choosing.…*

[85] The Federal Court overturned the adjudicator's decision in *Lamothe* (see *Canada (Attorney General) v. Lamothe*, 2008 FC 411 (upheld in 2009 FCA 2)) because the adjudicator had not properly addressed a clause in the collective agreement specifically prohibiting the compensation of travel time to attend courses. Because of that clause, the decision did not stand. However, PIPSC argued that I can still be guided by the adjudicator's analysis in *Lamothe,* specifically that since the travellers in this grievance did not control their own time, and as there is no specific clause denying them compensation, I should grant the grievance.

[86] As an aside, I will note that the AV and NR collective agreements contain collective agreement language that is modified from that at issue in *Lamothe.* The language (at 13.08) reads "Compensation under this Article shall not be paid for travel time to courses, training sessions, conferences and seminars **unless the employee is required to attend by the Employer**" (emphasis added). In other words, the parties have negotiated language to provide for the result originally ordered by the adjudicator in *Lamothe.*

3. Is this travel time or commuting time?

[87] These principles of collective agreement interpretation come into play in this case because of how the parties characterize the time it takes to drive from a hotel to a worksite. For the employer, it is commuting time, pure and simple, and since there is no explicit provision for the payment of commuting time, I must reject the grievance. For the union, the employer ultimately controls the location of a hotel, and therefore, the drive from a hotel to a worksite cannot be defined as commuting time.

[88] The employer argued that the Directive gives employees flexibility in selecting accommodations, subject to a number of operational and economic considerations.

Because employees have a significant degree of control over the choice of where to stay, the time it takes to travel from a hotel to a worksite must be considered commuting time. Just as time spent commuting between one's permanent residence and normal workplace is not paid, neither should it be paid in the travel context. As stated in the employer's reply to the grievance, the collective agreement "… does not contain explicit or implicit provisions for the compensation of commuting time when employees are at destination while on travel status or government business."

[89] The employer tendered evidence from Statistics Canada that the average commute time in Canada was 25.4 minutes in 2011, and that 17.2 per cent of commuters took 45 minutes or more to get to work. They also submitted as evidence a media report on the 2016 census, that the average commute times in Ottawa-Gatineau was 42 minutes by public transit, 25 minutes by car, and 18 minutes for those that walk or cycle.

[90] While acknowledging that employees are not compensated for their personal commuting time, PIPSC argued that the collective agreements do not contain the term "commuting time", and there is no express provision that defines travel in a remote location as commuting time. The fact that many employees may face long personal daily commutes in their headquarters areas should not be a factor in assessing this grievance. At issue in this case is travel outside one's headquarters area, and all such travel must be considered travelling time, not commuting time.

[91] For the union, the selection of hotel is constrained by those listed in the White Pages. Ultimately, the employer is responsible for determining travel arrangements, considering the employees' needs and interests as well as its operational requirements. In the Nevada example, the choice of hotel was made considering a whole team of staff from PWGSC, DND, and the contractor. Together, they coordinated transportation to the worksites, at a significant cost savings for the employer. In the London example, the employer had a lower rate at the downtown hotel, and staff drove together to the worksite. In summary, the employees were not in control of their own time, and therefore, the time it took to drive to the worksites cannot be considered commuting time.

[92] In this part of the analysis, I do not accept the employer's interpretation. While it is well established that personal commuting time to the employee's normal place of work is not paid, the decision about where one wishes to reside is strictly a personal choice, based on factors involving housing, commuting, neighborhood, schools, and individual preference. Selecting a hotel from a limited number of government-approved locations, in the context of short- or long-term travel, is not the same. Simply declaring that it is commuting time ignores the significant differences between the choice of personal residence and a travel situation. Consequently, I give no weight to the evidence that the employer sought to reference about normal commuting times in Canada.

[93] That being said, distinguishing this form of transit as something different from commuting time is not enough to conclude that the grievance should be upheld. In most cases, the hotel and worksite are close enough that the issue of transit time does not arise. Understanding this requires further analysis of clause 13.02 and of the meaning of the word "destination".

4. What is "destination" in clause 13.02?

[94] The parties' difference of opinion about the plain-language meaning of "residence" is clear and easy to understand. This is not the case when it comes to analyzing their difference of opinion (and in fact internal confusion in their submissions) about the meaning of the word "destination" as it is used in both clauses 13.02(a) and (b).

[95] In its original reply to the policy grievance, the employer stated that article 13 "… covers travel time … to a travel destination (e.g., either an accommodation or worksite)." In other words, a destination could be an accommodation or it could be a worksite.

[96] It took a different approach in its arguments. It stated that "… the phrase 'residence or workplace' is not interchangeable with the term 'destination'," and it disputed the assertion that destination is synonymous with the terms residence or workplace. This appears to directly contradict the position in the grievance reply.

[97] PIPSC's initial written submissions stated that "[t]ravelling between hotel/accommodation (i.e. 'the destination' or 'residence') and the 'workplace' clearly

falls within the terms of article 13." This appears to equate the destination with the hotel. Alternatively, it took the position that "destination" could include temporary accommodation only if the Board determines that "residence" does not include it.

[98] As neither party could provide a clear explanation of how the word destination affects the operation of the article, I find it necessary to explore and explain the practical meaning of the word by examining it in a hypothetical travel context relating to clauses 13.02(a) and 13.02(b).

[99] Consider for example an employee's flight from Ottawa to Toronto. As discussed earlier, clause 13.02(a) covers travel via public transportation (in this case, the flight from Ottawa to Toronto). The total travelling time includes the normal travel time that, as determined by the employer, it takes to get to the Ottawa airport before the scheduled departure time, from either the employee's place of residence (if one left directly from home) or from the workplace (i.e., if one reported to work before the flight). It covers time at the airport and the duration of the flight.

[100] But the destination is not Toronto writ large, and the travelling time does not stop when the plane lands in Toronto. It stops only on arrival at one's destination, which in practical terms has to be either a temporary accommodation or the worksite. If the travel day ends at a hotel, then the destination is the hotel. However, if one travels early in the day and takes a cab to the office or temporary workplace, then that is the destination, and is the point at which travelling time ceases and work time begins.

[101] The reverse is also true. When returning to Ottawa, travelling time does not end at the Ottawa airport. It ends at one's destination, which depending on the travel plan might be a residence or workplace.

[102] In effect, in 13.02(a) the destination is a specific location unique to the travel being undertaken. It is the location to which the employee travels, which is where his or her day is done (and the employee's time is his or her own) or the point at which the employee's work time begins. In this example, the destination is the hotel or worksite when going to Toronto. But it is also the employee's residence or workplace when returning to Ottawa. Once that point is reached, the travelling-time clock stops.

[103] The application of clause 13.02(b) covers travel via private transportation, for example, travel by rental car from Ottawa to Kingston. The travelling time includes the normal travel time, as determined by the employer, it takes to get either from the employee's place of residence (if one left directly from home) or from the workplace (if one reported to work before leaving for Kingston), to the employee's destination in Kingston. Once again, that destination could be either a hotel, or a worksite. The travel time stops when the employee arrives at his or her destination.

[104] For the return trip home to Ottawa, clause 13.02(b) does not use the word destination. The clause states that compensation will be paid for the time "… to proceed from the employee's place of residence or work place, as applicable, direct to the employee's destination and, upon the employee's return, direct back to the employee's residence or work place". Thus in this clause, the destination is only the temporary accommodation or the temporary worksite. Nevertheless, the clause operates similarly, such that when the employee returns to Ottawa, he or she travels back to his or her residence or workplace, and that is where the travel time ends.

[105] In many overnight travel situations, the hotel and a worksite are in close proximity to each other, and this careful parsing of the word destination is not required. This may be the source of the confusion in the parties' submissions. Because of this proximity, there is no need to precisely define the end point, and in effect, the concept of "destination" is broad enough to encompass both temporary accommodation and worksite because they are physically close to each other.

[106] However, in a situation like that of the 2014 Nevada trips, this ordinary use of the word "destination" creates a potentially absurd result. Initially, assuming one lands in Reno, rents a car, and drives to a hotel in Carson City, on that day, the destination is the hotel, and the travelling time ends upon arriving there. But is Carson City truly the destination of the travel? Clause 13.01 notes the purpose of travel is to perform duties for the employer. However, no work is performed in Carson City. The actual work is being performed in Yerington or Silver Springs — a full 45 to 60 minutes' drive from the hotel.

5. Does either interpretation produce an absurd result?

[107] One of PIPSC's strongest arguments was that the employer's interpretation of article 13 would lead to an absurd result, which is found by comparing its application

to two different types of travellers. It provided the example of an employee normally working at DND's offices at 3500 Carling Avenue, Ottawa, who has been assigned to report temporarily to work at its offices at 222 Nepean Street, Ottawa, a distance of 17.9 km. Such an employee, travelling in a private vehicle, would be paid for travelling time under clause 13.02(b). However, Ms. Marcichiw, who had to drive 60 to 100 km, was not compensated. This absurd result cannot have been the parties' intention, according to the union.

[108] I agree with PIPSC's arguments here, particularly in light of my analysis of the word destination. When a hotel is at a significant distance from a worksite, then the hotel and the worksite cannot form a single destination. When they are at a significant distance from one another, then a situation much like the DND one in Ottawa is created. This anomaly cannot be ignored.

[109] According to the union, another absurd result would be that an employee who travelled back home every night (for example, via a one-hour airplane trip) would be compensated for travelling time, while the employee with a one-hour transit time from a hotel to a worksite would not be compensated. The employer saves considerable money by having employees stay near a worksite; as a consequence, it should have to compensate them for excess travel time to a worksite. I do not find this argument convincing, as for practical reasons the employer would not fly employees home each night.

[110] In turn, the employer argued that the union's interpretation would produce anomalies. It took the position that if clause 13.02(b) provides compensation for employees using a private vehicle, it would disadvantage an employee taking a taxi, which the employer argued is a form of public transportation. Because taxis have no "scheduled time of departure", taking one would not attract compensation under clause 13.02(a).

[111] PIPSC disputed that clause 13.02(a) is restricted by something akin to a publicly posted schedule. It noted that transportation via taxi can be considered travelling time. Given my analysis of how the word "destination" is applied, covering the time to take a taxi from an airport to a hotel, I agree.

6. Is PIPSC's interpretation administratively feasible?

[112] There remains one last principle of contract interpretation to assess, which is whether the result proposed by the union is administratively feasible.

[113] The union argued that the Directive forms a part of the AV and NR collective agreements and that it must be considered when analyzing the travelling-time article. Underlying the Directive is a commitment to ensure that travel arrangements are "fair" and "reasonable". The employer is responsible for approving travel arrangements and ultimately determining them to accommodate both employees' needs and its operational requirements.

[114] The Directive defines an employee's headquarters area as within 16 km of her or his permanent workplace. When away from that workplace overnight, it provides that the employee is entitled to accommodation. At section 3.3.1, it defines the standard for that accommodation as "… a single room, in a safe environment, conveniently located and comfortably equipped." However, it also states that government hotel directories are to be used as guides for the cost, location, and selection of accommodation and that the employer ultimately approves the hotel to be used.

[115] At the same time, PIPSC argued that employees should not have to trade-off accommodation and travelling time and stated as follows: "An Employee should not be required to trade off her/his entitlement to a convenient accommodation while on travel status, with excessive commuting distances between the accommodation and travel status worksite."

[116] The difficulty with that statement is that it is completely at odds with the administrative impact of the interpretation of article 13 that PIPSC is promoting.

[117] If all travel between a hotel and a worksite that takes longer than 15 minutes attracts compensation, then, when it comes time for the employer to approve an employee's hotel choice, this additional cost would inevitably factor into the calculation of whether to approve hotel "A" (e.g., within a 15-minute drive or taxi trip) or hotel "B" (e.g., outside that range).

[118] Since the language of article 13 speaks to normal travel time "as determined by the Employer", it would require the employer to review estimates in every travel situation to determine if it involves transportation times of 15 minutes or more. In

effect, the trade-off between travelling time and costs would enter into hundreds of travel transactions approved each year. If this interpretation were supported by clear language, it would be one thing, but to infer it requires me to consider the administrative impact.

VI. Conclusion

[119] In addition to its other arguments, the employer took the position that the concept of common sense should apply and that I should find in its favour, citing *Carroll v. Treasury Board (Department of Public Works and Government Services and Department of Industry)*, 2019 FPSLREB 23 at para. 85.

[120] The concept of common sense used in *Carroll* was not a vague one through which any argument might be constructed but a more nuanced one drawn from the Board's decision in *Fehr v. Canada Revenue Agency*, 2017 FPSLREB 17 (upheld by 2018 FCA 159) at para. 67, as follows:

> ***67*** *This more modern approach of contract interpretation has evolved towards being more practical and based on common sense and not being dominated by technical rules of construction. The overriding concern is to determine the parties' intent and the scope of their understanding. To do so, a decision maker must read the contract as a whole, giving words their ordinary and grammatical meanings, consistent with the surrounding circumstances known to the parties at the time the contract was formed.*

[121] In other words, one must consider all the principles of contract interpretation and determine the parties' intent through the practical application of these principles using analysis, logic, and common sense.

[122] Applying that framework to this grievance, it is clear that article 13 covers a very broad range of travel situations, not just the unique fact situations presented as examples by the parties. The union asked me to conclude that the language of the collective agreement should compensate all travel between a hotel and a worksite that is over 15 minutes in duration. To do so I would have to conclude that the parties intended the word "residence" in 13.02(b) to include temporary residences, such as hotel accommodations. Although I agree that clause 13.02(b) does not specify "residence" as permanent, the use of *domicile* in French and the context of the agreements as a whole lead me to conclude that the **ordinary** meaning of the clause is to cover travel from a headquarters area, which is from an employee's permanent

home or workplace, to a remote destination. Once that destination is reached, the travelling time ends. As such, I cannot find that the parties' intent was to have the clause compensate employees for all travel between a hotel and a worksite. While I do not think the time should be characterized as commuting time, I have to recognize that employee hotel choice is built into the process and that in most travel situations, the employees do have some control over their time before arriving at and after leaving their worksites.

[123] In the end, the most critical factor in my decision is the logical disconnect between PIPSC's proffered interpretation and its position that the choice of hotel should not be traded off against the calculation of travelling time. Were I to accept its interpretation as accurate, it would effectively insert the 15-minute travel calculation into every travel approval under these and all similarly worded collective agreements.

[124] Had the parties intended this result, I believe that much clearer language would have been found in the collective agreements to support it.

[125] The union had the burden of proving that on a balance of probabilities, the employer was in violation of the collective agreements. As it failed to do so, I dismiss the policy grievance.

[126] That being said, I have reached this conclusion without accepting the employer's position that **all** such travel between a hotel and a worksite is equivalent to commuting time. I also do not accept its assertion that it lacks the discretion to ever compensate an employee for such time. Some consideration needs to be given to unique travel circumstances which exist outside the normal course of business.

[127] In its arguments, the employer argued that "workplace" is defined "… as either permanent/regular or temporary, with temporary workplace being within the headquarters area to which an employee is temporarily asked to report or to perform the work of his or her position."

[128] If the employer is correct in its interpretation, then in a situation like the one in Nevada, the temporary work location was the worksite (Yerington or Silver Springs). The headquarters area around that temporary worksite would be 16 km. As such, if travel to a hotel outside that temporary headquarters area was required, it would be logical to conclude that it should have attracted some form of compensation.

[129] However, this result is not clearly spelled out in the Directive or article 13. The Directive does not explicitly define that the concept of headquarters area applies to a remote location. This is what leads to the absurdity argued by the union, which was that the Nevada travel situation did not attract compensation, but an employee's drive from DND's offices on Carling Avenue to its downtown Ottawa office — cited earlier at 17.9 km — would.

[130] It also leaves us with the ambiguous situation where the application of the word destination can mean a hotel that is located at a considerable distance from the actual location where work is to be performed. In such circumstances, concluding that "destination" can simultaneously cover both "accommodation" and "worksite" does not make sense in terms of the work to be performed and the travel to be undertaken.

[131] In other words, I am not prepared to rule out that an individual fact situation might produce a different result than the one reached in this policy grievance. A key question that would need to be answered in assessing a particular fact situation is whether **appropriate** accommodation can be found within a reasonable range of the worksite. The Directive spells out the criteria for accommodation. The management affiants in this case also identified a number of criteria that go into selecting an accommodation, such as access to restaurants and other amenities, security issues, the quality of the accommodation, the needs of individual employees, the needs of the staff team as a whole, and the benefits from coordinating local transportation.

[132] If appropriate accommodation exists within a reasonable range and the employee **voluntarily** agrees to accommodation outside that range because of personal preference, then that is not the employer's responsibility.

[133] But if appropriate accommodation does not exist within that range, then I think a case can be made for compensation.

[134] Assessing this would require a detailed fact situation analysis examining the nexus between the employer's operational requirements, the needs of the team as a whole, and the individual employee's requirements. I note again Mr. McNutt's statement that employees are "… strongly encouraged to stay at the same location for security, cost, and team coordination." This significantly undermines the suggestion that an employee has voluntarily accepted accommodation at a significant distance from a worksite.

[135] I do not have enough facts to fully assess either of the examples used by the parties for this policy grievance and am not seized with their individual grievances. Specific testimony would be required to assess whether the level of remote travel or commute was fair or reasonable.

[136] I think it is interesting to note that this line of analysis informed the adjudicators in cases cited by the employer (*Mayoh*) and the union, *Booton v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-13844 (19840209), [1984] C.P.S.S.R.B. No. 18 (QL).

[137] As discussed earlier, the employer cited *Mayoh* as authority for the interpretation of "residence" as one's permanent home, not one's temporary residence. The travel situation involved employees engaged in field duties for the Prairie Farm Rehabilitation Administration in rural Saskatchewan. The adjudicator in that case rejected a claim that the employees be paid "portal to portal" — i.e., from the time they left their hotel until they arrived at their worksite. However, this was in a context in which the employer had already compensated them for excess travel — beyond 10 miles (or 16 km). The adjudicator upheld that practice, in effect saying that a drive of under 10 miles was justifiably one's personal responsibility but that having to travel longer than 10 miles deserved compensation.

[138] *Booton*, published four years later, came to a similar conclusion. In it, the grievors were involved in rehabilitating the airport in Trinidad, and the only accommodation approved by the employer involved a 2.5-hour commute each day (to and from the airport). Local management had agreed to pay 1.5 hours of overtime but was overruled by staff at headquarters. The employees challenged that decision, and the adjudicator found in their favour, granting the 1.5 hours per day of overtime. Therefore, like in *Mayoh*, the result was that some of the travel time (1 hour per day, or 30 minutes each way) was considered the employee's responsibility, and not paid, but the excess time (1.5 hours per day, or 45 minutes each way) was considered work.

[139] Both *Mayoh* and *Booton* were analyzed not on the basis of travelling-time language but on overtime language that is not found in the collective agreements in question in this case. In the current AV and NR collective agreements, the most similar clause would be clause 13.06, which reads as follows:

> ***13.06*** *This article does not apply to an employee required to perform work in any type of transport in which the employee is travelling. In such circumstances, the employee shall receive pay for actual hours worked in accordance with the appropriate article of this Agreement, Hours of Work, Overtime, Designated Paid Holidays.*

[140] Thus, in a situation where the circumstances require significant travelling time in a remote location, this question arises: should that time be considered as time worked?

[141] PIPSC argued that if I disagreed with its interpretation of clause 13.02, the travel experienced by Ms. Marcichiw and Mr. Bergeron should be considered captive time and compensated under clause 13.06. It cited jurisprudence that recognizes captive time as work performed for the employer, including *Hutchison v. Treasury Board (Department of National Defence)*, 2015 PSLREB 32, *Canada (Attorney General) v. Paton*, [1990] 1 F.C. 351 (C.A.), and *Vancouver (City) Fire and Rescue Services v. Vancouver Firefighters' Union, Local 18 (HUSAR Overtime Grievance)*, [2016] B.C.C.A.A.A. No. 29 (QL).

[142] The employer objected to the union's arguments on clause 13.06, stating that neither the grievance nor the reference to adjudication raised that clause and that the union should be barred from arguing it at adjudication (see *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.), and *Shneidman v. Canada (Customs and Revenue Agency)*, 2007 FCA 192).

[143] The union responded that the grievance referenced the entirety of article 13 and that its presentation to the employer during the policy grievance process raised the issue of captive time and quoted at length from *Hutchison*.

[144] The union's arguments at the internal stage of the grievance process were included as part of the agreed statement of facts, and I agree with it that the employer cannot claim any surprise or otherwise rely upon *Burchill*. I dismiss the employer's objection.

[145] The employer argued that in the alternative, the travel situations experienced by Ms. Marcichiw and Mr. Bergeron did not meet criteria established in the case law for captive time. For example, *Hutchison* addressed the case of an employee engaged in sea trials, and the *HUSAR Overtime Grievance* case applied when a Vancouver search and rescue team was deployed to Calgary, Alberta, and had to remain at an elementary

school with limited access to amenities and significant restrictions on its freedom. Furthermore, the employer emphasized that in both the Nevada and London examples, the employees were not obligated to stay at the hotels they did and had considerable freedom of movement, and therefore, the employer could not justify the application of captive-time principles. It argued that the Federal Court of Appeal has turned down captive-time claims even for extreme jobs such as backcountry patrols in national parks (see *Martin v. Canada (Treasury Board)*, [1990] F.C.J. No. 939 (C.A.)(QL)).

[146] However, in this case, PIPSC did not argue that captive time should attract 24-hour compensation, as it did not dispute the notion that once employees are back at their hotels, their time is their own. Only the travelling time to a remote worksite is being contested.

[147] As already discussed, I am not in a position to fully assess the particular circumstances of Nevada or London; and consequently am not prepared to rule that such travel time is captive time. However, I am also not prepared to rule, as the employer asked me to do, that the concept of captive time would never apply to such travel situations.

[148] To sum up, I find the bargaining agent has not established that article 13 requires the employer to compensate employees for all travel that takes place during travel status between a temporary residence (e.g. hotel) and a temporary worksite. However, I am not prepared to accept the employer's arguments that the collective agreement prevents the employer from compensating some employees in unique travel situations. Determining which travel situations justify compensation would require case specific evidence, either in relation to the suitability of accommodation (e.g. under the Directive), or in relation to whether a particular travel situation represents a form of captive time.

[149] I also believe that the above analysis points to a void in the collective agreements with respect to an employee being compensated for travelling to and from his or her accommodation and the worksite while on travel status. It is not for the Board to create a new provision, as its decision may not have the effect of requiring the amendment of a collective agreement. It is for the parties to negotiate this if that is what they want.

[150] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VII. Order

[151] The policy grievance is dismissed.

November 8, 2019.

David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board