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File: 566-02-05944

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

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

BETWEEN

FRÉDÉRIC CAMPEAU

Grevor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Campeau v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Lindsay Cheong, Public Service Alliance of Canada

For the Employer: Patrick Turcot, counsel

Decided on the basis of written submissions filed March 28, April 16, and May 6 and 28, 2019.
(Traduction de la CRTESPF)

REASONS FOR DECISION

I. Individual grievance referred to the Board

[1] Frédéric Campeau ("the grievor") filed a grievance on February 27, 2009, in which he stated that he was entitled to compensation for his travel time under article 32 of the collective agreement between his bargaining agent, the Public Service Alliance of Canada, and the employer, the Treasury Board, for the Program and Administrative Services Group (expired June 20, 2011; "the collective agreement"). The grievance was dismissed at all levels of the grievance process and was referred to adjudication on September 23, 2011.

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013 c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the Public Service Labour Relations Board and the Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[3] 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 the name of the PSLREB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

[4] The Board decided to proceed by way of a paper hearing. The parties provided their written arguments by the established deadline.

II. Summary of the evidence

[5] The parties agreed to submit an agreed statement of facts, which I outline in the following paragraphs, with a few style changes and additions for clarification.

[6] The grievor worked for the Correctional Service of Canada during all the periods relevant to the grievance. During that time, he lived at the same address, in a municipality north of Montreal.

[7] The parties agree that the grievor was assigned to the following locations on the following dates:

1. February 12, 2007, to January 22, 2008: City of Laval;
2. March 10 to May 1, 2008: Quebec Regional Headquarters, 3 Place Laval, Chomedey, City of Laval; and
3. June 2, 2008, to February 28 or March 12, 2009 (the parties disagree on the date on which the assignment ended): Laferrière CCC (Community Correctional Centre), Saint-Jérôme.

[8] The employer refused to pay the travel time that the grievor claimed. The grievance was dismissed at the three levels of the grievance process. At the first level, the employer cited as its reason the fact that the grievor needed less time to get to his assigned workplace than to his substantive workplace. At the second level, the response was that the time needed to travel to the assignment location caused him no prejudice. At the final level, the grievance was dismissed because he was deemed to have abandoned it.

[9] In addition, in the agreed statement of facts, the parties indicate a disagreement with respect to the following facts.

[10] The parties do not agree on the location of the grievor's substantive position. According to him, it was at the courthouse at 1 Notre-Dame Street East in Montreal. According to the employer, it was at the District Office at 3155 Côte-de-Liesse Road in Montreal's Saint-Laurent neighbourhood.

[11] The parties do not entirely agree on the assignments, and the disagreement about them can be summarized as follows:

1. Assignment from May 15, 2006, to September 2, 2006, Regional Reception Centre, Sainte-Anne-des-Plaines: The parties agree to the dates and location, but the employer is of the view that this assignment is not included in the grievance.
2. Assignment from February 12, 2007, to January 22, 2008, in Laval: The parties agree that the assignment was at the Federal Training Centre, but the grievor states the address as 600 Montée Saint-Francois, while the employer claims that it was 1300 Montée Saint-Francois.
3. Assignment to the Laferrière CCC in Saint-Jérôme: The grievor's opinion is that the assignment was from June 2, 2008, to March 12, 2009, while the employer claims that it ended on February 28, 2009. In a sworn statement attached to the file, the grievor states that in fact, the date should be March 31, 2009.

[12] Finally, the grievor stated that the employer had granted mileage costs for the assignments in question.

[13] The grievance, filed on February 23, 2009, reads as follows:

> [Translation]
>
> …
>
> *The employer reimbursed me my travel expenses for my secondments from February 2007 to February 2008, March 2008 to May 2008, October 2008, and my current secondment to CSC Laurentides. The required travel is outside my headquarters area. Article 32 of my collective agreement provides that I am entitled to travel time when I travel outside my headquarters area. The employer refuses to pay my travel time; by doing so, it is breaching article 32 of my collective agreement.*

[14] The parties agree that the employer did not pay the travel time.

III. Summary of the arguments

A. For the grievor

[15] First, the grievor specified that his substantive position was in fact at the courthouse on Notre-Dame Street, as evidenced by the following documents: the performance evaluation from November 2004 to September 2005, an email from Financial Services indicating that the substantive position was located at the courthouse, and his sworn statement.

[16] The assignment dates are as set out above. Several documents were presented in support of this statement.

[17] In a sworn statement dated April 15, 2019, the grievor affirmed that all assignment periods (including in 2006) were covered by his grievance.

[18] The grievor submits that the employer defines the headquarters area as being within 16 km of an employee's permanent workplace. Therefore, he was outside his headquarters area for all the assignments because each time, the distance between the courthouse and the assignment location was more than 16 km.

[19] Under clause 32.04 of the collective agreement, employees are entitled to compensation for travel time when they are required to travel outside their headquarters areas. If the travel time exceeds normal work hours, they are entitled to compensation at the rate set out in article 28, on overtime.

[20] The grievor advocates for an interpretation of the collective agreement based on its wording. According to him, article 32 is clear. The employer's reasons for refusing to compensate for travel time are not relevant.

B. For the employer

[21] For the purposes of this decision, the employer objects to the Board considering the sworn statement that the grievor filed with his arguments as there was no cross-examination on that evidence.

[22] According to the employer, its interpretation of clause 32.04 of the collective agreement is not unreasonable. The provision provides for compensating travel time when an employee must travel to a location outside his or her headquarters area on government travel at the employer's request.

[23] Section 7.03(a) of the National Joint Council's "Travel Directive" ("the Directive"), which is an integral part of the collective agreement, defines "headquarters area" and "government travel". Examining those definitions shows that clause 32.04 does not apply.

[24] According to the employer, *Hamilton v. Treasury Board (Correctional Service of Canada)*, 2013 PSLRB 91, and *Hutchison v. Treasury Board (Department of National Defence)*, 2015 PSLREB 32, apply in this case.

[25] In *Hamilton*, two employees on secondment also claimed their travel costs because according to them, they were outside their headquarters area. The adjudicator instead found that the headquarters area referred to the area surrounding the usual workplace, which, in their case, was modified for the period of their secondment, i.e., three years. Since they were not outside their headquarters area, they were not entitled to compensation for their travel costs. The decision can be summarized by the following passage from paragraph 33:

> *… It is the expectation that every public service employee is responsible for reporting to work at his or her regular work location unless for reasons specified in the travel directive that work location has been changed. Normal commuting to attend work does not constitute travel for government business….*

[26] In addition, at paragraph 9 of that decision, as follows, the employer indicated that the Board had found that the grievors were not entitled to compensation for their travel costs because they did not meet the definition of "government travel":

> ***9*** *The definition of an employee on government travel or business means that that employee travels to a location, other than the employee's normal place of work, to represent a government department or to carry out duties on behalf of that department. In the case of the grievors … they were merely travelling to and from work each day, which did not meet the definition of government business….*

[27] Hutchison deals with another issue, time spent on board a ship, but the following is useful:

> …
>
> ***41*** *As a general rule, the time taken by an employee to travel to and from his or her normal place of operation is not compensated, subject to any provision to the contrary in a collective agreement….*
>
> ***42*** *There are basically three exceptions to this general rule. These are situations in which the concept of work has been extended to cover time during which an employee is not actively performing his or her normal work duties.*
>
> ***43*** *The first exception applies where travel is a necessary incident of the specific task required by the employer to be performed (as, for example, in transporting a deportee to the country to which he or she is being deported). In such cases both adjudicators and the courts have held that the travel time necessary to accomplish that specific task, as well as the return journey and any wait time prior to commencing the return will be considered work and compensated as such ….*

> ***44*** *A second exception arises when an employee is required to standby ready and fit to perform a required task. Such employees can be considered to be at work even though the timing of the task to be done is not known, and even though the employee is otherwise free to do what he or she wants until such time as the task has to be performed (so long as they remain fit and ready to do the task) ….*
>
> ***45*** *The third exception applies where the nature of the work requires the employee to spend extended periods of time away from his or her normal place of work. An example is the case where a maintenance person is assigned to a ship for the purpose of conducting tests or repairs of the vessel at sea. The specific task in question may only require a few hours of the employee's time, but the task itself has to be carried out at sea. Hence, in order to get to and from the place where the work is to be conducted, the employee must spend many more hours on board. In such cases, adjudicators have considered the employees to be "captives" of their employer, in the sense that their free time is no longer strictly speaking their own ….*

…

[28] In this case, the grievor travelled to his normal workplace for the duration of his assignment. He was neither on government travel nor outside his headquarters area.

[29] Consequently, the grievance must be dismissed. In addition, should the Board find that the grievor is entitled to compensation for travel time, this decision should not apply to the period in 2006, as it was mentioned neither in the grievance nor in the employer's responses to it. Thus, it is highly doubtful that that period was included in the original grievance. The principle set out in *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.), according to which a new issue cannot be raised in adjudication, would apply in this case.

C. The grievor's reply

[30] For the purposes of my decision, I retain two points raised in the reply.

[31] The first argument relates to the application of *Hamilton* to the facts of this case. According to the grievor, apart from the fact that a distinction is to be made between a three-year secondment and a temporary assignment when interpreting article 32 of the collective agreement, he submitted the following:

> [Translation]
>
> …

> ***26*** *… With respect, we find it hard to understand how the purpose and scope of the Directive applies to article 32 when that article is not part of the Directive….*

[32] The grievor also noted that clause 32.02 of the collective agreement specifically excludes travel time for training sessions. As the collective agreement specifically excludes training, it does not exclude travel from a place of residence to a temporary workplace when it is outside the headquarters area.

[33] The second argument relates to clause 32.05(b) of the collective agreement. The grievor submitted the following:

> [Translation]
>
> …
>
> ***30.*** *Finally, we respectfully submit that the employer's emphasis on and isolation of the term "government travel" under article 32 does not account for the fact that clause 32.05(b) explicitly provides for the reimbursement of travel time between an employee's home and workplace….*

[34] In his reply, the grievor adds that adopting the employer's point of view would negate the effect of clause 32.05(b) of the collective agreement, which would be contrary to the principles of collective agreement interpretation.

IV. Analysis

[35] When a decision is rendered based on written arguments, the Board generally expects the parties to agree to all the facts. Otherwise, a hearing may be required so that the parties may examine their witnesses and cross-examine the other party's witnesses.

[36] However, in this case, I do not think that a hearing is needed, despite some contradictions in the facts put forward, as ultimately, my reasoning would remain the same. Therefore, there is no need to establish the precise address of the grievor's substantive position or the exact dates of his assignment from June 2008 to March 2009. For the purposes of the decision, I accept that the assignment locations were more than 16 km from the location of the permanent substantive position.

[37] The employer asked me to dismiss the grievor's sworn statement since cross-examination was not possible. Insofar as the sworn statement is not consistent with the agreed statement of facts, I cannot give it any weight. In addition, the part of the statement that establishes that the assignment in 2006 was included in the

grievance is not consistent with the grievance text or the employer's responses during the grievance process. I find that the employer was not seized of this matter during the internal grievance process. Thus, in accordance with *Burchill*, I have no jurisdiction over that aspect of the grievance.

[38] The determination of this grievance is based on interpreting article 32 of the collective agreement, the relevant parts of which read as follows:

> ***32.02*** *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.*
>
> ***32.03*** *For the purposes of this Agreement, travelling time is compensated for only in the circumstances and to the extent provided for in this Article.*
>
> ***32.04*** *When an employee is required to travel outside his or her headquarters area* ***on government business****, as these expressions are defined by the Employer, the time of departure and the means of such travel shall be determined by the Employer and the employee will be compensated for travel time in accordance with clauses 32.05 and 32.06….*
>
> ***32.05*** *For the purposes of clauses 32.04 and 32.06, the travelling time for which an employee shall be compensated is as follows:*
>
> …
>
> *(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 workplace, as applicable, directly to the employee's destination and, upon the employee's return, directly back to the employee's residence or workplace….*
>
> [Emphasis added]

[39] In addition, it must also be noted that the Directive, established by the National Joint Council, is an integral part of the collective agreement, as set out as follows in clause 7.03(a) of the collective agreement:

> ***7.03***
>
> *(a) The following directives, as amended from time to time by National Joint Council recommendation, which have been approved by the Treasury Board of Canada, form part of this Agreement:*
>
> …
>
> *Travel Directive*
>
> …

[40] The Directive contains certain definitions that are essential to interpreting the terms used in clause 32.04, namely, "headquarters area" and "government travel", to give them the meaning that the employer gives them. The Directive defines these two terms as follows:

> ***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.*
>
> …
>
> ***Government travel*** *(voyage en service commandé) - all travel authorized by the employer and is used in reference to the circumstances under which the expenses prescribed in this directive may be paid or reimbursed from public funds.*

[41] I cannot accept the grievor's argument that clause 32.05(b) of the collective agreement expressly provides for travel from home to the workplace. Rather, it provides for travel from either home or the workplace to the intended destination of the government travel. Clause 32.05(b) reads as follows:

> ***32.05*** *For the purposes of clauses 32.04 and 32.06, the travelling time for which an employee shall be compensated is as follows:*
>
> …
>
> *(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 workplace, as applicable, directly to the employee's destination and, upon the employee's return, directly back to the employee's residence or workplace….*

[42] I am of the view that the reasoning in *Hamilton* entirely resolves the issue in this case. The grievor did not work outside his headquarters area while on assignment; he worked in a new headquarters area. He assumed the duties of the positions at those locations during the established times. Government travel means all travel authorized by the employer to a place other than the usual workplace. While the grievor worked at an office other than that of his substantive position, his usual workplace ("assigned workplace" in the definition of "headquarters area") became that office. That is not government travel, which refers to travel, as the title of the Directive quite clearly indicates. Compensation for travel outside the headquarters area cannot apply when the grievor remains inside his headquarters area, which may be temporary but is characterized by the fact that it is the area surrounding the usual workplace where the grievor ordinarily performs his duties.

[43] As emphasized in *Hutchison*, the employer does not pay for the time an employee takes to get to work because the employee is not at work. There may be exceptions in which an employee is paid even if he or she is not working. The adjudicator listed those exceptions as follows: travel to carry out a task assigned outside the usual workplace, being on standby, and time at a location where the employee cannot leave, such as a ship, for example. There is no common measure with the grievor's situation; for a year, he went to a new workplace. The employer is not required to pay him for that travel to his assigned workplace, which was his usual workplace during the time of the assignment.

[44] I find that the travel claimed by the grievor does not meet the criteria set out in article 32 of the collective agreement.

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

(The Order appears on the next page)

V. Order

[46] The grievance is dismissed.

December 9, 2019.

FPSLREB Translation

Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board