Date: 20210526

File: 566-02-41456

Citation: 2021 FPSLREB 57

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

DANNY PARMITER

Grievor

and

TREASURY BOARD

Employer

Indexed as
Parmiter v. Treasury Board

In the matter of an individual grievance referred to adjudication

Before: Augustus Richardson, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: John McLuckie, counsel

For the Employer: Véronique Newman, counsel

Heard by videoconference,
March 18, 2021.

REASONS FOR DECISION

I. Introduction

[1] The Canadian Merchant Service Guild ("the union") and the Treasury Board ("the employer") are parties to an agreement that covers all employees in the Ships' Officers group, which expired on March 31, 2014 ("the collective agreement"). Clause 42.01 of the collective agreement provides that agreements concluded by the National Joint Council (NJC) may be included in the collective agreement. The NJC *Travel Directive* is deemed to be included in the collective agreement in its entirety.

[2] Mr. Parmiter grieved that he was denied certain benefits provided in section 4.2.8 of the *Travel Directive*. The employer agreed that it denied those benefits but it said that it does not apply to persons "whose travel is governed by other authorities". The employer said that as clause 44.03 of the collective agreement is another authority, section 4.2.8 of the *Travel Directive* does not apply.

II. The evidence and hearing

[3] The hearing proceeded by videoconference, based on an agreed statement of facts and a joint book of documents. As well, a few admissions were made during oral submissions.

[4] I have set out the agreed statement of facts, the references of which are in the joint book of documents.

> *Agreed Statement of Facts*
>
> ***A. GENERAL BACKGROUND***
>
> *1. The Agreement between the Treasury Board and Canadian Merchant Service Guild (Ships' Officers (SO)), expiry March 31, 2014 (the "Collective Agreement"), applies to this grievance.*
>
> ***Joint Book of Documents ("JBD") Tab 1: Ships' Officer Collective Agreement***
>
> *2. Article 42.01 of the Collective Agreement provides that the National Joint Council Travel Directive (the "Travel Directive"), dated July 1, 2017, is part of the Collective Agreement.*
>
> ***JBD – Tab 2: Travel Directive***
>
> *3. The main provisions at issue in this grievance are:*
>
> *a) Article 44.03 of the Collective Agreement, which states:*

44.03 After seven (7) days at sea, away from the officer's home port, and each subsequent seven (7) days away from home port, the officer shall be provided access, off watch and subject to operational availability, to the vessel's telephone equipment to place a call to his/her home. The officer will reimburse the department for the costs of the telephone call.

b) The Application provision in the Travel Directive, which states:

This directive applies to public service employees and other persons travelling on government business, including training. It does not apply to those persons whose travel is governed by other authorities.

c) Section 4.2.8 of the Travel Directive, which states:

4.2.8 Over each contiguous three-day period away from home port, employees on board vessels shall be authorized to make up the equivalent of a ten minute phone call home using the equipment available. When satellite communication systems are available and used, the phone calls shall be limited to five minutes.

B. FACTUAL BACKGROUND TO THE GRIEVANCE

General

4. The grievor has at all material times occupied the position of Chief Engineer with the Canadian Coast Guard, classified at SO-MAO-12. He has been permanently assigned to the CCGS Louis S. St-Laurent since 2011.

5. The CCGS Louis S. St-Laurent is based in St. John's, Newfoundland.

6. The CCGS Louis S. St-Laurent has for many years conducted annual voyages to the High Arctic in order to conduct various resupply and scientific missions.

7. The grievor has participated in several past voyages to the High Arctic on the CCGS Louis S. St-Laurent.

8. The grievor was onboard the CCGS Louis S. St-Laurent for the summer 2018 Arctic voyage for the period between August 23 and October 4, 2018.

Communications

9. For much of the time that the grievor was aboard ship during the 2018 Arctic voyage, the CCGS Louis S. St-Laurent was out of range of cellular telephone signals. As a result, the grievor and the remainder of the crew could not use their personal cellular devices to make telephone calls home.

10. The CCGS Louis S. St-Laurent is equipped with satellite and other communication equipment that allows the vessel to remain in contact with Canada while it is underway in the Arctic.

11. Some of the senior ships officers (including the Captain, Chief Engineer, Chief Officer, Senior Engineer and Logistics Officer) have access to satellite communications using the telephones located in their workstations or in their personal quarters.

12. Other members of the ship's crew typically have access to satellite communications through the use of a "telephone booth" located in the communal area of the CCGS Louis S. St-Laurent.

13. Use of the ship's onboard communications systems are addressed by Commanding Officer's Standing Order #5. Paragraph 6 of Standing Order #5 indicates that the cost of all personal calls made using the ship's communications system are the responsibility of the individual making the call.

JBD Tab #3: Commanding Officer's Standing Order #5

14. In order to make use of the satellite communications system for personal use, the grievor and other members of the ship's company were required to key-in a unique number drawn from a pre-paid calling card.

15. The use of calling cards made it easier logistically to manage personal calls as the calls were already paid for, eliminating the need to keep track of minutes to charge.

16. Despite the wording of Commanding Officer's Standing Order #5, the officers and crew on each past arctic [*sic*] *voyage that the grievor participated in were usually each given a unique PIN number by the ship's logistics officer that gave them up to 30 minutes of satellite telephone time. The practice was put into place as a good will* [*sic*] *measure for health and wellness due to the length of time and limited connectivity in the Arctic, but not in accordance with any specific directive.*

17. Any additional satellite time used beyond the allocated 30 minutes was at the expense of the individual.

18. During the 2018 cruise, a logistical difficulty of some kind resulted in no usable satellite calling cards numbers being provided to the ship's logistics officer. As a result, an honour system for the use of the satellite phone was put into place for the voyage. Each crew member who wished to use the satellite phone did so via the radio room (instead of the Telephone Booth) and they then recorded the duration of each call in a logbook created for that purpose. Any time used beyond 30 minutes cost $1.00 per minute, which was paid to the ship's logistics officer at the end of the voyage.

Grievor's Request to Use the Satellite Phone

19. Over the course of the CCGS Louis S. St-Laurent's 2018 Arctic voyage, the grievor made a request to the Captain that he be given access to the satellite telephone in order to make a call in accordance with section 4.2.8 of the Travel Directive. On September 19, 2018 this request was denied.

20. On October 1, 2018, the grievor filed a grievance regarding this denial. The Department of Fisheries and Oceans (the "Employer") and the Canadian Merchant Service Guild ("CMSG") agreed to bypass the first level of the grievance process.

JBD – Tab 4: Grievance presentation form

JBD – Tab 5: Email chain regarding bypassing of first level.

21. On November 26, 2018, the Employer issued a second level response denying the grievance. The response stated that the Employer was waiting for a formal interpretation from the Treasury Board Secretariat ("TBS"). The response went on to say that providing phone calls in accordance with section 4.2.8 of the Travel Directive would represent a significant deviation from past practice which, the letter stated, was to follow the article of the Collective Agreement.

JBD – Tab 6: Second level decision

22. On November 30, 2018, the grievance was transmitted to the National Joint Council (the "NJC") final level.

JBD – Tab 7: Grievance transmittal form

23. On February 15, 2019, TBS provided a formal interpretation which found that the provisions of the Travel Directive and the Collective Agreement had to be read in a complementary manner and that there was "no inherent conflict between these two provisions which requires resolution."

JBD – Tab 8: First TBS Interpretation

24. On September 30, 2019, TBS provided a revised interpretation which found that the Travel Directive did not apply to government travel for people governed by other authorities under the restriction specified in the Travel Directive's application provision, and the Employer should grant the officer the travelling conditions specified at clause 44.03 of the Collective Agreement.

JBD – Tab 9: Revised TBS Interpretation

25. On October 10, 2019, the Employer and the CMSG provided submissions to the NJC.

26. On December 20, 2019, the NJC Executive Committee issued a decision stating that it could not reach consensus and had reached an impasse. It also found that the practice of providing calling cards to employees aboard vessels did not "meet the intent of either the Travel Directive or the collective agreement."

JBD – Tab 10: NJC Decision

27. On January 27, 2020, the grievance was referred to adjudication.

III. The issue

[5] During the course of the submissions, the employer agreed with the bargaining agent that the *Travel Directive* was made part of the collective agreement by virtue of clause 42.01, which provides as follows:

> ***42.01*** *Agreements concluded by the National Joint Council of the Public Service on items which may be included in a collective agreement, and which the parties to this agreement, have endorsed after December 6, 1978, will form part of this collective agreement, subject to the* Public Service Labour Relations Act *(PSLRA) and any legislation by Parliament that has been or may be, as the case may be, established pursuant to any Act specified in Section 113(b) of the PSLRA.*

[6] The employer also agreed that if section 4.2.8 of the *Travel Directive* applied, it should be interpreted to mean that for each continuous three-day period away from home port, an employee was entitled to use the satellite communication system, if available, to make a phone call for five minutes without cost to the employee. For the purposes of the hearing, the employer also accepted that at issue were the roughly 14 calls that totalled approximately 70 minutes that the grievor made and was charged a fee.

[7] The employer made it clear that it did not agree that the grievor was in "travel status", as defined in the *Travel Directive*, but added that section 4.2.8 of the *Travel Directive* did not require the employee to be in travel status.

[8] The employer's position, based in part on *Clerveaux v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 7, was that section 4.2.8 of the *Travel Directive* did not apply because the *Travel Directive* made it clear under the "Application" heading that it did not apply to "… those persons whose travel is governed by **other authorities** …" (emphasis added). The employer's position was that the grievor's travel was governed "by other authorities" as in clause 44.03 of the collective agreement, which provides as follows:

> ***44.03*** *After seven (7) days at sea, away from the officer's home port, and each subsequent seven (7) days away from home port, the officer shall be provided access, off watch and subject to operational availability, to the vessel's telephone equipment to*

> *place a call to his/her home. The officer will reimburse the department for the costs of the telephone call.*

[9] If clause 44.03 applied, then the grievor was not entitled to free five-minute calls using the vessel's satellite system. He was entitled to use the vessel's telephone equipment but only at his expense. If, on the other hand, section 4.2.8 of the *Travel Directive* applied, then subject to certain conditions, he was entitled to a free five-minute call using the vessel's satellite system every three days.

[10] As a result, the issue that divided the parties became very narrow: Was clause 44.03 an "other authority" that could displace section 4.2.8 of the *Travel Directive*?

IV. The grievor and bargaining agent's submissions

[11] Accepting that there was an apparent conflict between clause 44.03 of the collective agreement and section 4.2.8 of the *Travel Directive*, the bargaining agent submitted that the parties must have agreed that the latter was to prevail. The parties agreed in clause 42.01 that the *Travel Directive* "… will form part of **this** collective agreement" (emphasis added). As well, the collective agreement applied to Ships' Officers. Section 4.2 of the *Travel Directive* was designed expressly for "Ships Officers/Ships Crews". To accept the employer's argument would mean that a provision designed specifically for ships' officers that had been incorporated into a ships officers' collective agreement would not in fact apply.

[12] The bargaining agent found further support for its position in the principles of the *Travel Directive*, which were to "… guide all employees and managers in achieving fair, reasonable and modern travel practices across the public service". These included trust, flexibility, respect, valuing people, transparency, and modern travel practices. The bargaining agent pointed to the *Travel Directive's* description of the flexibility principle, which is intended to "… create an environment where management decisions respect the duty to accommodate, best respond to employee needs and interests, and consider operational requirements in the determination of travel arrangements", and the principle of valuing people, which is intended to "… recognize employees in a professional manner while supporting employees, their families, their health and safety in the travel context".

[13] The bargaining agent submitted that these principles supported a conclusion that the parties must have intended that employees be provided with free, albeit limited, access to satellite communication systems while on extended voyages where they could not otherwise use their cell phones to contact family and friends. It was the employer that had located the employee in a location that was beyond cell phone range. Providing free access to a communications system in such cases recognizes the duty to accommodate, as well as supports employees, their families, and their health.

[14] The bargaining agent also relied on the first opinion reached by the Treasury Board of Canada Secretariat (TBS) on February 19, 2019. At that time, the TBS concluded that the *Travel Directive* and the collective agreement must be read in a complementary manner. The TBS had opined that "… a reasonable interpretation of the agreement that harmonizes apparently conflicting provisions should be preferred over an interpretation that perpetuates the conflict". For that reason, it concluded that an employee was entitled to a free five-minute call when the conditions in section 4.2.8 of the *Travel Directive* were met.

[15] The bargaining agent submitted that the TBS's September 30, 2019, second (revised) opinion was based on *Clerveaux*, which was misread.

[16] The bargaining agent also referred to and relied upon the following decisions: *Umar-Khitab v. Treasury Board (Department of Social Development)*, 2006 PSLRB 136; *Baird v. Treasury Board (Department of National Defence)*, 2012 PSLRB 117; *Chapman v. Treasury Board (Department of National Defence)*, 2013 PSLRB 73; *Skoulus v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2014 PSLRB 80; and *Thunder Bay Regional Health Services Centre v. Ontario Nurses' Association*, 2007 CanLII 21590 (ON LA).

V. The employer's submissions

[17] The employer submitted that the TBS's September 30, 2019, second opinion was the correct one. The employer noted that the *Travel Directive* was incorporated into the collective agreement. Hence, its statement that it did not apply to "… those persons whose travel is governed by other authorities", had to be considered. If the wording of an agreement is clear, it ought to apply, even if it might seem unfair. Issues related to fairness are best left to collective bargaining.

[18] The employer submitted that clause 44.03 of the collective agreement was an "other authority." It relied on *Clerveaux*, which dealt with a similar conflict between the *Travel Directive* as part of a collective agreement and a clause in the agreement. In that case, the adjudicator ruled that the restriction contained in the "Application" provision of the *Travel Directive* had to be read within the general framework of the collective agreement. As noted at paragraphs 33 of *Clerveaux*, "other authorities" can refer only to other parts of the Collective Agreement".

[19] The employer also referred to and relied upon *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112; *Delios v. Canada (Attorney General)*, 2015 FCA 117; *Ewaniuk v. Treasury Board (Department of Citizenship and Immigration)*, 2020 FPSLREB 96; and *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55.

VI. The grievor's reply

[20] The bargaining agent pointed out that virtually all ships officers and ships crews employed by the Treasury Board were covered under two collective agreements, each of which was incorporated into the *Travel Directive* with a clause that is similar if not identical to clause 44.03. The bargaining agent submitted that it made no sense for the parties to incorporate a directive specifically for ships officers and ships crews and then render them insignificant. The parties could not have intended to incorporate a provision that in practice applied to no one.

[21] With respect to remedy, both the bargaining agent and the employer agreed that the issue that most concerned them was the question of the interplay between section 4.2.8 of the *Travel Directive* and clause 44.03 of the collective agreement. They felt confident that if the grievance were upheld, they could determine the amount of the reimbursement to which the grievor would be entitled. They agreed that I will retain jurisdiction for a limited time on the off-chance that they could not arrive at a figure.

VII. Analysis and decision

[22] The issue before me is essentially one of interpretation. Therefore, it is helpful to keep some principles in mind. An adjudicator cannot modify terms or conditions that are clear. As stated at paragraph 45 of *Ewaniuk*, the words used by the parties, or in any particular clause or provision, must be construed in their ordinary and plain meanings "unless such an interpretation is likely to result in absurdity or would be

inconsistent with the entire collective agreement". The fact that a particular provision may seem unfair is not a reason to ignore it if the provision is otherwise clear. The resolution of any such unfairness must be left to collective bargaining (see *Chafe*, at paras. 50 and 51; and *Delios*, at para. 36). Finally, paragraph 28 of *Wamboldt* states as follows:

> *28 … parties to a collective agreement are generally considered to have attempted to arrive at an agreement that is easy to apply in daily practice. Hence, an interpretation that produces a clear result is generally to be preferred to one that produces a messy or uncertain result …".*

[23] I turn now to the grievance before me. The union and the employer agreed that **if** section 4.2.8 of the *Travel Directive* applied, the employee was entitled to make a free five-minute call using a ship's satellite system, provided certain preconditions were met. But the union and the employer disagreed as to whether section 4.2.8 applied. The employer said that it does not apply because clause 44.03 is another authority that supersedes it; the union said the contrary.

[24] And here we come to the central question, which is that the ambiguity in issues arises not because the wording of clause 44.03 or section 4.2.8 is unclear. In fact, both provisions are quite clear. What is unclear — what is ambiguous — is which provision the parties intended should have precedence. The parties will have no difficulty in interpreting and applying either provision once that intention is ascertained.

[25] Several decisions that involved the *Travel Directive* were put before me. I did not find *Umar-Khitab* helpful; it dealt with the *Travel Directive* but not section 4.2.8. It dealt instead with the interpretation of the phrase "sole caregiver" in the context of a reimbursement claim for dependent childcare expenses.

[26] A similar observation applies to *Baird*, *Chapman*, and *Skoulas*. In *Baird*, the question was whether the grievors were on "travel status" within the meaning of the *Travel Directive*. If so, they were entitled to be reimbursed certain expenses. The issue then was simply one of the interpretation of the *Travel Directive*, not an apparent conflict between it and another provision in the collective agreement. As stated in paragraph 43 in *Chapman*, the issue was whether the employee was "required by the employer to travel to a point away from the employee's normal place of work". In *Skoulas*, the issue was whether the grievor fell within the provisions of a prior or a new

agreement that incorporated *Travel Directive* provisions that the grievor argued should apply. The issue had more to do with which collective agreement should apply, rather than a conflict between them.

[27] Of all the decisions referred to me by both parties, the only one directly on point was *Clerveaux*.

[28] *Clerveaux* concerned grievances filed by two correctional officers under the collective agreement between the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN), and the Treasury Board for the Correctional Services group that expired on May 31, 2002. Those employees grieved that the employer failed to grant them a suitable rest period of at least 16 hours after they had worked more than 17 hours. The grievance was based on what was then section 4.1 of the *Travel Directive*, which, as in the case before me, was part of the collective agreement. The employer denied the grievance on the grounds that pursuant to its terms, the *Travel Directive* did not apply "to persons whose travel is governed by other authorities". It argued that Appendix "D" of the collective agreement contained detailed terms and conditions about the correctional officer entitlements when they escort inmates and was, accordingly, an "other authority".

[29] In *Clerveaux*, the adjudicator reviewed the *Travel Directive* and the collective agreement and concluded that the employer's position was correct as follows:

> *33 This restriction [in the Application section of the Travel Directive], which forms an integral part of the Collective Agreement, must be interpreted within the general framework of the Collective Agreement. The " other authorities " mentioned fall of necessity under the Collective Agreement; the Collective Agreement can apply only to its signatories. In this context, " other authorities" can refer only to other parts of the Collective Agreement, i.e., the Agreement itself, the appendices and the addendum contained therein.*

[30] With respect, I was not persuaded that the term "other authorities" in the version of the *Travel Directive* before me can be interpreted in this way. Looking at the term within the context of both the *Travel Directive* and the collective agreement, I am satisfied that the parties understood and intended the term to refer to an authority that was an actor, statute, regulation, or other agreement **outside of and independent of** the collective agreement.

[31] I arrived at this interpretation of "other authorities" for the reasons that follow.

[32] First, the *Travel Directive* expressly differentiates between the terms "collective agreement" and "authority". For example, section 2.1.1 of Part II (Insurance) provides as follows:

> *2.1.1 In the event that an employee becomes ill, is injured or dies while travelling on government business, the employee or, where applicable, the employee's dependants may be provided with protection,* ***subject to the terms and conditions of the following****:*
>
> *(a)* ***the collective agreement or other authority*** *governing terms and conditions of employment, i.e., injury-on-duty leave and severance pay....*
>
> [Emphasis added]

[33] Section 3.1.9 of Part III (Travel Modules) states as follows:

> *3.1.9* ***Unless otherwise covered by*** *terms and conditions of employment or* ***collective agreements****, meal expenses incurred within the headquarters area shall not normally be reimbursed.*
>
> [Emphasis added]

[34] Part IV (Special Travel Circumstances) states in part the following:

> *...*
>
> *4.2.4 Travel status applies in the circumstances described above when the employee is on sick leave. It does not apply when the employee is on leave of absence. During a period of leave of absence, however, the employee shall be entitled to any appropriate travel provisions* ***contained in the employee's collective agreement****, where such provisions are applicable under the circumstances.*
>
> *4.2.5 Entitlement to accommodation expenses and meal and incidental expense allowances during each period of required absence from the vessel shall be governed by this directive as applicable. Notwithstanding the foregoing, there shall be no entitlements in respect of meals and accommodation while the employee is ashore* ***if appropriate entitlements in such circumstances are provided for in a collective agreement applicable to the employee****.*

> *4.2.6* ***Except as otherwise provided for in a collective agreement****, for purposes of weekend travel home, an employee shall be deemed not to be in travel status for the period during which the normal duties of that employee are performed aboard a self-contained vessel.*
>
> …
>
> [Emphasis added]

[35] Finally, Part V (Emergencies, Illnesses, Injuries and Death while in Travel Status), states as follows:

> *5.1.1 If an employee dies while in travel status, the employer shall authorize the payment of necessary expenses that are additional to those which might have been incurred had the death occurred in the headquarters area. Reimbursement of costs incurred shall be reduced by any amount payable under* ***some other authority****.*
>
> …
>
> *5.2.2 An employee shall be reimbursed the necessary expenses incurred as a result of illness or accident occurring while in travel status, to the extent that the employer is satisfied the expenses were additional to those which might have been incurred had the employee not been absent from home, and which were not otherwise payable to the employee under an insurance policy, the* Government Employees Compensation Act*,* ***or other authority****.*
>
> *5.2.3 An employee who becomes ill or is injured while outside Canada shall, where practical, be provided with a justifiable, accountable advance when incurring sizeable medical expenses. Such advances would subsequently be repaid to the employer under the employee's private insurance plans, the* Government Employees Compensation Act*,* ***or other authority****.*
>
> …
>
> [Emphasis added]

[36] Had the parties understood the term "other authorities" to mean, or at least include, the term "collective agreement", they would not have differentiated between the two. However, they did, which indicates that they understood that there was a difference.

[37] Second, there is the question of the meaning of the words "authorities" or "authority". The word "authorities" derives from "authority", which is defined in the *Merriam-Webster Online* dictionary as follows:

> *Definition of* authority*:*
>
> ***1a:*** *power to influence or command thought, opinion, or behavior*
>
> *- the president's authority*
>
> ***b:*** *freedom granted by one in authority: right*
>
> *- Who gave you the authority to do as you wish?*
>
> ***2a:*** *persons in command*
>
> *specifically: government*
>
> *- the local authorities of each state*
>
> ***b:*** *a governmental agency or corporation to administer a revenue-producing public enterprise*
>
> *- the transit authority*
>
> *- the city's housing authority*

[38] The *Cambridge Dictionary Online* defines "authorities" as follows:

> *a group of people with official responsibility for a particular area of activity:*
>
> *- the health authority*
>
> *- the local housing authority*
>
> ***the group of people with official legal power to make decisions or make people obey the laws in a particular area, such as the police or a local government department:***
>
> *- I'm going to report these potholes to the authorities.*

[39] These definitions carry with them the sense of something that has the power (authority) to require a person to do or refrain from doing something. Compliance is compelled; it is not a function of agreement. That situation can be contrasted with one in which parties have entered into a collective agreement. There is no outside authority compelling the parties to do anything. Rather, they have outlined for themselves their respective rights and obligations. Parties to a collective agreement do not normally speak of its terms and conditions as being "other authorities". Instead, when they agree that one term of their agreement might take precedence over another, they usually say something along the lines of "unless otherwise provided herein", or "subject to article x of this agreement". It is only when they recognize that what they agreed to do may be overridden by something or someone that is not a party to the agreement, that they speak of an "other authority". Such a formulation is often found, for example, in confidentiality agreements, in which the parties agree to keep terms and conditions private and confidential but recognize that their agreement may be

subject to the dictates or authority of something or someone who is not a party to the agreement (e.g., a court or a tax authority).

[40] I note that *Clerveaux* did not consider either the first or the second of these points. There is no reference to the differential use of the terms "collective agreement" or "authority" in the *Travel Directive*. There is no reference to the meaning of the word "authorities". It may be that the *Travel Directive* was worded differently in 2003, and if it was it may explain the result in *Clerveaux*. However, based on the wording and the facts before me, I am satisfied that *Clerveaux* does not apply.

[41] Third, while the *Travel Directive* originates from outside the collective agreement, it is not a product of strangers to that agreement. The NJC comprises representatives of 18 public service bargaining agents, including the union, the Treasury Board (the employer), and several other employers. Hence, as a body, the NJC can be viewed as having intimate and direct knowledge and understanding of collective bargaining and collective agreements. NJC members, including the union and the employer, know that public-sector collective agreements include provisions that deal with issues related to expenses incurred by employees while conducting the employer's business, such as travel time, meals, etc. The NJC must also be aware that conflicts, or at least overlaps, might arise between the *Travel Directive* and specific provisions in individual collective agreements. Seized with that knowledge, it strikes me as unlikely that the NJC would agree to incorporate provisions into collective agreements that were worded in such a way as to render them ineffective once they were deemed part of those collective agreements.

[42] For example, section 4.2 of the *Travel Directive*, of which 4.2.8 is a part, is entitled "Ships Officers/Ships Crews". Clearly the NJC, which again includes the union and the employer, intended that the provisions under section 4.2 apply to the very employees (ships officers) covered by the collective agreement. It would verge on the absurd for the NJC to draft a directive, which, while deemed part of the agreement, was at the same time to be negated by that agreement. If that was the intent, why bother in the first place?

[43] Taking all these points into account, I am satisfied that the term "other authorities" in section 4.2.8 of the *Travel Directive* cannot be interpreted as referring to the collective agreement. Rather, it refers to other agreements, statutes, regulations

or bodies that exist outside the collective agreement but which had the authority to override its provisions. Therefore, the grievor was entitled to the benefit afforded by that directive, and the grievance must be allowed.

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

(The Order appears on the next page)

VIII. Order

[45] The grievance in file number 566-02-41456 is allowed. The employer is ordered to reimburse the grievor his payments for calls that fell within the scope of section 4.2.8 of the *Travel Directive* during the 2018 summer Arctic voyage of CCGS Louis S. St-Laurent.

[46] I will remain seized of the matter of the reimbursement amount to be paid for 30 days following the release of this order in the event that the parties cannot agree upon the amount.

May 26, 2021.

Augustus Richardson,
a panel of the Federal Public Sector
Labour Relations and Employment Board