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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

DENIS DAIGLE

Grievor

and

TREASURY BOARD
(Canada Border Services Agency)

Employer

Indexed as
Daigle v. Treasury Board (Canada Border Services Agency)

In the matter of the interpretation and application of a collective agreement

Before: Paul Fauteux, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Wesley Duclervil, Public Service Alliance of Canada

For the Employer: Philippe Giguère, counsel

Heard at Ottawa, Ontario,
August 7, 2019.
(FPSLREB Translation)

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Introduction

[1] This case involves determining whether Denis Daigle ("the grievor") was entitled to be granted leave with pay for other reasons under clause 52.01(a) of his collective agreement for his absence on April 20, 2013. He did not report for work that day due to a flight that was cancelled on his return from vacation.

II. Background

[2] The facts are not in dispute and can be summarized as follows.

[3] The grievor is employed as a customs officer by the Canada Border Services Agency at the border crossing of St-Armand/Philipsburg. From April 14 to 19, 2013, he received paid vacation leave, which he used to travel to St. Louis, Missouri, in the United States. His return trip included a stopover of 5 hours and 10 minutes in Charlotte, North Carolina, from where his final flight was scheduled to leave at 20:20 and to land in Montreal at 22:30 on April 19, 2013. He was scheduled to return to work at 08:00 on April 20, 2013.

[4] A snowstorm in Charlotte caused his last flight to be cancelled. The grievor was unable to secure a seat on an alternative flight until April 20. After a stopover in Washington, D.C., he landed finally in Montreal at 14:49 that day.

[5] As he did not report for work as scheduled on April 20, 2013, on April 21, 2013, the grievor emailed his supervisor, David Patenaude, explaining his absence. Alleging reasons "[translation] beyond his control", he requested an "[translation] other than vacation" leave day, in accordance with clause 52.01 of his collective agreement, which read as follows:

> ***Article 52: Leave With or Without Pay for Other Reasons***
>
> ***52.01*** *At its discretion, the Employer may grant:*
>
> *a. leave with pay when circumstances not directly attributable to the employee prevent his or her reporting for duty; such leave shall not be unreasonably withheld;*
> *b. leave with or without pay for purposes other than those indicated in this Agreement.*

[6] Mr. Patenaude replied by email on May 15, 2013, stating that the requested leave had not been granted "[translation] … because the employer deemed that flight

cancellations are frequent and that an earlier return flight should have been planned". After the refusal, the employer granted the grievor an additional paid vacation leave day.

[7] The grievor filed a grievance, to which the employer responded as follows at the final level:

> [Translation]
>
> …
>
> *I note that you were on rest days and/or on vacation until April 19, 2013. You planned a return flight from St. Louis (United States) with a stopover in Charlotte, arriving in Montreal on April 19, 2013, at 20:20. You then intended to drive for more than an hour from Montreal to St. Armand and to report to work for your shift at 08:30 on April 20, 2013. You planned your return flight to arrive at the last minute, and unfortunately, the flight was cancelled.*
>
> *Clause 52.01 of your collective agreement provides for leave with pay when circumstances not directly attributable to the employee prevent the employee from reporting to work.*
>
> *I conclude that your absence from work was related to your trip planning and that you did not demonstrate that the circumstances that prevented you from reporting to work on April 20, 2013, as scheduled, were beyond your control.*

III. The parties' arguments

[8] The matter was heard on August 7, 2019. At the end of the hearing, the Board asked the parties for electronic versions of their arguments, to facilitate the preparation of its decision. In doing so, the Board specified that it was not an opportunity for the parties to supplement their oral arguments but simply to provide a written version of what they said at the hearing.

[9] Philippe Giguère, the employer's counsel, replied that he would respond to the request after ensuring that the written notes he had used for the purpose did not contain any typos. He sent the written version of his arguments to the Board on October 7, 2019.

[10] Wesley Duclervil, the grievor's representative, replied that he had not prepared written notes for his arguments, that he had "[translation] improvised", and that he

was committed to providing the Board with a text that faithfully reflected their contents.

[11] Unfortunately, the commitment was not honoured, and it was the subject of extensive correspondence between the parties and the Board.

[12] Thus, the Board made the following order on December 20, 2019:

> [Translation]
>
> *Following the December 19, 2019, conference call, at which the parties had the opportunity to make their submissions on the admissibility of the arguments and the authorities attached to Cynthia Bélanger's December 9, 2019, email, the Board has determined that the documents are inadmissible, for these reasons:*
>
> *1. On December 4, 2019, the Board asked the bargaining agent to provide by December 9, 2019, its reply to the employer's response to its request for an extension of time, not a new argument and new authorities.*
>
> *2. The new argument and new authorities do not comply with the Board's request that the parties agreed to at the close of the August 7, 2019, hearing.*
>
> *3. The request consisted of providing a written version of the parties' oral arguments made that day, to help the Board prepare its decision.*
>
> *4. Mr. Giguère did so for the employer on October 7, 2019.*
>
> *5. Wesley Duclervil, the grievor's representative at the hearing, had almost a month-and-a-half between the end of the hearing and the start of his vacation, which was sufficient time to honour the commitment he made at the hearing to provide the Board with a written version of the arguments he made that day, but he did not honour it.*
>
> *6. The bargaining agent could not have given Ms. Saint-Amand the mandate to honour Mr. Duclervil's commitment, since she did not attend the August 7, 2019, hearing.*
>
> *7. The mandate that the bargaining agent gave to Ms. Saint-Amand, which was to provide written arguments that would inevitably be different from Mr. Duclervil's oral arguments, did not comply with the Board's request or with the parties' commitment in response to that request.*

> *8. In the interests of procedural fairness, admitting Ms. Saint-Amand's new arguments and new authorities would require allowing Mr. Giguère to respond to them.*
>
> *9. That would lead to reopening the case after the hearing, which is not justified by any exceptional circumstances in this case.*
>
> *10. Not admitting the written version of Mr. Giguère's arguments that he submitted on October 7, 2019, would deprive the Board of the assistance that the two parties committed to providing it on August 7, 2019.*
>
> *11. The Board's decision mentioned earlier will not advantage the employer or disadvantage the grievor because the Board's notes taken at the hearing will allow it to both verify the consistency of the written version of the arguments that Mr. Giguère provided on October 7, 2019, with what he said on August 7, 2019, and consider all the arguments that Mr. Duclervil presented that day in his pleading.*

IV. The relevant legal issues

[13] The employer considered that the Board must respond to the following issues:

> [Translation]
>
> *a) Who has the burden of proof?*
>
> *b) Did the employer violate clause 52.01(a) of the collective agreement?*
>
> *c) Specifically, the Board must respond to the question through this two-part analysis:*
>
> *i) Did the grievor establish that circumstances not directly attributable to him prevented him from reporting for work?*
>
> *ii) If so, was his leave request denied unreasonably?*

[14] Even though the grievor did not formulate the questions to which the Board must respond with the same precision, Mr. Duclervil's arguments at the hearing indicated no disagreement with the employer in that respect.

[15] The Board agrees with the questions that the parties would like it to answer.

[16] For the following reasons, I find that the employer did not violate clause 52.01(a) of the collective agreement.

V. The burden of proof

A. The employer's position

[17] The employer stated that from the Board's case law, it follows that the grievor had the burden of demonstrating that it violated clause 52.01(a) of the collective agreement. It added that to win his case, the grievor had to establish first that circumstances not directly attributable to him prevented him from reporting for work and second that his leave request was denied unreasonably.

[18] In support of that statement, the employer cited the following Board decisions: *Porlier v. Treasury Board (Department of Natural Resources)*, 2018 FPSLREB 77 at paras. 29 and 30; *Vaughan v. Canadian Food Inspection Agency*, 2010 PSLRB 74 at paras. 70 and 71; and *Close v. Treasury Board (Department of Citizenship and Immigration)*, 2016 PSLREB 18 at paras. 75 and 97.

B. The grievor's position

[19] Relying on paragraph 38 of the Board's decision in *Martin v. Treasury Board (Department of Veterans Affairs)*, 2014 PSLRB 37, the grievor claimed, "[translation] … once an employee has established that he or she could not have made it to work and that the circumstances were beyond his or her control, the onus shifts to the employer to establish why it did not grant the paid leave …".

C. My decision

[20] The employer correctly cited the Board decisions noted at paragraph 18.

[21] In contrast, the grievor improperly relied on paragraph 38 of *Martin*, which is part of part III, "Summary of the arguments", section A, "For the grievor".

[22] At paragraph 53 of *Martin*, which is the first paragraph in part IV, "Reasons", Adjudicator Jaworski stated the following at the outset:

> *[53] An adjudication hearing with respect to an allegation of a breach of a collective agreement under paragraph 209(1)*(a) *of the* Public Service Labour Relations Act *is a hearing* de novo, *and the burden of proof is on the grievor.*

[23] I endorse this statement and conclude from it that the employer correctly described the burden-of-proof rules in this case.

VI. Did the grievor establish that circumstances not directly attributable to him prevented him from reporting for work?

A. The grievor's position

[24] According to the grievor, the cancellation of his Charlotte-to-Montreal flight on April 19, 2013, was a circumstance not directly attributable to him, and it prevented him from reporting for work; therefore, it is an example of the circumstances set out in clause 52.01(a) of the collective agreement.

[25] To support his position, the grievor adduced into evidence statistics on the frequency of flight cancellations at Douglas International Airport in Charlotte from January to December 2013, which indicated that only 1.32% of departing flights were cancelled over that period, both for all carriers and for US Airways, which operated the cancelled flight, and that the proportion was only 1.15% for just the month of April 2013. The statistics also showed that the rates of on-time flights for the same periods and carriers were 80.65% and 81.77%, respectively.

[26] The employer objected to the evidence on the grounds that it had not been introduced during the grievor's examination-in-chief but on cross-examination. The grievor's representative insisted on its relevance. I said that I would admit it, taking the employer's objection under reserve. I did not believe that it would serve the interests of justice were the evidence deemed inadmissible for the employer's cited reason, which is why I dismissed the objection.

[27] Therefore, relying on that evidence, the grievor argued that aviation generally runs on time, that flights are rarely delayed, and that flight cancellations are rare. He testified that he took two trips per year on average and that on his returns from them, he never experienced a delay before the April 19, 2013, incident or since that prevented him from returning to work on the scheduled day. He also testified that the cancellation had been announced as being due to the weather and that he then took the earliest available flight.

[28] The grievor acknowledged that his flight could have been delayed or cancelled and added, "[translation] I don't plan for the worst." He replied to the employer's counsel, who pointed out to him that he could have booked an earlier flight, with, "[translation] I had five days of leave, and I wanted to make the most of them." When

counsel asked him whether he agreed that in the game of roulette, "[translation] if you lose your bet, you're responsible for your loss", he replied, "[translation] Yes, if you're gambling." Then, returning to the statistics mentioned earlier, he added, "[translation] I would not bet if I had a 1.32% chance of winning."

[29] The grievor also testified that he chose a flight with a five-and-a-half-hour layover in Charlotte, which was "[translation] a good cushion for delays", and that he generally tried to avoid layovers that are too short "[translation] because they increase the chances of missing a connection".

[30] In his arguments, Mr. Duclervil insisted that all flights out of Charlotte were cancelled on the evening of April 19, 2013, and that the grievor exercised due diligence in getting to Montreal as quickly as possible the following day.

[31] In his view, the employer's argument about planning, which "[translation] does not hold water", should be dismissed because there was less than a 2% chance that the flight would be cancelled. Therefore, there was "[translation] no question of risk" because "[translation] 98% of the time, flights are not cancelled".

[32] In addition, the grievor had reported for work on time despite earlier delayed flights when he returned from vacation. However, cancellations were exceptional.

[33] Since travellers are powerless when their flights are delayed or cancelled, this circumstance thus is not "directly attributable" to him within the meaning of clause 52.01(a) of the collective agreement because the grievor and the flight's cancellation were not connected directly.

[34] The employer was unable to demonstrate that the circumstances that prevented the grievor from reporting for work were directly attributable to him because he and the cancellation had no causal link.

[35] Mr. Duclervil also denounced the employer's "[translation] amalgamation", in his view, of the two paragraphs in clause 2.2.2 of Appendix A of the *Directive on Leave and Special Working Arrangements*, entitled, "Time off due to adverse climatic or environmental conditions", which read as follows:

> *Persons with the delegated authority exercise their discretionary power to grant time off with pay only if satisfied that the adverse*

> *climatic or environmental conditions affect a person's capability to remain on or report for duty.*
>
> *Adverse environmental conditions at the workplace, such as a lack of heat, and emergency conditions affecting the community, such as a serious flood or snowstorm, are examples of conditions that could warrant management to exercise discretion with respect to granting time off with pay.*

[36] He distinguished the paragraphs and stated that the first is about "a person's capability to remain on or report for duty", while the second is about "[a]dverse environmental conditions at the workplace".

[37] Finally, through his representative, the grievor cited the following decisions in support of his position: *Société canadienne des postes v. Syndicat des postiers du Canada (grief de Larouche, STTP 390-95-00751, Arb. Morin)*, [1999] D.A.T.C. nº 106 ("*Larouche*"); *Martin*; *Coppin v. Canada Revenue Agency*, 2009 PSLRB 81; *Laroche v. Treasury Board (Department of Agriculture and Agri-Food)*, 2006 PSLRB 21; and *Canada (Attorney General) v. Degaris*, [1994] 1 FC 374, 1993 CanLII 3000 (FC).

B. The employer's position

[38] The employer maintained the position it stated in its decision at the final level of the grievance process, cited at paragraph 7 of this decision, which was that the grievor did not demonstrate that the circumstances that prevented him from reporting for work on April 20, 2013, as scheduled, were beyond his control, because they were related to his travel planning.

[39] The employer called Mr. Patenaude to testify. He was the grievor's superintendent at the time, and he decided to deny the grievor's requested leave. He stated that the decision was made after the chief of operations and some colleagues were consulted "[translation] because the employee should have left a margin for error because flight delays are frequent".

[40] In cross-examination, Mr. Patenaude stated the following: "[translation] Each request [under clause 52 of the collective agreement] must be analyzed individually, based on the particular and exceptional circumstances. It can be very, very broad, and the request received must be analyzed."

[41] When cross-examined on the *Directive on Leave and Special Working Arrangements*, Mr. Patenaude said that it came from the Treasury Board and that therefore, it applied beyond the Canada Border Services Agency. At the same time, he acknowledged that clause 2.2.2 of the document, entitled "Time off due to adverse climatic or environmental conditions", was analyzed as part of the decision made in response to the grievor's request and that the provision applies in the workplace environment and where employees live but "[translation] not to situations elsewhere in the world".

[42] Mr. Patenaude admitted that the grievor was not directly responsible for the cancellation of his flight. When asked what article he relied on to deny the requested leave, he replied, "[translation] Travel planning is the employee's responsibility." When he was invited to re-read the email quoted at paragraph 6 and to explain his basis for writing that "flight cancellations are frequent", he said, "[translation] My personal experience, and what I hear regularly from the people I know who travel."

[43] The employer also called Michel Martineau, Chief of Operations, Montérégie Est, to testify. When he was invited to explain the meaning of the words, "At its discretion, the Employer may grant", in clause 52.01 of the collective agreement, he said that leave is not granted automatically and that therefore, managers must address the situation and decide whether the requested leave should be granted.

[44] When in cross-examination, he was invited to comment on the last words of clause 52.01(a) of the collective agreement ("… such leave shall not be unreasonably withheld …"), Mr. Martineau stated, "[translation] We perceived/considered that it was not up to the employer to assume the risk of a delayed flight and that the risk is multiplied if there is no Plan B because there is insufficient time to allow for cancellations." He also said the following: "[translation] I understand that Mr. Daigle did not cause the delay, but he was responsible for planning his trip."

[45] The employer submitted the following case law in support of its position: *Justason v. Treasury Board (Transport Canada)*, [1982] C.P.S.S.R.B. No. 132 (QL) at 3 and 4; *Ontario Agency for Health Protection and Promotion (Public Health Ontario) v. Ontario Public Service Employees Union, Local 716*, 2014 CanLII 72996 (ON LA) at paras. 53 to 55 ("*Ontario Agency*"); *Porlier*, at paras. 29 and 30; *Dollar v. Treasury Board (Canada Employment and Immigration Commission)*, [1979] C.P.S.S.R.B. No. 18 (QL) at

para. 16; *Close*, at paras. 75 and 97; *Shpur v. Treasury Board (Employment and Immigration Canada)*, [1989] C.P.S.S.R.B. No. 72 (QL) at 3; and *Vaughan*, at paras. 70 and 71.

[46] Anticipating the references he would make to those decisions, Mr. Giguère said as follows in his opening statement: "[translation] The Board has always ruled that employees must assume the risks with respect to flight delays or cancellations."

C. Case law review

[47] It is *a priori* reasonable to doubt the accuracy of that last statement because the grievor cited the Board's decisions in *Martin*, *Coppin*, and *Laroche* to support his contentions. Therefore, I will begin with those decisions in my review of the case law on which each party relied.

[48] *Martin* concerned the aftermath of a volcanic eruption in Iceland, which led to the closure of much of Europe's airspace and kept aircraft on the ground from April 15 to 21, 2010. The grievor was on vacation in England. Since her stay was extended beyond her scheduled return-to-work date, she requested 5 days of paid leave under clause 52.01(a) of her collective agreement. The employer granted her only 2.5 days. She filed a grievance for the denied 2.5 days, which the Board allowed.

[49] At paragraph 59 of *Martin*, the Board explained the following:

> *[59] I have no doubt that the grievor was unable to get out of London on her scheduled return flight, as it was on April 20, 2010, and flights were still cancelled. Therefore, she could not report for work on April 21, 2010, as she was still in London.* ***The employer has clearly accepted that the grievor's situation fell within the confines of clause 52.01(a) of the collective agreement and within the definition of "… circumstances not directly attributable to the employee …," as it initially granted her two days of leave due to her inability to get to work,*** *obviously* ***caused by the*** *volcano closing European airspace and causing* ***flights to be cancelled****. The only question left to be answered by me is whether the decision to not grant the full five days of leave, by the employer, was reasonable.*
>
> [Emphasis added]

[50] It is appropriate to also cite as follows paragraph 72 of that decision, due to its relevance to this case:

> *[72] Finally, the employer argued those two and one-half days granted were reasonable because somehow the grievor was partially responsible because she took her vacation overseas, and there is an inherent risk when one travels.* ***While I agree that there is a certain risk in travelling generally and in travelling by air, I reject this argument as there is again no factual basis to support the apportionment of any risk****. Clause 52.01(a) of the collective agreement is clearly meant to deal with situations when an employee is kept from getting to work* ***by obstacles beyond his or her control****. As I stated earlier, these are fact-driven cases, and of the cases submitted, seven dealt with snowstorms.* ***The reasonableness or unreasonableness of the decision to grant leave is generally driven by whether at some juncture the circumstance that kept the employee from getting to work changed****. In the snowstorm cases, this question usually turns on when the roads became passable or when the bus routes were restored and whether the circumstances remained such that the employee could not get to work.* ***In this case, the grievor attended the first day of work after she got on the first available flight back to Halifax.***
>
> [Emphasis added]

[51] In light of those passages, I point out the following from *Martin*:

> a) the employer "clearly accepted" that the cancellation of the grievor's flight was a circumstance not directly attributable to her;
>
> b) the Board agreed that there is a certain risk in travelling generally and in travelling by air; but
>
> c) it rejected the employer's argument based on that risk "… as there is again no factual basis to support the apportionment of any risk."

[52] In this case, as in *Martin*, the employer justified its decision with an argument based on the risks of air travel.

[53] In this case, contrary to *Martin*, the employer sought to have the grievor bear those risks entirely, based on its proposition that he had to bear all risks of travelling by air and that in this case, contrary to what it "clearly accepted" in *Martin*, it denied that the cancellation of his flight was a circumstance not directly attributable to him.

[54] In this case, through the voices of Mr. Patenaude and Mr. Martineau (see paragraphs 42 and 44), the employer admitted that the grievor had no control over the cancellation of his flight, as it accepted in *Martin*.

[55] Having noted in *Martin* that the employer responded in the positive to the first question that the parties wanted the Board to answer in this case, which was whether the grievor had established that circumstances not directly attributable to the grievor had prevented reporting to work, the Board then addressed the second question, which was whether the grievor's leave request had been denied unreasonably.

[56] In that respect, in *Martin*, the Board determined the following: "The reasonableness or unreasonableness of the decision to grant leave is generally driven by whether at some juncture the circumstance that kept the employee from getting to work changed." It then made the following observation: "In this case, the grievor attended the first day of work after she got on the first available flight back to Halifax." Clearly, in this case, the circumstances are similar in that the grievor reported on the first day of work after taking the first available flight to Montreal.

[57] In his arguments, Mr. Giguère stated that volcanic eruptions do not happen often and that it was an exceptional circumstance. However, nothing in *Martin* was based on the eruption's exceptional nature. The Board simply noted that the employer had accepted that the grievor had no control over the cancellation of her flight, independent of its cause. In my view, whether the cancellation was caused by a volcanic eruption, a snowstorm, a mechanical breakdown, or anything else, it would change nothing; the important thing, for the purposes of applying clause 52.01(a) of the collective agreement, is whether circumstances not directly attributable to the grievor prevented the grievor from reporting for work. In my view, all those circumstances could be part of it, based on a case-by-case assessment, because, as the Board ruled in *Martin,* "these are fact-driven cases".

[58] I will return to *Martin* at paragraphs 109 to 111. For the moment, I simply add that contrary to what the employer claimed in its counsel's opening argument, at the very least, this case shows that the Board has not "always" ruled that employees must assume the risks of flight delays or cancellations.

[59] In *Coppin*, the grievors challenged the employer's rejection of their requests for leave with pay because they stated that they had been unable to report for work because of bad weather. The Board allowed the grievances, ruling that the employer's decision had to be based on the merits of each request and that the two grievors had made reasonable efforts to get to work.

[60] The Board noted the following at paragraph 33 of *Coppin*:

> *[33]* ***In exercising its discretion, the employer must examine each request and its series of facts individually, and the employer's decision must be based on the merits of each request****. There is nothing wrong with the employer developing a policy to manage leave requests after a winter storm, but that policy must by applied with some flexibility in assessing the facts of each request, considering that* ***the key factor is whether the employee was prevented from reporting to work for reasons not directly attributable to him or her.***
>
> [Emphasis added]

[61] After analyzing the evidence, at paragraphs 36 and 42, the Board found that each grievor had made reasonable efforts to report for work on December 23, 2004, and that their efforts had been in vain due to particularly adverse weather conditions. The employer acted unreasonably by refusing to grant each grievor the requested leave with pay for an absence under the relevant collective agreement clause.

[62] Mr. Giguère argued that the facts in that case were "[translation] completely different" from those in this case. The objection is not *a priori* determinative, since clause 52.01(a) of the collective agreement was written in general terms, precisely to allow it to be applied to facts completely different from each other. As the Board ruled in *Coppin*, "… the key factor is whether the employee was prevented from reporting to work for reasons not directly attributable to him or her." That is also why "… the employer must examine each request and its series of facts individually …", which will necessarily be different from one case to the next, "… and the employer's decision must be based on the merits of each request."

[63] Even were this case about the effects of a snowstorm on road and not air traffic, I also note that in *Coppin*, the Board did not make the employee bear the risk of impacts on transportation that is inherent in North American winters, as the employer asked of the grievor in this case.

[64] In *Laroche*, the grievor learned from a newspaper that a cannabis seizure had been made on one of his properties. On the same day, he contacted his supervisor and stated that he was not feeling well and would not come into work. On his return to work, Mr. Laroche submitted a leave request under clause 52.01(a) of the collective agreement. It was denied, as the employer believed that sick leave was more

appropriate under the circumstances. The Board allowed the grievance, for the following reasons:

> *[7] I therefore find that the situation involved circumstances that were not directly attributable to the employee and that prevented him from reporting for duty. I believe that this article of the collective agreement is specifically designed for the type of situation in which Mr. Laroche found himself that day. Mr. Laroche was not simply ill or indisposed. Moreover, the element of psychological distress is not such as to prevent the leave from qualifying under subclause 52.02(a) of the collective agreement. The circumstances must be considered in their entirety.*

[65] As Mr. Giguère observed, "[translation] The parties agreed to deal with the grievance based on an accelerated adjudication method. This final and enforceable decision cannot constitute a precedent or be referred to the Federal Court for judicial review."

[66] Nevertheless, I note that even if that decision involved neither a flight cancellation nor a winter hazard, it was consistent with the one the Board would make three years later in *Coppin*, which was that "… the employer must examine each request and its series of facts individually, and the employer's decision must be based on the merits of each request."

[67] As mentioned at paragraph 37, the grievor also cited two decisions not of the Board, which I will now address.

[68] The *Larouche* decision involved the application of a collective agreement clause similar to clause 52.01(a) of the grievor's agreement. Arbitrator Morin concluded that the fact that an employee forgot to turn off his car's headlights when he arrived at his destination on a fishing trip, which resulted in a dead battery when it was time to return and prevented him from reporting for work at the scheduled time, constituted a set of "[translation] circumstances not directly attributable to him". Consequently, the arbitrator allowed the grievances.

[69] That decision appears in the grievor' book of authorities, but Mr. Duclervil did not refer to it in his arguments, and Mr. Giguère also did not mention it.

[70] With respect to *Degaris*, which also appears in the grievor's book of authorities, at the hearing, Mr. Duclervil stated that including it was an error and that it should be ignored.

[71] I now turn to the review of the case law that the employer cited, which I will proceed with in the order in which its counsel chose to refer to it in his arguments.

[72] Mr. Giguère began by quoting the principles stated at paragraph 30 of *Porlier*, as follows:

> *[30] The grievor has the burden of showing that the employer interpreted the collective agreement unreasonably … The Board cannot amend the collective agreement by its decision … When interpreting a collective agreement provision, not only the usual meaning of the words but also the collective agreement as a whole must be considered "… as the agreement as a whole forms the context in which the words used must be interpreted"….*

[73] As did Board Member Perrault in *Porlier*, I agree with those principles.

[74] Mr. Giguère then quoted paragraphs 70 and 71 of *Vaughan* and dismissed the grievor's argument that the burden of proof should be reversed, assuming that he had established the *prima facie* existence of a collective agreement violation.

[75] At paragraph 23, I already said that I agree with the employer's position on the issue of the burden of proof. As the Board ruled as follows in *Vaughan*:

> *[71] … Injury-on-duty leave is a collective agreement provision* [and, I would add, the one on leave for other reasons] *like any other. In my view, there is no reason to relieve the grievor of his normal onus to prove, on a balance of probabilities, a violation of that provision.*

[76] On the merits of the dispute, the employer first relied on *Close*. That decision involved two grievances, one of which was based on facts similar to those in this case. The grievor was returning from vacation but had problems with her return flight and was unable to return in time to work her scheduled hours. She requested paid leave for other reasons. The employer refused to grant it, and she had to use annual leave to compensate for her absence.

[77] Mr. Giguère drew the Board's attention to paragraph 75 of *Close*, which provided a reminder of the rules related to the burden of proof, and to paragraph 97, in which

Board Member Rogers found as follows: "… Ms. Stevens has not met the onus of establishing that she was prevented from reporting to work by circumstances not directly attributable to her; therefore, I cannot allow the grievance."

[78] The reasons for that finding are stated as follows at paragraphs 92 to 96 of *Close*. I have quoted them because of their relevance to this case:

> *[92] Ms. Stevens argued that she was prevented from working on May 27, 2011 by circumstances that were not directly attributable to her. I do not agree.* ***She scheduled her return flights in such a way as to leave no margin of error.*** *As originally booked, she did not expect to return to Sydney until 3:00 a.m. on May 27, 2011, for her scheduled workday at 8:30 a.m. She was flying from Marseille through Frankfurt and Philadelphia to Halifax.* ***The fact that she had no control over the cancellation of her flight or that she took all possible steps to find another flight is irrelevant when considered in light of the fact that once her flight was cancelled, there was no possibility she would be able to report for duty on time because she left no room for such eventualities in her planning.***
>
> *[93] In* Barrett, *involving a grievance filed under a provision similar to clause 52.01(a), the adjudicator considered an* ***employee's failure to plan his return trip from a vacation appropriately, given the season and the potential for delays.*** *The adjudicator wrote as follows at page 10:*
>
> > … the failure by an employee to anticipate in advance the delays that might be occasioned by adverse weather conditions and allow himself sufficient lead time to permit his scheduled return to work is a factor that ought to be deemed to be within his control. **Failure to allow for such contingencies is in itself a reckless venture that ought not normally in the exercise of the employer's discretion to [*sic*] give rise to benefits** under Article 18.04 ….
>
> *[94] Similarly, in* Justason, ***an employee's failure to allow a margin of error for unforeseen circumstances when making travel plans was found to be the true reason that the employee failed to report for duty as required and was a circumstance directly attributable to him.***
>
> *[95] I agree with the principles enunciated in* Barrett *and* Justason. ***Ms. Stevens was responsible for her travel arrangements. She knew that she was booked on the last flight*** *out of Philadelphia to Halifax, on May 26, that she had to drive from Halifax to Sydney, and that she would arrive, if all went exactly according to plan, just five-and-a-half hours before the start of her scheduled workday.* ***A delay in any portion of her return itinerary could***

> ***have resulted in her missing the last flight and would have prevented her from returning to Sydney in time for her scheduled workday. She left no room to deal with any of the problems that accompany air travel, such as adverse weather or mechanical difficulties or even lost luggage. In my opinion, that kind of planning does not meet the requirement that an employee exercise reasonable foresight and take reasonable measures to ensure that he or she is able to report for duty. The employer should not have to pay for the risk and the lack of foresight that Ms. Stevens demonstrated.***
>
> *[96] I do not find* Martin *applicable to the circumstances of this case. That case concerned the steps that the grievor took after her flight was cancelled. It did not examine whether she had left herself a sufficient margin of error in her travel planning.*
>
> [Emphasis added]

[79] Therefore, the Board's decisions in *Close* as well as in *Barrett* and *Justason* were clearly in line with the one the employer asked it to make in this case.

[80] In *Close*, before examining Ms. Stevens's grievance (and that of Ms. Close, which involved different facts), the adjudicator began her reasons with a few general remarks, including the following at paragraph 76:

> *[76] Similar versions of the provision have been in the collective agreement for over 30 years, and therefore, a substantial number of decisions have considered its interpretation and application. For the most part, cases concerning article 52 or its earlier incarnations are fact driven and concern whether the circumstances that prevented the employee from reporting to work were directly attributable to him or her….*

[81] In this case, the employer also relied on an older Board decision, from 1979: *Dollar*. At paragraph 16 of that decision, Adjudicator Pyle noted that the provision related to other leave with pay in different collective agreements had already been the basis of many grievances referred to adjudication over the past seven years, and rather than reviewing each one in detail, he noted Adjudicator Beatty's observation in *Benson* (166-02-1557 to 1565), from which Mr. Giguère quoted lengthy excerpts in his arguments. I have reproduced them as follows, given their relevance to this case:

> …
>
> *The issue before me then is very simply whether or not the seven grievors came within the provisions of art. 23.05 and whether their*

> *applications for special leave were unreasonably withheld.* ***The principles on which their cases fall to be determined*** *has now been canvassed by at least four different adjudicators* ***and appears to be reasonably well settled****. The task that I am called upon to perform therefore is even further narrowed to embrace an* ***application of this settled jurisprudence pertaining to article 23.05 to the facts*** *testified at this hearing. Indeed* ***so consistent has been the interpretation given*** *to art. 23.05 by these adjudicators that in all but one of these previous adjudications, the adjudicator has held that* ***the employer did not unreasonably withhold special leave notwithstanding that the employees faced in some cases as severe storm conditions*** *as that faced by the grievors who have come before me.*
>
> ***In arriving at such uniform results, the adjudicators have been agreed that*** *… **a discretion still exists within the employer to grant or to deny such applications.** Although this discretion is … no longer absolute, nevertheless adjudicators have been firm in their analyses that a discretion remains,* ***which is not subject to review by adjudicators except to the extent of ensuring that it has not been exercised unreasonably.*** *Very simply, the provision relating to special leave has not been drafted, as for example the marriage leave provision in article 23.02 or the bereavement leave provision in article 23.03, in terms of an absolute entitlement. Rather,* ***and uniquely, the special leave provision remains in the language of the permissive.*** *The consequence must be … that* ***an adjudicator must not interfere with the employer's decision if it is reasonable, even and although the adjudicator might well have reached a different decision and even if the adjudicator or some other supervisor might have granted special leave in these circumstances*** *… To the extent that some other employer or indeed myself might well grant special leave under the circumstances prevailing on the days in question does not of itself demonstrate that Mr. Roussy's decision was unreasonable. To the contrary,* ***it may well be that both decisions were equally reasonable, in which event these grievances must fail****. In the second place, and more generally, if the meaning to be attributed to article 23.05 is, as I and others have described it, the single issue confronting the adjudicator is, as noted above, to test the* ***reasonableness*** *of the employer's decision on the facts of each individual case.*
>
> …
>
> [Emphasis added except for the last word, which is emphasized in the original]

[82] The employer also drew my attention to paragraph 20 of *Dollar*, at which Adjudicator Pyle, when faced with a divergence of opinion in the case law (and I see that it contradicts Adjudicator Beatty's observation that his task was limited to "an application of this settled jurisprudence"), stated as follows:

> *… I would accept as an initial premise that a discretion exists for the employer to grant or deny an application for leave with pay. This discretion is not absolute. The adjudicator shall ensure that it has not been exercised unreasonably. If the decision is reasonable the adjudicator must not interfere, even though he or some other supervisor might have reached a different decision and have granted the leave with pay in the circumstances.*

[83] In my view, the *Dollar* decision also contains several other passages relevant to the dispute that I must decide. In fact, at paragraph 25, Adjudicator Pyle concluded that even if he agreed that Ms. Dollar had made reasonable efforts to report to work despite a snowstorm, he concluded as follows:

> *… nevertheless her choice of residence was a circumstance within her control and this prevented her from reporting for duty. This was the primary cause of her missing work and not the weather which was a circumstance not directly attributable to her.*

[84] I am struck by the similarity between that conclusion and the one the employer asked me to reach in this case. As Mr. Martineau reported in his testimony at paragraph 44, "I understand that Mr. Daigle did not cause the delay, but he was responsible for planning his trip." Therefore, according to the employer, the grievor decided to plan his trip "[translation] with no margin of error in case of a delay or cancellation", which is the main reason he did not report for work. Similarly, in *Dollar*, Adjudicator Pyle found that Ms. Dollar did not cause the snowstorm but that she was responsible for choosing her place of residence.

[85] At paragraph 26 of *Dollar*, immediately after that conclusion, Adjudicator Pyle added the following:

> *I am aware that in this award I have not confirmed the recent interpretation of my colleagues, Messrs. O'Shea and Moalli. Rather, I have been persuaded by the observation of Adjudicator Beatty in* Benson *in which he referred to principles which he held have "now been canvassed by at least four different adjudicators and appear to be reasonably well settled" ….*

[86] Adjudicator Pyle, aware of the dissonance his decision created with those of his Board member colleagues, then cited a series of observations on "arbitral jurisprudence", from which in turn I have quoted the passages that appear to me to be most relevant to the decision I must make, as follows:

…

[27] … in Canadian Labour Arbitration *(1977), Brown and Beatty have noted, para. 1:3000, at pp. 13-6:*

> *The analogy between the arbitral and judicial systems is not limited to similarities in process. Rather, in much the same fashion as the evolution of the common law, a large body of arbitral jurisprudence has been developed with respect to many common issues which arise in collective bargaining relationships. These awards have come to shape and direct not only the drafting of clauses in new collective agreements by providing a point of reference as to how certain problems have been determined by arbitrators in the past, but also they bear upon the resolution of future grievances. However, and in contrast to judicial decisions, the award of an arbitrator does not assume the character of binding precedent for all future disputes that may arise under other agreements ….*
>
> …
>
> *Moreover, it is generally conceded that arbitral awards have no binding effect where the prior award is under a different collective agreement or where one of the parties did not participate in the earlier proceedings. However, even in these circumstances arbitrators are influenced by earlier decisions and indeed, where the prior awards are not conflicting and suggest a uniform line of reasoning, it is not likely that an arbitrator will lightly disregard them. Similarly, where over the years a strong arbitral consensus has developed with respect to a particular issue, arbitrators regard those prior decisions as forming part of the context in which collective agreements are negotiated and, in those circumstances, they will usually presume that a similar disposition of the issue was intended by the parties unless the collective agreement clearly provides otherwise.*

[28] These observations were made having regard to "arbitral jurisprudence", including:

(i) Re Canadian Industries Ltd. and U.S.W., Local 6350 *(1965), 16 L.A.C. 270 (Little). After noting a prior award Judge Little observed, at p. 274:*

> *That award was written over five years ago, but we know of no award expressing a contrary view since that time. It is true that no board is bound by any previous award but it is our view that where a subject has been so thoroughly considered and reviewed over the years as this one has been and a uniform result is evident in the decisions and that most companies and unions engaged in the collective bargaining*

> *process, including these parties, know of such jurisprudence and continually act with that knowledge, a board would have to find exceptional circumstances to warrant reaching a different conclusion. No such circumstances exist here. Furthermore, we agree with the jurisprudence quoted and must find on the evidence here that no violation of the agreement has been established in this instance.*
>
> …
>
> *(iii) More recently Adjudicator Beatty in* Chandler et al. *(166-2-4139 to 4142) has observed:*
>
> > *Faced with such an unequivocal interpretation of the very provisions of the same collective agreement as those which are in issue before me, I would be loath to interfere with such settled opinion (and the parties' subsequent reliance on it) unless I were satisfied that it was clearly in error. Were one to adopt any other position, the effect of an adjudicator's decision would be merely transitory and devoid of impact, and the parties would be encouraged to "re-arbitrate" any decision unfavourable to their interests.…*
> >
> > …

[87] With respect to *Ontario Agency*, the employer drew my attention to paragraphs 53 to 55, about Katherine Mayo's grievance. Even though it was a private arbitration and the clause in question was different from the one before me, the facts were very similar to those of this case. A flight was delayed due to weather conditions, and a request for special leave was denied.

[88] I note the following passages from the reasons for dismissing the grievance in *Ontario Agency*:

> …
>
> *[54] I agree with the Employer that this situation was not unforeseen or unusual. Flight delays and cancellations are a normal part of air travel in this day and age … the situation was hardly unforeseen and would not normally evoke much sympathy.*
>
> *[55] I also note that the grievor was taking quite a chance by taking a flight so late on the evening before she was scheduled to work… The grievor ought to have anticipated that she may well be delayed or have her flight cancelled.*
>
> …

[89] The facts in *Justason*, which the Board cited in *Close*, are also very similar to those in this case, as I noted at paragraph 78. A flight was delayed due to weather conditions, and a request for special leave was denied. As the employer observed in its arguments, in that case, the fact that an employee did not allow a sufficient margin of error for unforeseen circumstances when making travel plans was found the true reason that the employee could not to report for duty as required and was a circumstance directly attributable to the employee.

[90] In dismissing the grievance, Board Member MacLean relied on the Board's decision in *Barrett v. Treasury Board (Department of Transport)*, PSLRB File No. 166-02-7738, as follows:

> …
> *… the failure by an employee to anticipate in advance the delays that might be occasioned by adverse weather conditions and allow himself sufficient lead time to permit his scheduled return to work is a factor that ought to be deemed to be within his control. Failure to allow for such contingencies is in itself a reckless venture that ought not normally in the exercise of the employer's discretion to [sic] give rise to benefits ….*
> …

[91] And in *Justason*, Board Member MacLean found that Mr. Justason was delayed because "… it was his decision to delay his return until the last evening flight from Saint John, and thereby disregard the normal contingencies that a traveller should take into account when planning a trip." I note in that respect that as in this case, the grievors whose grievances were dismissed in *Barrett*, *Justason*, and *Close* had all chosen to take the last available return flights before their scheduled returns to work. As I noted at paragraph 28, it was the grievor's deliberate choice, who testified as follows: "I had five days of leave, and I wanted to make the most of them."

[92] Finally, the employer cited the Board's decision in *Shpur*, which involved a grievance with factual origins also similar to those that I have just analyzed. A flight was delayed by weather conditions, and a request for special leave was denied, except that according to Deputy Chairperson D'Avignon, "She was not prevented from attending work by the delay in air travel. She may have been extremely tired; but, this resulted from circumstances directly attributable to her."

[93] The reasons for the decision that preceded that observation read as follows:

…

> *Adjudicators have examined similar requests in the past and have almost universally held that grievors who arrange their travel such as to return as late as possible assume the risks of delay and mechanical failures. The grievors are, in effect, authors of their own misfortune. Ms. Shpur is in no different position.*
>
> *I would adopt, without reservation, the reasoning of Adjudicator MacLean in* ***Justason*** *(Board file 166-2-10376) where he writes, at pp. 4-6:*
>
> > … [the cause of his lateness] *was his decision not to allow a greater margin for unforeseen circumstances when he made and undertook his travel plans. To have remained in Saint John in the hope of catching the latest possible flight to Halifax in order to meet the connection to Goose Bay is a decision that was directly attributable to the grievor. For that decision it is he who must bear the costs of his delay, not the employer.*
> >
> > *… In my opinion it is now for the grievor to accept the consequences for delays occasioned by his assumption that everything would run smoothly so that he could return in time for work.*
>
> …
>
> [Emphasis in the original]

D. My decision

[94] At paragraph 62, I noted that clause 52.01(a) of the collective agreement was written in general terms, so that it could be applied to facts completely different from each other, and as the Board ruled in *Coppin*, "… the employer must examine each request and its series of facts individually …", which will necessarily be different from one case to another, "… and the employer's decision must be based on the merits of each request."

[95] Nevertheless, it must be stated that as Mr. Giguère noted in his argument inviting the Board to compare apples to apples instead of apples to oranges, the cases that the employer cited are comparable and very similar, if not identical, to this case. As a result, he emphasized that in all the cases, the employer's decision to deny the requested special leave was deemed reasonable, and he stated that there was no reason for the Board to derogate from the principles established in those cases.

[96] I am persuaded by that reasoning, to which I add the following.

[97] First, as I did at paragraphs 13 to 15, I note that the Board must answer the question of whether the employer violated clause 52.01(a) of the collective agreement through a two-part analysis; the first is whether the grievor established that circumstances not directly attributable to him prevented him from reporting for work. Only if the answer to that question is affirmative must the Board then determine whether his leave request was denied unreasonably.

[98] Mr. Giguère confused the two parts when he stated that in all the cases he cited, the employer's decision to deny the requested special leave was ruled reasonable. In reality, the decision makers in those cases had to rule only on the reasonable nature of the employer's refusal, since they all found that the grievors had failed the first criterion. Since it was the grievor's decision not to comply with "… the requirement that an employee exercise reasonable foresight and take reasonable measures to ensure that he or she is able to report for duty" (as the Board stated in *Close*), which prevented the grievor from reporting for work, and since the decision was directly attributable to the grievor, there was no need to go on to the second step.

[99] The first step of the applicable criterion indeed has an aspect of reasonableness, but as the preceding quotation shows, this is about the step related to the precautions that the grievor took to guard against being unable to report for work, or conversely, the efforts he made to overcome the obstacles that prevented him from reporting.

[100] Thus, as I noted at paragraph 61, in *Coppin*, the Board allowed the grievance because it deemed that each grievor made reasonable efforts to report for work on December 23, 2004, and that their efforts were in vain because of particularly adverse weather conditions. Therefore, the first part of the criterion was satisfied, as the grievors established that circumstances not directly attributable to them had prevented them from reporting for work. The Board then applied the second part of the criterion and found that the employer acted unreasonably when it refused to grant each of them the requested leave with pay.

[101] Second, the validity of the employer's argument that there is no reason for the Board to derogate from the principles established in those cases is confirmed by the Board's observations in *Dollar*, quoted at paragraph 86, and in my view, this

constitutes solid arbitral policy reasons for applying those principles in this case. In fact, to derogate from them with no valid reason (and I see none, for the reasons that I will develop in the following paragraphs) would encourage any party to a federal public sector labour relations or employment dispute to "re-arbitrate" any decision that was contrary to its interests and to "[translation] tamper" by referring grievances to adjudication that have already been subjected to unanimous decisions or that at the very least, reveal a uniform logic. That would encourage more recourses to adjudication at the expense of the negotiated settlement of differences related to applying collective agreements and would create instability and unpredictability in arbitral decisions that is not in the shared interest of employers and bargaining agents.

[102] Third, I am not persuaded by the grievor's argument at paragraph 31 that the employer's planning argument "does not hold water" because there was less than a 2% chance that his flight would be cancelled; therefore, there was "no question of risk" because "[translation] 98% of the time, flights are not cancelled".

[103] On the contrary, it is a question of risk, and the entire question before me comes down to determining who must bear it.

[104] In all the decisions that the employer cited, the Board, as did other decision makers in the cases it also cited, recognized that the risk of a flight not arriving at its destination at the scheduled time, whether due to a cancellation or a delay, whatever the cause (weather, mechanical breakdown, pandemic, etc.) is inherent to air transportation. The fact that the risk is low, as shown by the statistics that the grievor adduced into evidence and that the employer did not contradict, does not change the fact that it exists.

[105] Almost all of the Board's decisions (with one exception, to which I will return at paragraphs 109 to 111) ruled that however low, the employee must bear the risk when determining, for the purposes of applying clause 52.01(a) of the collective agreement and the identical or similar provisions of other collective agreements, whether the circumstances that prevented the employee from reporting for work were directly attributable to the employee.

[106] Most of the reasons that I believe that there is no need to derogate from the almost unanimous case law were outlined well in the passages that I reproduced earlier from the decisions cited by the employer. I will summarize them as follows:

> a) Clause 52.01(a) of the collective agreement is permissive and therefore does not create any obligation on the employer to grant the requested leave.
>
> b) Even though the discretion that the clause confers on the employer is not unlimited, it is real.
>
> c) Consequently, an adjudicator must not interfere with the employer's decision if it is reasonable, even if the adjudicator or another supervisor might have reached a different conclusion and granted the requested leave.

[107] Another reason not to derogate from the Board's almost unanimous case law is that I agree with the principle mentioned at paragraph 28 that Mr. Giguère articulated in the following terms during his cross-examination of the grievor, "if you lose your bet, you're responsible for your loss." The grievor replied, "Yes, if you're gambling." He suggested that he did not gamble because there was only a 1.32% chance that his flight would be cancelled.

[108] In reality, the grievor did gamble that according to the statistics adduced into evidence, he had a 98.68% chance of winning, because, as he explained, he had 5 days of leave and wanted to make the most of them. He drew an unlucky number, because the improbable (but not the unpredictable) happened. As the Board ruled in *Barrett* and then in *Justason*, making such a bet "… is in itself a reckless venture that ought not normally in the exercise of the employer's discretion to [*sic*] give rise to benefits …". And, as it ruled in *Close* when relying on those two decisions, "The employer should not have to pay for the risk and the lack of foresight that [the grievor] demonstrated."

[109] Finally, a few more words on the *Martin* decision with respect to the exception that I mentioned, at paragraph 105, to the Board's case law that is otherwise unanimous on the issue of who, the employer or the employee, must bear the risk of delay or cancellation inherent in air transportation.

[110] First, I note the following:

> a) I noted at paragraph 57 that nothing in that decision was based on the exceptional nature of the volcanic eruption and that the important thing for the

purposes of applying clause 52.01(a) of the collective agreement is whether circumstances not directly attributable to her prevented her from reporting for work.

b) I noted at paragraph 78 that in *Close*, the Board ruled as follows: "I do not find *Martin* applicable to the circumstances of this case. That case concerned the steps that the grievor took after her flight was cancelled. It did not examine whether she had left herself a sufficient margin of error in her travel planning."

c) I observed this at paragraph 51:

i) the employer accepted that the cancellation of the grievor's flight was a circumstance not directly attributable to her;

ii) the Board agreed that there is a certain risk in travelling generally and in travelling by air; but

iii) it rejected the employer's argument based on that risk "… as there is again no factual basis to support the apportionment of any risk."

[111] In light of that, I add the following:

a) It was completely open to the employer, when exercising its discretionary authority, to consider that the cancellation of Ms. Martin's flight was a circumstance not directly attributable to her.

b) By doing so, it did not create a precedent that would be enforceable in any future exercise and on a case-by-case basis through the same discretionary power.

c) In that case, the employer sought to "[translation] share the risk" of the flight cancellation by granting Ms. Martin only half of the five days of special leave that she had requested.

d) The Board did not rule on the first part of the criterion because of the employer's admission mentioned at point a).

e) When it applied the second part of the criterion, it ruled that the refusal to grant the requested leave was unreasonable because there was no factual basis to support the proposition of sharing the risk of the flight cancellation.

f) By doing so, the Board did not contradict its other decisions before and after *Martin* in which the risk of air travel must be borne by the grievor requesting special leave because of a flight delay or cancellation.

[112] I find that the grievor did not establish that as required by the first part of the applicable criterion under clause 52.01(a) of the collective agreement, circumstances not directly attributable to him prevented him from reporting for work.

VII. If so, was the grievor's leave request denied unreasonably?

[113] Since I replied in the negative to the first question, there is no need to examine the second.

[114] For all of the above reasons, I make the following order:

(The Order appears on the next page)

VIII. Order

[115] The grievance is denied.

June 23, 2021.

FPSLREB Translation

Paul Fauteux,
a panel of the Federal Public Sector
Labour Relations and Employment Board