

Date: 20221128

File: 566-02-12655

Citation: 2022 FPSLREB 98

*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

STEVE PELLERIN-FOWLIE

Grievor

and

**TREASURY BOARD
(Canada Border Services Agency)**

Employer

Indexed as

Pellerin-Fowlie v. Treasury Board (Canada Border Services Agency)

In the matter of an individual grievance referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Pamela Sihota, Public Service Alliance of Canada

For the Employer: Larissa Volinets Schieven, counsel

Decided on the basis of written submissions,
filed July 26 and August 22, 2022.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Steve Pellerin-Fowlie (“the grievor”) was, at all times relevant to the facts in this decision, employed by the Treasury Board (TB or “the employer”) and working for the Canada Border Services Agency (CBSA) as a border services officer (BSO) in the general technical group, classified at the FB-03 group and level. At the relevant time, his position was in Calgary, Alberta. In addition to his position as a BSO, he was also the Alberta branch president for the Customs and Immigration Union (CIU).

[2] The CIU is a component union that is a part of the Public Service Alliance of Canada (“the Alliance”).

[3] At the relevant time, his terms and conditions of employment were partially governed by a collective agreement between the TB and the Alliance for the Border Services Group, all employees, which was signed on January 29, 2009, and expired on June 20, 2011 (“the collective agreement”).

[4] On December 21, 2012, the grievor filed a grievance that alleged that the employer denied him leave with pay for December 6 and 11, 2012, as travel days for him to attend contract mediation on December 7, 2012 (incorrectly identified as December 8, 2012, on the grievance form), and a public interest commission (PIC) hearing on December 10, 2012. As relief, the grievor requested that the Alliance be reimbursed directly for the two days (December 6 and 11, 2012) and that he be made whole.

[5] The employer denied the grievance at the final level of the grievance process, and the grievor referred it to adjudication with the former Public Service Labour Relations Board (PSLRB) under s. 209(1)(a) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *PSLRA*”).

[6] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; “the *PSLREBA*”) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the *PSLREB*”) to replace the former PSLRB as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force

(SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *PSLRA* before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[7] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* (“the Act”).

II. Summary of the evidence

[8] The parties submitted an agreed statement of facts and an agreed book of documents.

[9] At the relevant time, the collective agreement had expired, and the Alliance and the employer were proceeding to the PIC hearing process. The grievor was a member of the Alliance’s bargaining team.

[10] On October 26, 2012, by email, at 14:59 local time, the grievor advised Celine Bourgoin who was the acting chief of commercial operations for the Central Alberta District of the CBSA that the mediation that was scheduled for November 23, 2012, was cancelled and that the leave that he had previously requested should be cancelled and transferred to December 6, 7, 10, and 11, 2012. He further said that they were both covered by article 14.04 of the collective agreement.

[11] On November 27, 2012, Ms. Bourgoin advised the grievor that leave with pay was granted for Friday, December 7, and Monday, December 10, 2012, under clause 14.04 of the collective agreement and that leave without pay under clause 14.10 was granted for the travel days of Thursday, December 6, and Tuesday, December 11, 2012.

[12] In an email dated December 4, 2012, at 14:49, Scott Hazlitt, a senior labour relations advisor, forwarded an email from CBSA headquarters to Kevin Hewson and Mike Shoobert on the topic of leave for the PIC hearing scheduled in Ottawa, Ontario, on December 10, 2012. Mr. Hewson’s position and relevance to the grievance were not

made known to me. Mr. Shoobert was identified as the interim director for the Calgary District of the CBSA. The email stated as follows:

...

The following is further to recent discussions with Regional Human Resources Directors on the subject of Leave With or Without Pay for Union Business (Article 14, Border Services Agreement) and is intended to clarify what type of leave may be granted to bargaining team members for the purpose of participating in the upcoming Public Interest Commission (PIC) process in Ottawa.

As you know, a PIC mediation hearing for the FB group is scheduled on December 8th and 9th, 2012. If required a PIC hearing is also scheduled on December 10, 2012.

Leave for Union Business to participate in the PIC process is to be granted, where operational requirements permit, to bargaining team members only.

Leave with pay, as per clause 14.04, may be granted for the period of December 8-10, 2012.

We have received questions concerning leave requests where travel is required to attend the PIC. Leave without pay, as per clause 14.09, may be granted for the purposes of travelling to and from Ottawa.

Should members request leave to attend preparatory contract negotiations meetings (typically the day before, for example), leave without pay under clause 14.10 may be granted.

...

[13] By email on December 5, 2012, at 15:13, Ms. Bourgoin advised the grievor that his leave with and without pay that had been approved was being amended by changing December 7, 2012, from leave with pay to leave without pay, thus granting the grievor three days of leave without pay, December 6, 7 and 11, and one day of leave with pay, December 10, 2012. By return email that same day at 16:14, the grievor reiterated his request for leave with pay for December 6, 10, and 11, 2012, and leave without pay for December 7, 2012.

[14] The documents variously identified what was proceeding on December 7, 2012, as a mediation related to the PIC hearing, a contract negotiation, and an Alliance prep meeting for the PIC hearing. As nothing turns on what exactly it was, from here on, I will simply refer to it as the “pre-PIC” meeting.

[15] By email dated December 7, 2012, at 12:48, from Ms. Bourgoin, Mr. Shoobert advised the grievor that the leave that Ms. Bourgoin had approved on December 5,

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

2012, which was three days of leave without pay and one day of leave with pay, would be granted.

[16] The collective agreement contains 7 “Parts”, comprising 64 “Articles” and 9 “Appendices”. Not counting the appendices, it numbers 97 pages, of which 2 are the signing pages. One part, Part IV, is entitled “Leave Provisions”, and there are 20 separate articles, covering 30 pages, setting out the different types of leave contemplated, several of which are further broken down within each provision. In addition to these leave provisions, a separate article is designated for leave, with or without pay, for Alliance business, article 14, which consists of 3 pages and states as follows:

ARTICLE 14

**LEAVE WITH OR WITHOUT
PAY FOR ALLIANCE BUSINESS**

***Complaints Made to the Public
Service Labour Relations Board
Pursuant to Section 190(1) of the
Public Service Labour Relations
Act***

**

14.01 When operational requirements permit, in cases of complaints made to the Public Service Labour Relations Board pursuant to section 190(1) of the PSLRA alleging a breach of sections 157, 186(1)(a), 186(1)(b), 186(2)(a)(i), 186(2)(b), 187, 188(a) or 189(1) of the PSLRA, the Employer will grant leave with pay:

(a) to an employee who makes a complaint on his or her own behalf before the Public Service Labour Relations Board;

and

Article 14

Congé payé ou non payé pour les affaires de l'alliance

Plaintes déposées devant la Commission des relations de travail dans la fonction publique en application du paragraphe 190(1) de la Loi sur les relations de travail dans la fonction publique

**

14.01 Sous réserve des nécessités du service, lorsqu'une plainte est déposée devant la Commission des relations de travail dans la fonction publique en application du paragraphe 190(1) de la LRTFP alléguant une violation de l'article 157, de l'alinéa 186(1)a ou 186(1)b, du sous-alinéa 186(2)a(i), de l'alinéa 186(2)b, de l'article 187, de l'alinéa 188a) ou du paragraphe 189(1) de la LRTFP, l'Employeur accorde un congé payé :

a. à l'employé-e qui dépose une plainte en son propre nom devant la Commission des relations de travail dans la fonction publique;

et

(b) to an employee who acts on behalf of an employee making a complaint or who acts on behalf of the Alliance making a complaint.

b. à l'employé-e qui intervient au nom d'un employé-e ou de l'Alliance qui dépose une plainte.

Applications for Certification and Representations and Interventions With Respect to Applications for Certification

Demandes d'accréditation, de comparutions et d'interventions concernant les demandes d'accréditation

14.02 When operational requirements permit, the Employer will grant leave without pay:

14.02 Lorsque les nécessités du service le permettent, l'Employeur accorde un congé non payé :

(a) to an employee who represents the Alliance in an application for certification or in an intervention; and

a. à l'employé-e qui représente l'Alliance dans une demande d'accréditation ou dans une intervention;

et

(b) to an employee who makes personal representations with respect to a certification.

b. à l'employé-e qui fait des démarches personnelles au sujet d'une accréditation.

14.03 The Employer will grant leave with pay:

14.03 L'Employeur accorde un congé payé :

(a) to an employee called as a witness by the Public Service Labour Relations Board;

a. à l'employé-e cité comme témoin par la Commission des relations de travail dans la fonction publique;

et

and

(b) when operational requirements permit, to an employee called as a witness by an employee or the Alliance.

b. lorsque les nécessités du service le permettent, à l'employé-e cité comme témoin par un autre employé-e ou par l'Alliance.

Arbitration Board Hearings, Public Interest Commission Hearings and Alternative Dispute Resolution Process

Séances d'une commission d'arbitrage, d'une commission de l'intérêt public et lors d'un mode substitutif de règlement des différends

14.04 When operational requirements permit, the Employer will grant leave with pay to a reasonable number of employees representing the Alliance before an Arbitration Board, Public Interest

14.04 Lorsque les nécessités du service le permettent, l'Employeur accorde un congé payé à un nombre raisonnable d'employé-e-s qui représentent l'Alliance devant une commission d'arbitrage, une commission de

Commission or in an Alternate Dispute Resolution Process.

l'intérêt public ou lors d'un mode substitutif de règlement des différends.

14.05 *The Employer will grant leave with pay to an employee called as a witness by an Arbitration Board, Public Interest Commission or in an Alternate Dispute Resolution Process and, when operational requirements permit, to an employee called as a witness by the Alliance.*

14.05 *L'Employeur accorde un congé payé à l'employé-e cité comme témoin par une commission d'arbitrage, par une commission de l'intérêt public ou lors d'un mode substitutif de règlement des différends et, lorsque les nécessités du service le permettent, un congé payé à l'employé-e cité comme témoin par l'Alliance.*

Adjudication

Arbitrage des griefs

14.06 *When operational requirements permit, the Employer will grant leave with pay to an employee who is:*

14.06 *Lorsque les nécessités du service le permettent, l'Employeur accorde un congé payé à l'employé-e qui est :*

(a) a party to an adjudication;

a. partie à l'arbitrage;

(b) the representative of an employee who is a party to an adjudication;

b. le représentant d'un employé-e qui s'est constitué partie à l'arbitrage;

or

et

(c) a witness called by an employee who is a party to adjudication.

c. un témoin convoqué par un employé-e qui s'est constitué partie à l'arbitrage.

Meetings During the Grievance Process

Réunions se tenant au cours de la procédure de règlement des griefs

14.07 *Where an employee representative wishes to discuss a grievance with an employee who has asked or is obliged to be represented by the Alliance in relation to the presentation of his or her grievance, the Employer will, where operational requirements permit, give them reasonable leave with pay for this purpose when the discussion takes place in their headquarters area and reasonable leave without pay when it takes place outside their headquarters area.*

14.07 *Lorsqu'un représentant d'employé-e désire discuter d'un grief avec un employé-e qui a demandé à l'Alliance de le ou la représenter ou qui est obligé de l'être pour présenter un grief, l'Employeur leur accordera, lorsque les nécessités du service le permettent, une période raisonnable de congé payé à cette fin si la discussion a lieu dans leur zone d'affectation et une période raisonnable de congé non payé si elle se tient à l'extérieur de leur zone d'affectation.*

14.08 *Subject to operational requirements.*

14.08 *Sous réserve des nécessités du service,*

- | | |
|---|--|
| <p>(a) when the Employer originates a meeting with a grievor in his headquarters area, he or she will be granted leave with pay and “on duty” status when the meeting is held outside the grievor’s headquarters area;</p> | <p>a. lorsque l’Employeur convoque à une réunion un employé-e qui a présenté un grief, il ou elle bénéficie d’un congé payé si la réunion se tient dans sa zone d’affectation, et du statut de « présent au travail » si la réunion se tient à l’extérieur de sa zone d’affectation;</p> |
| <p>(b) when a grievor seeks to meet with the Employer, he or she will be granted leave with pay when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area;</p> | <p>b. lorsque l’employé-e qui a présenté un grief cherche à obtenir un rendez-vous avec l’Employeur, il ou elle bénéficie d’un congé payé si la réunion se tient dans sa zone d’affectation et d’un congé non payé si la réunion se tient à l’extérieur de sa zone d’affectation;</p> |
| <p>(c) when an employee representative attends a meeting referred to in this clause, he or she will be granted leave with pay when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area.</p> | <p>c. lorsqu’un représentant d’employé-e assiste à une réunion dont il est question dans le présent paragraphe, il ou elle bénéficie d’un congé payé si la réunion se tient dans sa zone d’affectation et d’un congé non payé si la réunion se tient à l’extérieur de sa zone d’affectation.</p> |

Contract Negotiation Meetings

Séances de négociations contractuelles

14.09 When operational requirements permit, the Employer will grant leave without pay to an employee to attend contract negotiation meetings on behalf of the Alliance.

14.09 Lorsque les nécessités du service le permettent, l’Employeur accorde un congé non payé à l’employé-e qui assiste aux séances de négociations contractuelles au nom de l’Alliance.

Preparatory Contract Negotiation Meetings

Réunions préparatoires aux négociations contractuelles

14.10 When operational requirements permit, the Employer will grant leave without pay to a reasonable number of employees to attend preparatory contract negotiation meetings.

14.10 Lorsque les nécessités du service le permettent, l’Employeur accorde un congé non payé à un nombre raisonnable d’employé-e-s pour leur permettre d’assister aux réunions préparatoires aux négociations contractuelles.

Meetings Between the Alliance and Management Not Otherwise Specified in This Article

Réunions entre l’Alliance et la direction non prévues dans le présent article

14.11 When operational requirements permit, the Employer will grant leave with pay to a reasonable number of employees who are meeting with management on behalf of the Alliance.

14.11 Lorsque les nécessités du service le permettent, l'Employeur accorde un congé payé à un nombre raisonnable d'employé-e-s qui participent à une réunion avec la direction au nom de l'Alliance.

Board of Directors Meetings, Executive Board Meetings and Conventions

Réunions du conseil d'administration, réunions du conseil exécutif et congrès

14.12 Subject to operational requirements, the Employer shall grant leave without pay to a reasonable number of employees to attend meetings of the Board of Directors of the Alliance, meetings of the National Executive of the components, Executive Board meetings of the Alliance, and conventions of the Alliance, the components, the Canadian Labour Congress and the territorial and provincial Federations of Labour.

14.12 Sous réserve des nécessités du service, l'Employeur accorde un congé non payé à un nombre raisonnable d'employé-e-s pour leur permettre d'assister aux réunions du conseil d'administration de l'Alliance, de l'exécutif national des éléments et du conseil exécutif de l'Alliance ainsi qu'aux congrès de l'Alliance et à ceux des éléments, du Congrès du travail du Canada et des fédérations provinciales et territoriales du travail.

Representatives' Training Courses

Cours de formation des représentants

14.13 When operational requirements permit, the Employer will grant leave without pay to employees who exercise the authority of a representative on behalf of the Alliance to undertake training related to the duties of a representative.

14.13 Lorsque les nécessités du service le permettent, l'Employeur accorde un congé non payé aux employé-e-s qui exercent l'autorité d'un représentant au nom de l'Alliance pour suivre un cours de formation lié aux fonctions d'un représentant.

...

[...]

[17] Part III of the collective agreement is entitled "Working Conditions", and article 32 is entitled "Travelling Time", consists of three pages, and states the following:

...

[...]

Excluded Provisions

Dispositions exclues

32.02 Compensation under this Article shall not be paid for travel time to courses, training sessions, conferences and seminars, unless

32.02 La rémunération que prévoit le présent article n'est pas versée pour le temps que met l'employé-e à se rendre à des cours, à des séances

the employee is required to attend by the Employer.

de formation, à des conférences et à des séminaires, sauf s'il est tenu par l'Employeur d'y assister.

32.03 For the purposes of this Agreement, travelling time is compensated for only in the circumstances and to the extent provided for in this Article.

32.03 Aux fins de la présente convention, le temps de déplacement n'est rémunéré que dans les circonstances et dans les limites prévues par le présent article.

32.04 When an employee is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, the time of departure and the means of such travel shall be determined by the Employer and the employee will be compensated for travel time in accordance with clauses 32.05 and 32.06. Travelling time shall include time necessarily spent at each stopover en route, provided such stopover is not longer than three (3) hours.

32.04 Lorsque l'employé-e est tenu de se rendre à l'extérieur de sa zone d'affectation en service commandé, au sens donné par l'Employeur à ces expressions, l'heure de départ et le mode de transport sont déterminés par l'Employeur, et l'employé-e est rémunéré pour le temps de déplacement conformément aux paragraphes 32.05 et 32.06. Le temps de déplacement comprend le temps des arrêts en cours de route, à condition que ces arrêts ne dépassent pas trois (3) heures.

32.05 For the purposes of clauses 32.04 and 32.06, the travelling time for which an employee shall be compensated is as follows:

32.05 Aux fins des paragraphes 32.04 et 32.06, le temps de déplacement pour lequel l'employé-e est rémunéré est le suivant :

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

a. si l'employé-e utilise les transports en commun, le temps compris entre l'heure prévue de départ et l'heure d'arrivée à destination, y compris le temps de déplacement normal jusqu'au point de départ, déterminé par l'Employeur;

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

b. si l'employé-e utilise un moyen de transport privé, le temps normal, déterminé par l'Employeur, qu'il lui faut pour se rendre de son domicile ou de son lieu de travail, selon le cas, directement à sa destination et, au retour, directement à son domicile ou à son lieu de travail;

(c) In the event that an alternative time of departure and/or means of

c. si l'employé-e demande de partir à une heure différente ou d'utiliser un

travel is requested by the employee, the Employer may authorize such alternative arrangements, in which case compensation for travelling time shall not exceed that which would have been payable under the Employer's original determination.

autre moyen de transport, l'Employeur peut acquiescer à sa demande, à condition que la rémunération du temps de déplacement ne dépasse pas celle qu'il ou elle aurait touchée selon les instructions initiales de l'Employeur.

32.06 If an employee is required to travel as set forth in clauses 32.04 and 32.05:

32.06 Lorsque l'employé-e est tenu de voyager ainsi qu'il est stipulé aux paragraphes 32.04 et 32.05 :

(a) on a normal working day on which the employee travels but does not work, the employee shall receive his or her regular pay for the day;

a. un jour de travail normal pendant lequel l'employé-e voyage mais ne travaille pas, l'employé-e touche sa rémunération journalière normale;

(b) on a normal working day on which the employee travels and works, the employee shall be paid:

b. un jour de travail normal pendant lequel l'employé-e voyage et travaille, l'employé-e touche :

(i) his regular pay for the day for a combined period of travel and work not exceeding his or her regular scheduled working hours;

i. sa rémunération journalière normale pour une période mixte de déplacement et de travail ne dépassant pas les heures de travail normales prévues à son horaire;

and

et

(ii) at the applicable overtime rate for additional travel time in excess of his or her regularly scheduled hours of work and travel, with a maximum payment for such additional travel time not to exceed twelve (12) hours' pay at the straight-time rate of pay;

ii. le tarif des heures supplémentaires applicable pour tout temps de déplacement additionnel qui dépasse les heures normales de travail et de déplacement prévues à son horaire, le paiement maximal versé pour ce temps de déplacement additionnel ne devant pas dépasser douze (12) heures de rémunération au tarif normal;

(c) on a day of rest or on a designated paid holiday, the employee shall be paid at the applicable overtime rate for hours travelled, to a maximum of twelve (12) hours' pay at the straight-time rate of pay.

c. un jour de repos ou un jour férié payé, il ou elle est rémunéré au tarif des heures supplémentaires applicable pour le temps de déplacement, jusqu'à concurrence de douze (12) heures de rémunération au tarif normal.

...

[...]

32.08 Travel-Status Leave

32.08 Congé pour l'employé-e en déplacement

- | | |
|--|---|
| <p>(a) An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his permanent residence for forty (40) nights during a fiscal year shall be granted seven decimal five (7.5) hours of time off with pay. The employee shall be credited seven decimal five (7.5) hours of additional time off with pay for each additional twenty (20) nights that the employee is away from his or her permanent residence, to a maximum of eighty (80) additional nights.</p> | <p>a. L'employé-e tenu de se rendre à l'extérieur de sa zone d'affectation en service commandé, au sens donné par l'Employeur à ces expressions, et qui est absent de sa résidence principale pour quarante (40) nuits dans une année financière a droit à sept virgule cinq (7,5) heures de congé payé. De plus, l'employé-e a droit à sept virgule cinq (7,5) heures de congé payé supplémentaire pour chaque vingt (20) nuits additionnelles passées à l'extérieur de sa résidence principale jusqu'à un maximum de quatre-vingts (80) nuits additionnelles.</p> |
| <p>(b) The maximum number of days off earned under this clause shall not exceed five (5) days in a fiscal year and shall accumulate as compensatory leave with pay.</p> | <p>b. Le nombre total de jours de congé payé qui peuvent être acquis en vertu du présent paragraphe ne dépasse pas cinq (5) jours au cours d'une année financière, et est acquis à titre de congé compensateur.</p> |
| <p>(c) This leave with pay is deemed to be compensatory leave and is subject to paragraphs 28.06(c) and (d).</p> | <p>c. Ce congé payé est assimilé à un congé compensateur et est sujet aux alinéas 28.06c) et d).</p> |
| <p>(d) The provisions of this clause do not apply when the employee travels in connection with courses, training sessions, professional conferences and seminars, unless the employee is required to attend by the Employer.</p> | <p>d. Les dispositions du présent paragraphe ne s'appliquent pas à l'employé-e qui voyage pour assister à des cours, à des séances de formation, à des conférences et à des séminaires, sauf s'il est tenu par l'Employeur d'y assister.</p> |

[18] The collective agreement also refers to travel in article 25, "Hours of Work", at clause 25.27, and states the following:

<p>...</p> <p>25.27 Specific Application of This Agreement</p> <p>For greater certainty, the following provisions of this Agreement shall be administered as provided for herein.</p>	<p>[...]</p> <p>25.27 Champ d'application particulier de la présente convention</p> <p>Pour plus de certitude, les dispositions suivantes de la présente</p>
--	---

convention sont appliquées comme suit :

...

[...]

(f) Travel

Overtime compensation referred to in clause 32.06 shall only be applicable on a workday for hours in excess of the employee's daily scheduled hours of work.

...

f. Déplacements

La rémunération des heures supplémentaires dont il est question au paragraphe 32.06 ne s'applique qu'aux heures qui dépassent le nombre d'heures prévues à l'horaire de travail journalier de l'employé-e au cours d'une journée de travail.

[...]

[19] The Alliance reimbursed the grievor for his travel days. The employer had no knowledge of this reimbursement.

III. Summary of the arguments

A. For the grievor

[20] The grievor submitted that article 14 of the collective agreement unambiguously demonstrates the parties' intention to grant either leave with pay or leave without pay in order to allow members of the bargaining agent to attend and participate in certain union matters. While the grievor also attended the preparatory meeting with the bargaining agent on December 7, 2012, for which he was granted leave without pay under article 14.10, he was still required to undertake two days of travel to and from the PIC which means that article 14.04 should be applied to include the grievor's two days of travel. The grievor submitted that by denying leave with pay for the time to travel to the PIC, the employer is adding words to the original provision which makes no distinction between appearing before the PIC and travelling to appear before it.

[21] In examining the collective agreement in its entirety, article 32 of the collective agreement deals with travelling time and with how and when employees will be paid when travelling for their employment. The language found under article 32 provides limitations and parameters for when an employee will be paid or compensated for work related travel. No such limitations or parameters are found under article 14 which deals with the granting of leave with pay and without pay for Alliance business. Therefore, in the absence of any express provision stating that travel was not included,

the grievor submitted that he should have been granted leave with pay under article 14.04 of the collective agreement for two days of travel.

[22] The grievor requested that the Board issue a declaration that the employer breached the collective agreement and that he be made whole and receive any other remedy that the Board deems appropriate.

[23] The grievor referred me to *Canadian Labour Arbitration*, 5th Edition, Donald J. M. Brown and David M. Beatty, Chapter 4, “The Collective Agreement”, paragraph 4:2100, “The Object of Construction: Intention of the Parties”; *Professional Institute of the Public Service of Canada v. Treasury Board*, 2019 FPSLREB 108 (“*PIPSC v. TB*”); and *Fields v. Treasury Board (Department of Transport)*, 2016 PSLREB 78.

B. For the employer

[24] The employer submitted that when a benefit has a monetary cost to the employer, it must be clearly and expressly granted under the collective agreement. Thus, it is incumbent on the grievor to prove clearly and unequivocally that the requested monetary benefit was the intended result.

[25] Article 14 is a complete code with respect to the leaves available for union business, both paid and unpaid. It does not provide for leave with pay to travel to and from PIC proceedings. There is clearly a distinction between “representing” the bargaining agent as set out in article 14.04 and travelling for that purpose, on which the collective agreement is silent. Silence on an issue neither raises an ambiguity nor gives rise to a monetary entitlement. Rather, it indicates that the parties did not address the issue. Given the collective agreement’s silence on the issue of leave to travel to and from PIC hearings and since the employer’s provision of leave without pay for such travel is not inconsistent with the collective agreement’s express language, the employer can exercise its residual management rights to determine the type of leave, if any, available for such travel. To read in such a monetary entitlement in the face of silence on the issue would amount to a revision of the collective agreement, in contravention of s. 229 of the *FPSLRA*. While the bargaining agent and the employer bargained for various paid and unpaid leaves to allow employees to attend to business of the bargaining agent, they clearly did not bargain for paid leave to travel to attend to such business.

[26] As the grievor points out, there are no limits or parameters on travel time in article 14, in contrast to article 32, which governs travel required by the employer on government business. This is because no travel time is provided for in article 14, such that no such limits or parameters are required. Clearly, the bargaining agent and the employer negotiated that employees be paid while travelling on government business at the Employer's behest. They did not, however, bargain for paid time off to travel for business on behalf of the bargaining agent.

[27] The grievor did not meet its burden of showing that article 14.04 provides for paid leave to travel to and from a PIC proceeding.

[28] The employer requested that the Board dismiss the grievance.

[29] In addition to the Act, the employer also referred me to *PIPSC v. TB* and to *Cruceru v. Treasury Board (Department of Justice)*, 2021 FPSLRB 30, *Nowlan v. Canada (Attorney General)*, 2022 FCA 83, *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112, *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55 ("*Wamboldt v. CRA*"), *Denboer v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 58, *Bédard v. Treasury Board (Canadian Grain Commission)*, 2019 FPSLRB 76, *Arsenault v. Parks Canada Agency*, 2008 PSLRB 17, *Forbes v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLRB 110, *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board (Department of National Defence)*, 2020 FPSLRB 117 (application for judicial review dismissed in 2022 FCA 69), *Association of Justice Counsel v. Treasury Board*, 2016 PSLREB 48 ("*AJC v. Treasury Board*"), *King v. Deputy Head (Canada Border Services Agency)*, 2010 PSLRB 125 (application for judicial review dismissed in 2012 FC 488, appeal dismissed in 2013 FCA 131, and leave to appeal to the Supreme Court of Canada dismissed, 2014 CanLII 3503), *Forster v. Canada Revenue Agency*, 2006 PSLRB 72, *Brain v. Canada Revenue Agency*, 2006 PSLRB 74, and *Cloutier v. Treasury Board (Department of Citizenship and Immigration)*, 2007 PSLRB 53.

C. The grievor's reply

[30] The grievor did not provide a reply to the employer's submissions.

IV. Reasons

[31] As set out in *Arsenault*, in grievances such as this one, where it is alleged that there is a breach of the collective agreement, the burden of proof is on the grievor, and the bargaining agent that is supporting him or her, and they must prove that the breach that has been alleged, on a balance of probabilities, has taken place.

[32] This grievance deals with the very narrow issue of whether the grievor was entitled to leave with pay for two days of leave when he travelled to attend a one-day PIC hearing and a pre-PIC meeting in Ottawa. The grievor lived and worked in Calgary, thus necessitating the travel on December 6, 2012, the day before the pre-PIC meeting, and on December 11, the day after the PIC hearing. The employer granted leave for the travel, albeit without pay.

[33] However, the days at issue were not a day of a PIC hearing or pre-PIC meeting but merely travel days. Article 14 is silent with respect to travel for Alliance business. However, the jurisprudence in this area is well established that adjudicators, arbitrators, and tribunals are to look not only at the plain and ordinary language of the collective agreement but also the agreement as a whole.

[34] The law in this area is settled. It is summarized as follows in *Canadian Labour Arbitration*, at paragraph 4:2100: "... in determining the intention of the parties [to a collective agreement], the cardinal presumption is that the parties [to a collective agreement] are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions."

[35] At paragraph 84 of *Cruceru*, the Board stated as follows:

[84] As outlined in authoritative sources such as Brown and Beatty, at paragraph 4:2100, and as recognized throughout the Board's case law, canons of interpretation such as the following guide this analysis: (1) the parties are assumed to have meant what they said, (2) the meaning and intent of the collective agreement is to be sought in its express provisions, (3) the words of a collective agreement must be given their grammatical and ordinary sense, (4) they must read in their entire context, in harmony with the scheme of the collective agreement, and (5) when the same words reappear, they are to be given the same interpretation.

[36] At paragraph 109 of *AJC v. Treasury Board*, the Board stated as follows:

109 A number of the rules of construction in my view are of assistance in determining the parties' intentions in interpreting the language used in this collective agreement. Firstly, words of collective agreement are to be given their ordinary and plain meaning. Secondly, a collective agreement is to be construed as a whole, and identical or similar terms used in different parts of the collective agreement should be given the same or similar meanings. Thirdly, the expressio unius alterius rule provides that the express mention of one thing implies the exclusion of another; see Collective Agreement Arbitration in Canada, at 27-32.

[37] When interpreting the collective agreement, s. 229 of the Act provides that an adjudicator's or the Board's decision may not have the effect of requiring the amendment of a collective agreement or an arbitral award.

[38] At paragraph 67 of *Forbes*, the Board stated as follows:

[67] The Board should be extremely cautious to not add benefits to agreements that the parties to those agreements have not bargained for. Parliament enacted such a restraint upon creative advocacy by parties in s. 229 of the FPSLRA [the Act], which prohibits adjudicators from rendering decisions that would alter the terms of a collective agreement.

[39] In negotiating the collective agreement, the Alliance and the employer expressly provided for several types of leave that can be requested and granted, and they are contained in 21 separate articles encompassing over 33 pages, which is about 1/3 of the entire collective agreement, not including the appendices. In short, the Alliance and the employer clearly considered leave provisions in depth, given that about a third of the agreement deals with the different types and options for leave.

[40] Indeed, in negotiating the collective agreement, the Alliance and the employer expressly provided in article 14, which is entitled "Leave With or Without Pay for Alliance Business", for how leave shall be granted and on what basis for employees involved in certain activities. Indeed, there are listed 13 different situations involving leave for an employee engaged in Alliance business. These are further subdivided, depending on the role the employee plays in the situation.

[41] The Alliance and the employer, when they wished to deal with issues involving travel and whether it would be paid, specifically did so. Article 32 of the collective agreement is entitled "Travelling Time". Clause 32.03 specifically states that "...

travelling time is compensated for only in the circumstances and to the extent provided for in this Article.” This is clear and unambiguous.

[42] A plain and ordinary interpretation of the words in the collective agreement leads me to the conclusion that the parties to the agreement have not provided for the payment of leave with pay for travelling when on Alliance business, and as such, the grievor has not established on a balance of probabilities that the collective agreement grants this benefit. As such, he has not established that the employer is in breach of the collective agreement.

[43] In addition, as set out in *Wamboldt v. CRA*, the Board has stated that “... a benefit that has a monetary cost to the employer must be clearly and expressly granted under the collective agreement ...”. As leave with pay has a monetary cost to the employer, it must be clearly and expressly granted. As nowhere does the collective agreement speak of leave with pay for travel on Alliance business, and since clause 32.03 specifically states that “... travelling time is compensated for only in the circumstances and to the extent provided for in this Article” and does not grant travel time for Alliance business, this benefit is not clearly or expressly granted, and the grievance must fail on this basis as well.

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

(The Order appears on the next page)

V. Order

[45] The grievance is denied.

November 28, 2022.

**John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board**