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File: 566-02-14768

Citation: 2023 FPSLREB 10

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

MICHAEL MCCARTHY

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

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

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Sheryl Ferguson, union advisor, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Employer: Peter Doherty, counsel

Heard by videoconference,
March 22, 2022.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] The grievor, Michael McCarthy, a correctional officer normally employed at the Dorchester Penitentiary ("Dorchester") in Dorchester, New Brunswick, alleged that he should have been placed on travel status and that he should have been eligible for the reimbursement of his travel expenses in accordance with the National Joint Council's *Travel Directive* ("the directive") from January to June 2016 when he was assigned to an accommodated position, by reason of a disability, at the regional headquarters ("regional headquarters" or RHQ) of the Correctional Service of Canada (CSC or "the employer") in Moncton, New Brunswick. He further alleged that he signed the assignment agreement with the employer, agreeing that he would not be on travel status, under duress.

[2] 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 Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* 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*. Note that in this decision, "the Board" refers to its current incarnation and any of its predecessors.

II. Background and context

[3] As background, the parties referred me to the Board's decision in *McCarthy v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLREB 45, a decision related to the facts in this case, in which Mr. McCarthy alleged that the employer failed to properly accommodate his disability.

[4] The grievor started working as a correctional officer classified CX-01 in 2005. He was posted to Dorchester in 2008. An incident occurred in February 2011 and he went on injury-on-duty leave for several years, after which he began a gradual return to work as a correctional officer. He was cleared for a full-time return to work effective January 2, 2015. By the end of January 2015, he was working full time, 40 hours per week. Three incidents occurred, which caused a major setback for him.

[5] The grievor returned to work in mid-March 2015. An independent medical evaluation concluded that he should not be in contact with inmates. He was assigned to the training schedule, a task normally done by a CX-02.

[6] In August 2015, a further medical assessment determined that he had a permanent restriction of no inmate contact.

[7] WorkSafeNB (WSNB) informed the CSC of the grievor's limitation precluding any type of work that involved direct contact with inmates, to prevent returning him to his pre-accident duties, and reminded the employer of its obligation to accommodate him.

[8] The CSC ended the scheduling assignment because the limitation was permanent. It stated that it would have to find a permanent position corresponding to the limitation.

[9] After considering and rejecting a number of options within Dorchester, the grievor was assigned to an accommodated position as the access to information and privacy (ATIP) coordinator at regional headquarters from January 7 to June 5, 2016.

[10] In October 2016, with new information from the treating psychologist, WSNB reversed its decision and informed the employer that starting in August 2016, the grievor had been fully fit to resume his correctional officer duties, with no limitations. He returned to those duties in October 2016.

III. Issue to be determined

[11] Should the employer have placed the grievor on travel status during the period he was assigned to the accommodated position at regional headquarters (from January 7 to June 5, 2016) in accordance with the directive, which entitled him to its benefits, including mileage, parking, and meals reimbursement?

IV. Summary of the evidence

A. For the grievor

[12] The grievor is a correctional officer posted at Dorchester Penitentiary in a position he has held since December 2005. He is also the regional vice president for the Atlantic region of the Union of Canadian Correctional Officers - Syndicat des agent correctionnels du Canada - CSN ("the bargaining agent").

[13] He was the author of his grievance, which he signed on January 26, 2016,in which he alleged a violation of article 41 of the Agreement between the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada – CSN, expiration May 31, 2014 (“the collective agreement”).

[14] What led to the grievance being filed was that he was offered the accommodation in the position at regional headquarters as the regional ATIP coordinator. This accommodation was based on an internal priority that the employer created based on its duty to accommodate the grievor for a disability he had at that time.

[15] He had been a correctional officer at Dorchester Penitentiary working under limitations. The employer had been accommodating him; however, three months before the assignment ended, he placed himself on leave without pay, which allowed him to use his personal leave credits to maintain a paycheque while the employer sought another accommodation that would fit his limitations.

[16] In mid-December 2015, he met with Renée Leger, who was the regional administrator in Communications and Executive Services, to discuss a potential accommodation in her department. The meeting was set up in response to an email from Dorchester’s assistant warden. She had sent an email in an attempt to find other accommodated positions in other departments.

[17] At that meeting, they discussed a number of options. She had the regional ATIP coordinator position available, as well as one in Victims Services.

[18] Shortly after the meeting, he was offered the ATIP coordinator position. On January 11, 2016, he was provided the assignment offer in writing, which he had not seen before then. He asked permission to take the document and review it with his bargaining agent advisors. He was not aware of his rights and entitlements.

[19] The question of travel came up with management. In his view, the document appeared contradictory. The ATIP coordinator position was classified PM-02. He was to be provided with travel time by having his work hours reduced from 7:30 a.m. to 3:30 p.m. The normal shift for a PM-02 position would have been from 8:00 a.m. to 4 p.m. with a half-hour lunch.

[20] However, a box was checked stating that he would not be on travel status during the assignment and therefore would not be entitled to the directive's benefits.

[21] Generally, the directive provides for the reimbursement of reasonable expenses necessarily incurred by an employee while travelling on government business outside his or her headquarters area.

[22] He raised the issue with management and bargaining agent representatives in the following days. By January 13, after discussing the issue with bargaining agent representatives, he concluded that he had no choice but to accept the offer as an employee who required accommodation.

[23] According to the grievor, "CD 254", the CSC Commissioner's Directive that sets out the employer's policy on return-to-work and injury-on-duty processes, states that employees must accept all reasonable accommodation attempts.

[24] WSNB's policy stated that benefits could be lost if employees failed to accept suitable employment offers.

[25] He was advised to sign the agreement, under duress. The information he received from management was not clear on the directive's application. By failing to sign, he could have lost all income and worker's compensation benefits. The union ethos principle to comply now and grieve later applied.

[26] He signed the agreement on January 14, 2016. He began work on that date. He immediately made his concerns known and filed the grievance on January 26 or within two weeks.

[27] WSNB's policy was attached to the grievance. It speaks about suspending benefits.

[28] The grievor asserted that the directive should have covered him as he fell within the meaning of the definitions in it. He stated that his permanent work location was Dorchester Penitentiary and that his temporary work location was regional headquarters. His view was that the temporary move to the regional headquarters position was included in the Treasury Board's definition of "assignment". He stated that he performed the functions of Module 2 of the directive, which applies when an

employee is away from the workplace on government travel outside the employee's headquarters area.

[29] He was referred to management's decision on the grievance, dated March 17, 2016, and in particular to the third paragraph, which reads as follows: "You accepted and signed the terms and conditions of the assignment agreement which notes 'the employee will NOT be on travel status and as a result NO travel time will be paid or expenses reimbursed'."

[30] The grievor stated that the agreement did say that he was not on travel status, but it also stated that he would be provided with time for travel. He asked to review the agreement with a bargaining agent representative. He did return it, signed. There was no mention in the grievance reply that he openly disagreed with the travel status issue. He felt that he had no option but to sign the agreement, under duress, or he would lose his income. He disagreed with the sentence in the third paragraph of the grievance reply, stating that management does not believe that he signed the agreement under duress.

[31] He was referred to "Human Resources Management Bulletin #: 2014-03" ("bulletin 2014-03"), which the CSC's Human Resources branch prepared to help managers apply the directive. The grievor stated that he could not say that he was aware of it before he signed the agreement; however, he did become aware of it. It states, "Employees should be on travel status only in exceptional circumstances."

[32] There was an existing vacancy, which he did not apply for as it was at a lower level. The only reason he applied was on account of the duty to accommodate. He stated that his acceptance was involuntary as policy mandated that he accept it.

[33] To his knowledge, at the time, no other candidates were being considered for the position. A number of its responsibilities were altered so that he could fill it.

[34] Someone else had to complete files that required knowledge of French as he is not bilingual; It was the same for files classified protected, security level C, as he did not hold a secret security clearance.

[35] In his view, a number of these factors fit the definition of "exceptional".

[36] The grievor referred to the assignment agreement, which set out that the assignment was for the regional ATIP coordinator position located in Moncton. The duration was from January 13 to May 13, 2016. The agreement stipulates, "The employee will NOT be on travel status, and, as a result, NO travel time will be paid or expenses reimbursed." It is noted in handwriting that the hours of work would be from 8:30 a.m. to 3:30 p.m. Mr. McCarthy stated that he initialed this provision.

[37] The agreement also provided that the grievor would remain at his present group and level for the duration of the assignment and that the home organization would continue to administer his salary.

[38] Ms. Leger of the host organization signed the agreement on January 6, 2016. The home organization's subdelegated manager signed it that same day, and Mr. McCarthy signed it on January 7, 2016. He acknowledged that he took four days to review it.

[39] The grievor explained that the assignment position was classified PM-02. He was maintained as a CX-01 with the salary and benefits commensurate with that position. His home organization paid the differences in salary and allowances.

[40] The grievor stated that there were a number of inconsistencies. He stated that the regional ATIP coordinator position required that the incumbent be bilingual and that he did not meet its security requirements as he did not have a secret security clearance. He stated that the agreement indicated that his home organization would pay the difference in salary and benefits but at no point was his home organization part of the travel request. The final matter was the handwritten condition, which stated that his hours of work would be modified. An objection was raised to this line of questioning, and the questions were not pursued.

[41] He was asked whether when he worked at Dorchester, he had to pay to park his vehicle. He replied that parking was provided.

[42] He stated that employees were required to drive to work; however, they had set up rideshare programs. He stated that the permanent workplace had more flexibility.

[43] The agreement was extended from May 16 to June 5, 2016. Ms. Leger, Mr. Muise, and the grievor all signed it on May 10, 2016. He was asked whether there was any change to the travel status provision in the extension agreement. He replied, "No."

[44] The extension agreement also notes in handwriting that "[h]ours of work will be 8:30-3:30 as per previous agreement." He was asked whether he had asked for a reduction in his hours of work. He replied "No," and stated that he had discussed the issue. He was told that it was done so that management would not have to pay overtime.

[45] He was asked how familiar he was with the directive. He stated that he was fairly familiar with it as there is a post in Moncton, and staff are paid overtime for travel time and are compensated for meals. He stated that he was familiar with it in his bargaining agent representative role as he represents correctional officers who work in Prince Edward Island and have overnight stays.

[46] He was referred to an email chain dated February 11, 2016, concerning claims for travel expenses.

[47] He was asked what brought about the email chain. He stated that his home organization was Dorchester Penitentiary, which was responsible for paying all his expenses and entitlements, as well as applicable allowances. Initially, he submitted a travel claim to his home organization for his first two weeks on the job; it sent both claims to regional headquarters. He attempted to follow up on his claims' statuses.

[48] He had asked why his home organization sent his claims to the host organization to act as a decision maker, when the assignment agreement expressed otherwise. The matter was referred to Ms. Leger.

[49] Ms. Leger responded to the grievor, advising him that she had confirmed with the finance branch that his travel claims have to be submitted to the host organization and not the home organization.

[50] Since he was assigned to a lower-classified job, his home organization covered the cost of the difference in salary and other allowances that he received in his substantive position so as to not financially penalize him for accepting an assignment at a lower pay rate.

[51] She advised him that any other allowances, such as requests involving travel to and from work, had to be submitted to her.

[52] She specifically advised him as follows:

…

> *I do not have access to my system at this point, however I would like to refer you to my Jan 22nd, 2016 email to you (4:25 PM) advising you that I was refusing your request for travel. Again, it was clearly indicated on the assignment contract that you signed (which you had over 4 days to review and discuss with your union) that you would not be on travel status during your assignment.*
>
> *Therefore, my decision to refuse your travel request remains. I will not approve travel for you during your assignment in the RHQ PM02 position.*

…

[53] The grievor responded as follows:

…

> *I'm confused, in section 4 of the enclosed agreement it states that Home Organization is the Officer Responsible for Salary Reimbursement for "for difference in PM02 and CX_position as well as applicable allowances" whereas the Host is only responsible "for PM02 position".*
>
> *Regardless, the grievance has been submitted, though I don't know to whom it will be sent to address the issue. I will continue to submit travel expenses for the duration of the assignment, through* [Dorchester Penitentiary] *for the purpose of documentation for the grievance under the assumption that they will be denied based on this decision however I maintain my objection. Now that we are on the same page with whom is responsible for approval/denial we can let this issue run its course.*

…

[54] The grievor was referred to "Guidelines 254-2" of the return-to-work program. He was asked about which sections applied to him at the time. He responded that the whole document applied to injured workers except for injuries not related to work.

[55] He was referred to section 4 and was asked if at any time did anyone review this document with him. He responded, "Not specifically; no." He stated that he had consulted the document and that he had been working for an accommodation and was familiar with it. He was asked as to what he considered were his obligations. He stated that he had to be an active participant cooperating with the relevant agencies and with his supervisor. He made his needs known. He stated that he did his best to keep in contact with his supervisor.

[56] His direct supervisor at regional headquarters was Robert McGregor, a project officer. Ms. Leger was the department head. He did not discuss his accommodation with Mr. McGregor. He actively fought to return to work as a correctional officer. WSNB oversaw the process.

[57] He was asked about the consequences had he not accepted the offer. WSNB's policy was clear that he could lose his benefits if he did not agree that no travel time would be paid. It was more reasonable to accept the offer. He had to accept things that were not perfect.

[58] He was asked if he believed that the regional headquarters assignment met his accommodation needs. He responded that had he been a regular employee, his needs could have been met through a number of modifications. It was not standard; it was exceptional.

[59] He was referred to a travel expense claim dated January 28, 2016. It is the first of the travel expense claims he made every day he worked at regional headquarters. It was submitted to the Dorchester Penitentiary. He stated that he was assigned away from his permanent workplace until June 28, 2016.

[60] The second page of that document has an itemized list of his expenses. His daily parking is listed as $10.

[61] Correctional officers eat at their posts.

[62] Dorchester Penitentiary is 30 km from regional headquarters. The grievor claimed both his mileage and his meals.

[63] He referred to a number of signed travel claims he submitted to Dorchester Penitentiary, including those dated February 15, 2016, and covering January 29 to February 16, dated March 14 and covering February 15 to March 11, and dated April 11 and covering March 14 to April 8, 2016.

[64] He was asked about a hotel that was located near the regional headquarters office that offered daily paid parking. He stated that most of the staff are not allowed to park on site. The majority of permanent employees on staff pay a monthly subscription, to reduce their costs. When he was in the ATIP position, all the lots were full and operated from waitlists; he was on one.

[65] He was referred to the parking receipts that cover the period from April 11 to June 16, 2016. He stated that he had registered to make expense claims online, which he made. However, he did not receive a receipt, which is why he submitted the parking receipts.

[66] He was asked if he was familiar with the directive and if he applied for everything he was entitled to under it. He stated that because the employer reduced the time attributed to working hours, he made no claim for travel time.

[67] He confirmed that at all relevant times, he lived in Moncton. He also confirmed that regional headquarters was located there.

[68] Dorchester Penitentiary is located in Dorchester. It is approximately 30 km from regional headquarters in Moncton.

[69] He was asked whether before he accepted the agreement in January 2016 he was aware of the directive. He replied that he was and stated that he had been assigned to Moncton Hospital while accompanying inmates. He was posted there regularly, during which he was paid overtime and reimbursed for travel mileage and meals.

1. Cross-examination

[70] The grievor was asked whether he was concerned about being reimbursed for these items and whether he raised his concerns with Ms. Leger. He responded that he had been concerned, both before and after entering into the agreement.

[71] He raised it with her in January 2016. She provided him with the draft agreement on January 11, 2016. He was asked whether he was aware of the specific term in the agreement excluding travel allowances.

[72] He stated that a question was raised as the agreement provided for reduced hours for travel but contradicted itself because it did not provide for him being on travel status. As far as he was aware, the only way he could have reduced hours for travel was if he were on travel status. He confirmed that the box on the form indicating that he would not be on travel status was checked.

[73] When he met with Ms. Leger on January 11, 2016, he asked her why the work hours were reduced. She replied that it was to not incur overtime costs. He asked her how he could not be on travel status when he was being reimbursed travel time. He

stated that she indicated that he was authorized for reduced hours for travel time but not for expenses related to being on travel status.

[74] He took a few days to review it with the bargaining agent, and on January 14, 2016, he signed the agreement and returned it.

[75] He signed the extension agreement in May 2016 with the same terms and under the same duress.

[76] He was asked if anyone ordered him to sign the agreement. He stated that he would have been sent home without work and without pay and that if he had not signed it, his income would have been reduced.

[77] He was asked whether she ordered him to sign the agreement. He replied, "No."

[78] He was asked whether he met with Ms. Leger in December 2015 and, if so, whether they discussed parking options. At that time, a number of positions were being considered for accommodation. It was a meet-and-greet session. He did not know if they talked about parking at that meeting.

[79] He acknowledged having a conversation about parking on January 7, 2016. He was asked whether he recalled Ms. Leger advising him about free parking at Heritage Court.

[80] She advised him that monthly parking was available but that it had waitlists. She did mention the possibility of parking at Heritage Court for free. He looked for it but was unable to locate it. There was no official parking for Government of Canada employees.

2. Re-examination

[81] The grievor was asked whether when he worked at Dorchester, employees were provided with commuting assistance. He replied, "Yes." He was asked whether the commuting assistance continued when he reported to regional headquarters. He replied, "No."

B. For the employer - Ms. Leger

[82] As of January 2016, Ms. Leger was the regional administrator of communications and executive services for the CSC's Atlantic Region. When he

accepted the assignment to work as the ATIP coordinator, the grievor became part of her organization.

[83] Before the assignment, he worked at Dorchester Penitentiary. When he signed the assignment agreement, she became his indirect supervisor.

[84] Regional headquarters is located on Main Street in Moncton. Dorchester Penitentiary is approximately a 45-minute commute from Moncton.

[85] She was referred to the assignment agreement, in particular to the language that reads, "The employee will NOT be on travel status …", and beneath that, in handwriting, "hours of work …. 8:30 to 3:30" and was asked to explain that sentence.

[86] The hours of work were specified because those of the ATIP coordinator differed from his hours of work at Dorchester, so he would not incur overtime. It was to confirm that his hours of work were different and to prevent him from having to travel outside his core hours while on the assignment.

[87] She was asked about her role in preparing the assignment document. She replied that she had prepared it. She was asked why the grievor was not placed on travel status.

[88] She replied that there were two reasons. Firstly, this assignment was an accommodation to provide employment to him while he could not return to his substantive position at Dorchester. Secondly, the grievor would not have any personal expenses related to the assignment because the location of his residence was much closer to the location of the assignment than to his position at Dorchester.

[89] She had been informed by his return-to-work advisor that the grievor resided in the Moncton area.

[90] She was referred to bulletin 2014-03. She identified the document as a bulletin that the CSC used to help interpret the directive as it pertains to travel status. She was referred to the bulletin's section 5.

[91] Section 5 is entitled, "Factors to be Considered by the Delegated Manager When Deciding Whether to Authorize Travel Status" and reads as follows:

> *Employees should be on travel status only in exceptional circumstances. The delegated manager should consider the following factors when deciding whether an employee should be on travel status during the period of an assignment, acting appointment or secondment:*
>
> - *the qualifications being sought;*
> - *the period of time for the assignment, acting appointment or secondment;*
> - *the pool of qualified candidates in the headquarters area;*
>
> *…*
>
> - *the need to attract qualified candidates outside the headquarters area; and*
> - *the expenses that will need to be incurred and the impact on the budget.*

[92] She stated that the bullets provide guidance to management. She was asked what factors she considered when she decided not to provide travel status to the grievor.

[93] She stated that because it was an accommodation and not a staffing action, the first bullets were not considered. She considered the last bullet, which refers to the expenses that will need to be incurred and the impact on the budget.

[94] She was referred to the extension agreement. She prepared it for his consideration and signature.

[95] Travel status was not provided, and the hours of work were described as 8:30 a.m. to 3:30 p.m. per the previous agreement and in her handwriting. Once again, these hours of work were different from the core hours to prevent him from having to travel outside the core hours of work.

[96] She was referred to a series of emails. One is from her to a number of employees and is dated December 17, 2015. It recites that she met with the grievor that afternoon and that he indicated that he could be considered for a bilingual position but that he had never been tested. She asked whether that could be done so that she could consider him for executive services positions.

[97] During that meeting, she stated that she described the duties of the ATIP coordinator position. She also discussed parking options, which she explained to the grievor. She explained that Heritage Court, which was a 15- to 20-minute walk from

regional headquarters, had free parking, as did the street. Hotels next to the office offered paid parking as well. All those parking lots were available. The employer does not pay for employee parking.

[98] Most of the employees use Heritage Court's free parking facilities.

[99] She was referred to an email that she received, dated February 8, 2016, from Tracy Theriault, a labour relations advisor that reads in part as follows:

…

> *… I believe you met with Mike and told him he would not be reimbursed his travel as that is what was agreed upon on his assignment agreement. He said that he signed the agreement under duress. However he took the assignment agreement home for the weekend to review with his union before returning it signed.*
>
> *As per his claim for parking, I believe Renée you provided him with a location (Heritage Court) that he could park for free; however, he chose to pay for parking at V Suites instead.*

…

[100] Ms. Leger stated that she met with the grievor to present him with the agreement around Thursday, January 6, 2016. She explained to him that travel would not be covered, including parking. She and the grievor were present. She went over the agreement and explained that he would not be reimbursed for parking because of his location in Moncton. He asked to review the agreement with the bargaining agent.

[101] She met with him on January 14 when he signed the agreement.

[102] She was referred to her email dated January 22, 2016, to the grievor.

[103] The email reads as follows:

…

> *This is to confirm that your request for travel status while on assignment at NHQ is refused.*
>
> *As previously discussed, the assignment agreement that you signed clearly indicated that NO Travel time or expenses would be paid during your assignment at RHQ in the PM02 position. Therefore, I will deny your request in the travel system accordingly.*

…

[104] Ms. Leger commented that the reference to "NHQ" in the first sentence should be "RHQ". She also stated that she recalled that Mr. McCarthy filed his travel expense reimbursement request in the relevant system.

[105] She was referred to the employer's decision at the first level of the grievance process, dated March 17, 2016. She stated that she had been the first-level decision maker. She was asked to summarize her decision. She stated that based on the initial assignment agreement, the decision had been made not to provide travel status to the grievor. Her initial reasoning was that his was not an exceptional case; he did not incur personal costs, and he was in an accommodated position.

1. Cross-examination

[106] Ms. Leger was asked whether ever, as an administrator, she had supervised someone on an accommodation. She replied that she had not done so in a situation in which the person was not an employee who reported to her.

[107] She was asked whether she had ever had a correctional officer report to her and whether she understood the correctional officers' collective agreement. She stated that she was aware of the collective agreement but that she had not managed under it.

[108] The hours of work for the PM-02 ATIP coordinator position were 7.5 per day within the core hours of the Public Service Alliance of Canada collective agreement, or 37.5 hours per week. She was asked whether she knew a correctional officer's work hours. She replied, "No."

[109] She was referred to the bottom of the assignment document and to the box marked "… employee will NOT be on travel status …" and stating that the hours were reduced to reflect travel time within core hours. It was suggested to her that it was very confusing that the document referred to travel time but that it did not permit claiming those expenses.

[110] She confirmed that she had overall responsibility for managing the assignment but that she had not managed anyone in corrections. She was aware that the hours of work were different. She wanted to avoid the grievor commuting outside the core work hours, so she provided him with travel time to allow him to commute within them.

[111] She included his commute time in his hours of work. He was being paid on a 40-hour workweek, and in reality, he was paid for commuting.

[112] She was asked if she was aware that correctional officers at Dorchester receive a commuting allowance and that it was not maintained while the grievor was assigned to regional headquarters. She replied that she was not aware of that.

[113] She referred to bulletin 2014-03 and in particular to its Annex A, which deals with questions and answers, specifically, question 6.

[114] The question reads: "Can employees access entitlements other than those provided for in the *NJC Travel Directive*?" Here is the answer:

> *Employees on travel status may also access entitlements under their applicable collective agreement, which could include overtime for travel time, depending on the circumstances. The delegated manager must apply the relevant collective agreement.*
>
> *Note: to avoid paying overtime, the delegated manager can require employees to travel during the regular hours of work.*

[115] She was asked whether the vacant ATIP coordinator position was fully funded. She replied that it was and that the incumbent was on an assignment. Management had been planning to initiate a staffing process but none was launched.

[116] She was asked if she knew how bulletins were developed and in particular whether management and the bargaining agent negotiated them or the employer alone developed them. She replied that they were not negotiated.

[117] Referring to the factors for the delegated manager to consider when deciding whether to authorize travel status and whether there exist exceptional circumstances to justify it, she was asked whether it was normal or exceptional to place someone who was disabled within the department on travel status. She replied that it was normal, not exceptional.

[118] She was asked whether Heritage Court had signs indicating that parking was available for Government of Canada employees. She replied that it was common knowledge.

[119] She was asked whether bulletin 2014-03 applied only to CSC. She replied only to CSC.

[120] She was asked whether an employee could have more than one headquarters. She replied that the assignment was at regional headquarters, although Dorchester paid the salary difference.

[121] She was asked whether she ever followed up with respect to the allegation that the grievor signed the agreement under duress. She stated that they had a conversation at the time he was assigned. He stated that he would grieve and that he would win.

2. Re-examination

[122] Ms. Leger was asked whether she thought that an employee's hours could be reduced without that employee being on government travel status. She replied, "Yes."

[123] She was asked whether Mr. McCarthy asked for the location of the lot that provided free parking. She stated that she explained the location to him.

V. Summary of the arguments

A. For the grievor

[124] Look at the evidence of the grievor's situation. He did not have a choice. Based on workplace policy, his risk was whether or not to receive an income. He was between a rock and a hard place. He had to ask, "Do I sign even though I think it is wrong to lose the benefits?"

[125] Ms. Leger did not elaborate on why he was not entitled to be placed on travel status, yet he was entitled to travel pay.

[126] She referred to Guidelines 254-2. The grievor described his obligations. The duty to accommodate and to re-employ is clear.

[127] The other document is bulletin 2014-03. It has to be examined in conjunction with its Annex A. It was not jointly developed with the bargaining agent.

[128] The employer developed the document to provide management with a framework for providing access to the directive.

[129] The directive is part of article 41 of the collective agreement.

[130] Ms. Leger stated that the grievor was not under exceptional circumstances when it came to accommodating him at regional headquarters, yet when bulletin 2014-03 and Annex A are reviewed, it appears that there were exceptional circumstances.

[131] There were no candidates. No processes were followed, and he did not meet the position's requirements.

[132] The grievor testified that he knew of the directive as correctional officers assigned to the Moncton Hospital were placed on travel status.

[133] She referred to the grievance and these definitions from the directive:

> …
>
> ***Workplace*** *(*lieu de travail*)*
>
> ***Permanent/Regular*** *(*permanent/régulier*) - the* ***single permanent location*** *determined by the employer at or from which an employee ordinarily performs the work of his or her position or reports to.*
>
> **Temporary** *(*temporaire*) - the single location where an employee is temporarily assigned to perform the work of his or her position or reports to within* **the headquarters area***.*
>
> **Headquarters area** *(*zone d'affectation*) - for the purposes of this directive, spans an area of 16 kms [sic] from the assigned workplace using the most direct, safe and practical road.*
>
> …
>
> [Emphasis in the original]

[134] The grievor's regular workplace was Dorchester Penitentiary.

[135] The grievor was temporarily assigned to regional headquarters. No evidence was introduced to show that his assignment there was anything but temporary.

[136] The evidence is that Dorchester is twice 16 km from regional headquarters.

[137] Ms. Leger believed that the grievor's headquarters area changed from Dorchester to regional headquarters. There is no evidence that she informed him that his headquarters area had changed.

[138] She referred to section 1.9 and in particular section 1.9.2 of the directive. The section is entitled "Workplace change" and reads in part as follows:

> *1.9 Workplace change (applies within the headquarters area only)*
>
> …
>
> *1.9.2 When an employee is assigned from a permanent workplace to a temporary workplace, for a period of 30 consecutive calendar days or more, the provisions of this directive shall apply unless the employee is notified, in writing, 30 calendar days in advance of the change in workplace. In situations where the employee is not notified of a change of workplace in writing, the provisions of the directive shall apply for the duration of the workplace change up to a maximum of 60 calendar days.*
>
> …

[139] The directive applies unless the employee was advised 30 days in advance of the workplace change.

[140] Section 3.2 of Module 2 applied to the grievor and reads in part as follows:

> *3.2 Module 2 - Travel outside headquarters area - no overnight stay*
>
> *The provisions outlined in this travel module apply when a traveller is away from the workplace on government travel outside the headquarters area without an overnight stay in Canada or worldwide.*
>
> …

[141] Counsel referred to the collective agreement and in particular clauses 27.02, 27.03, and 27.04 and article 40.

[142] Article 27 is entitled “Travelling Time”, and clauses 27.02 to 27.04 and 41.03 read as follows:

> ***27.02*** *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 27.03 and 27.04. Travelling time shall include time necessarily spent at each stop-over en route provided such stop-over is not longer than three (3) hours.*
>
> ***27.03*** *For the purposes of clauses 27.02 and 27.04, the travelling time for which an employee shall be compensated is as follows:*
>
> *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.*

> *For travel by private means of transportation, the normal time as determined by the Employer, to proceed from the employee's place of residence or work place, as applicable, direct to the employee's destination and, upon the employee's return, direct back to the employee's residence or work place.*
>
> *In the event that an alternate time of departure and/or means of travel is requested by the employee, the Employer may authorize such alternate arrangements, in which case compensation for travelling time shall not exceed that which would have been payable under the Employer's original determination.*
>
> ***27.04** If an employee is required to travel as set forth in clauses 27.02 and 27.03:*
>
> *(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.*
>
> *(b) On a normal working day on which the employee travels and works, the employee shall be paid:*
>
> > *(i) his regular pay for the day for a combined period of travel and work not exceeding his or her regular scheduled working hours,*
> >
> > *and*
> >
> > *(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*
>
> *(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.*
>
> *…*
>
> ***41.03***
>
> *(a) The following directives, as amended from time to time by National Joint Council recommendation and which have been approved by the Treasury Board of Canada, form part of this Agreement ….*
>
> [*Sic* throughout]

[143] The parties agreed to the collective agreement and the directive, not bulletin 2014-03, which guided the decision.

[144] Even though Ms. Leger's clarified that the employer recognized a change in the grievor's commuting pattern, why did it reduce his hours of work while he was on temporary assignment at regional headquarters?

[145] There was testimony that the grievor carpooled to Dorchester and that he did not claim his parking fees. He could not find the free parking lot that was located 15 to 20 minutes from his temporary workplace. Even when Ms. Leger received the parking receipts, she did not follow up and ask him why he was not using the free parking.

[146] The language in the assignment agreement is confusing. It states that the grievor could not have travel status, yet he did receive payment for travel time.

[147] It was a challenge to find any jurisprudence on point.

[148] Counsel referred to a number of National Joint Council (NJC) decisions on the directive.

[149] NJC File No. 21.4.1112 (November 7, 2018) details that over a weekend, management advised an employee occupying an indeterminate position at one work location to report to an alternate, temporary work location because protesters were occupying the employee's work location. The employee's permanent work location had free street parking.

[150] The distance between the work locations was approximately 750 m. During the grievance process, the employer determined that the employee was eligible for reimbursement at the kilometric rate for the period in which the employee reported to the temporary workplace. At issue was whether the employee was entitled to reimbursement for parking.

[151] The NJC Executive Committee concluded that the employee had not been treated within the travel directive's intent as there was a temporary workplace change within the headquarters area and section 1.9 of the directive applied. The employee received one day's notice of the temporary workplace change rather than the 30 days that the directive required.

[152] In NJC File No. 21.4.1113, a decision dated June 19, 2019, a new employee was advised that the grievor's permanent workplace was "Location A"; however, due to operational issues there, the employee never began working there and was immediately assigned to "Location B". The Executive Committee concluded that there was a clear recognition that the permanent workplace was Location A and that the temporary workplace was Location B and concluded that the employee was not treated within the directive's intent as the employee was not notified in writing 30 calendar

days in advance of the workplace change, in accordance with section 1.9.2 of the directive. The employee's commuting expenses claim was upheld.

[153] In NJC File No. 21.4.1092, dated December 15, 2016, "Department B" contacted an employee who was in a pool of qualified candidates for an assignment. Part of the agreed terms and conditions of the assignment included the department reimbursing the employee for travel expenses (kilometres, meals, and bridge tolls) while on the assignment.

[154] The initial assignment was from January 7 to May 3, 2013. It was extended until March 31, 2014, and again until December 31, 2014, with the stipulation that all the terms and conditions of the initial assignment would continue during the extension.

[155] In September 2014, the employee was informed that effective October 2014, travel expenses would no longer be paid, as for the remainder of the assignment, travel status would no longer apply. The employee was given the choice of continuing the assignment without receiving reimbursement or returning to the employee's substantive position in "Department A".

[156] The decision to cease paying benefits stemmed from a regional decision aimed at deficit reduction. The Executive Committee concluded that based on the initial assignment agreement, and as the employee at no time indicated agreement with the new conditions of employment, the employee continued to be eligible to receive benefits under the directive.

[157] Counsel pointed out that budgetary constraints were not a sufficient reason to deny benefits and furthermore that the parties had not agreed to the reduction.

[158] In *Lannigan v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 31, the adjudicator concluded that surveillance work performed by correctional officers on a hospital squad was not inmate escort work and that the collective agreement appendix providing benefits for escort work did not apply. Travel expenses of correctional officers on the hospital squad had to be reimbursed according to the directive.

[159] In his testimony, the grievor referred to correctional officers from Dorchester being assigned to the Moncton Hospital on surveillance duty of inmates. They were entitled to the directive's benefits.

[160] Counsel referred to paragraph 33 of *Lannigan*, which states that the directive was jointly developed and drafted by or on behalf of all bargaining agents and employers that are National Joint Council members. She also referred to paragraph 16 of the decision, which states that the grievor's representative stated that the directive was part of the collective agreement.

[161] The directive stands alone for interpretation. Bulletin 2014-03 was developed unilaterally.

[162] The case of *Allain v. Canadian Food Inspection Agency*, 2009 PSLRB 54, concerned a dispute about a reimbursement of travel expenses that centred on the interpretation of the directive. Counsel noted that the directive was described as being as follows:

> …
>
> *… developed in a partnership between the Treasury Board, as the formal employer of federal employees, and the representatives of bargaining agents for those employers, operating through an employer/union organization called the National Joint Council of the Public Service of Canada (NJC).…*
>
> …

[163] The employer's position was that because the grievor travelled less distance to regional headquarters than to Dorchester, he should not be entitled to that mileage. Mr. Lannigan's Dorchester headquarters would pay for his travel to the hospital in Moncton even if he lived in Moncton.

[164] At paragraph 25 of *Allain*, the adjudicator gives a clear direction, namely, "… to resolve this case, one must simply apply the Directive's plain wording, which is part of the collective agreement."

[165] Counsel also referred to the adjudicator's decision in *Baird v. Treasury Board (Department of National Defence)*, 2012 PSLRB 117. In that case, the adjudicator determined that surveillance and electronic warfare technologists located at Fleet Maintenance Facility Cape Scott (FMFCS) in Halifax, Nova Scotia, were entitled to the benefits provided under the directive when participating in sea trials on ships and submarines.

[166] Counsel referred to paragraph 25 of that decision, which states, "Nothing in the collective agreement states that the Travel Directive does not apply to work done on sea trials."

[167] The grievor's regular workplace was Dorchester Penitentiary, not regional headquarters. Nothing in the directive's language states that an employee being accommodated is not entitled to its benefits.

[168] The bargaining agent asked that the Board find that the grievor was entitled to the directive's benefits, including reimbursement for mileage, parking, and meals during his assignment to regional headquarters.

B. For the employer

[169] The employer did not require the grievor to go to regional headquarters. He was offered and accepted a position there as part of an accommodation.

[170] He did not meet the conditions of government travel set out in the directive. The employer properly exercised its discretion to not authorize travel status because the conditions were not met. Four conditions had to be met. They are in parts of articles 27 and 41 of the collective agreement.

[171] Article 41 incorporates the directive. Clause 27.02 reads in part as follows: "When an employee is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer …".

[172] The employer must require the employee to travel. This condition was not met.

[173] The employer must require the employee to travel outside his or her headquarters area. The grievor did not work outside his headquarters area, which became regional headquarters when he was assigned there.

[174] The directive outlines the directive's purpose and scope as follows:

> *The purpose of this directive is to ensure fair treatment of employees required to travel on government business consistent with the principles above. The provisions contained in this directive are mandatory and provide for the reimbursement of reasonable expenses necessarily incurred while travelling on government business and to ensure employees are not out of pocket. These*

> *provisions do not constitute income or other compensation that would open the way for personal gain.*

[175] The third condition is that an employee required to travel on government business not profit as the expenses must be reasonably incurred and not constitute income or other compensation that would open the way for personal gain.

[176] The fourth condition relates to the authorization of government travel.

[177] Sections 1.1.1 and 1.1.2 of the directive, under the title "Authorization", read as follows:

> *1.1.1 The employer has the responsibility to authorize and determine when government travel is necessary, and to ensure that all travel arrangements are consistent with the provisions of this directive. Following consultation between the employer and the employee, the determination of travel arrangements shall best accommodate the employee's needs and interests in the employer's operational requirements.*
>
> *1.1.2 Government travel shall be authorized in advance in writing to ensure that all travel arrangements are in compliance with the provisions of this directive. In special circumstances, travel shall be post authorized by the employer.*

[178] The employer did not authorize the grievor to travel on government business.

[179] In *Hamilton v. Treasury Board (Correctional Service of Canada)*, 2013 PSLRB 91, two employees accepted secondments to course manager positions at the CSC's Correctional Management Learning Centre (CMLC) in Cornwall, Ontario, for three years, during which they were not to report to their designated regular places of employment. One grievor was employed at the Joyceville Institution in Kingston, Ontario, and the other with the Department of National Defence at National Defence Headquarters in Ottawa, Ontario.

[180] The grievors sought reimbursement for travel to and meals at their seconded workplace. The secondment agreements stated that the grievors would not be reimbursed travel costs. The adjudicator dismissed the claims, finding that they did not have the employer's authorization to travel.

[181] In this case, the assignment agreement contained a specific provision stating that the grievor would not be on government travel. He discussed with Ms. Leger the

fact that he would not be on travel status. Further, in the email dated February 2016, he was again advised that he would not be reimbursed for his travel.

[182] An email dated January 22, 2016 also informed him that he would not be on travel status. He understood that he was neither preauthorized nor authorized to be on travel status. He failed to meet the condition of authorization.

[183] One of the purposes of the directive is that the employer must require the employee to travel.

[184] "Government travel" is defined as travel authorized by the employer.

[185] In *Hamilton*, travel that the employer did not require was not reimbursed.

[186] In the present case, the employer neither instructed nor required the grievor to travel. He was not ordered to accept the assignment. He was offered a job as part of an ongoing accommodation process, which he accepted after taking several days to consider whether to accept it.

[187] He stated that he signed the agreement under duress. Where is the duress? As early as December 17, 2015, when the grievor met with Ms. Leger, he was informed that the regional headquarters position could be available for accommodation. Several days before he accepted the assignment, another meeting took place, and after it, he took several days to meet with his bargaining agent before signing the agreement. He was not ordered to sign it.

[188] The grievance states that CD 254 requires accepting all reasonable accommodation attempts.

[189] CD 254 does not contain any statement to that effect. The grievor stated that he was required under WSNB's policy to accept all offers of suitable employment.

[190] The employer cannot be held responsible for WSNB's policy. Where is the employer's duress?

[191] The employer acknowledged that it is well established in the case law that accommodation is a cooperative process, a dialogue, and a two-way street. In the body of the case law, the employee has the responsibility to accept a reasonable accommodation. It is not an employer requirement. It was not because the employer

forced him to accept the accommodation. It is difficult to understand how duress could arise in the context of an accommodation. See *Bourdeau v. Treasury Board (Immigration and Refugee Board)*, 2021 FPSLREB 43 at para. 168, where the Board summarizes the duty to accommodate.

[192] The employer did not require him to accept the regional headquarters assignment.

[193] The grievor was not working outside his headquarters area. He stated that he should have received benefits under the directive's Module 2 for travelling outside his headquarters area.

[194] In a recent case, *Campeau v. Treasury Board (Correctional Service of Canada)*, 2019 FPSLREB 120, the grievor, who was a CSC employee, worked a number of assignments outside his substantive position's headquarters and claimed that he was on travel status during those assignments.

[195] The Board in that case dismissed the grievance, following the reasoning in *Hamilton*. *Hamilton* found that employees on secondment were not entitled to be reimbursed for travel from their regular work locations.

[196] Ms. Leger understood that the grievor would commute from his home to the workplace. When he began working at the assigned workplace, it became his new headquarters, as defined in the directive.

[197] It is true that he worked at a different location than that of his substantive position, which is not relevant for defining his headquarters. His substantive position was not mentioned when he accepted the regional headquarters assignment. He did not fall under the provisions of the directive's Module 2.

[198] The fourth condition set out in the directive's scope and purpose is that it cannot open the way for personal gain. The grievor was not out of pocket.

[199] *Public Service Alliance of Canada v. Treasury Board*, 2018 FPSLREB 4, concerned a group grievance in which the grievors sought reimbursement for the cost of monthly parking passes. The grievance was denied. The Board concluded that she could find nothing that indicated that the grievors should be reimbursed for expenses for which

they were not out of pocket and that it was their choice as to whether to pay for parking at their work location.

[200] The grievor made no serious attempt to find free parking. He parked at the hotel for the duration of the assignment. It was not Ms. Leger's responsibility to follow up with him.

[201] The grievor's travelling time was reduced, which meant savings to him as regional headquarters was located closer to his residence. His home address was in Moncton. Dorchester is 32 km from Moncton.

[202] As in *Hamilton*, the grievor benefitted from a shorter commute. He claimed meal costs. His work location was closer to his home. He should not have been able to claim lunch as a travel expense.

[203] The grievor did not meet the basic prerequisites to claim travel expenses. He was not authorized to be on travel status, he was not directed to perform the assignment, he did not work outside his headquarters area, and he was not out of pocket.

[204] The employer properly refused to exercise its discretion to place him on travel status.

[205] Under the directive, the employer has the responsibility to authorize and determine when government travel is necessary. At clause 27.02, the collective agreement contemplates that the employer is required to exercise discretion as it defines these expressions. The collective agreement does not define how the employer should exercise its discretion.

[206] Bulletin 2014-03 fills the gap by setting out the factors that the employer should consider when exercising its discretion. Section 3 and 6 contemplate that it has the authority to determine whether an employee is on an assignment. If not, the employee will not be on travel status. Ms. Leger consulted the bulletin. While it is true that the employer prepared it, it is useful for clarifying the collective agreement.

[207] In *Doran v. Treasury Board*, 2018 FPSLREB 1 at para. 21, a decision pertaining to a grievance on the CSC's decision to not reimburse the grievors' meal allowances that they had claimed entitlement to under the directive and the collective agreement, the

Board commented on the employer's reference to its directive with respect to collective agreement provisions dealing with meal breaks as follows: "Since bulletins, such as the one in this case, are commonly used to standardize and clarify a national approach towards certain provisions of a collective agreement, I am of the view that the bulletin must also be examined."

[208] In *Brescia v. Canada (Treasury Board)*, 2005 FCA 236, a decision of the Federal Court of Appeal in which the appellants were full-time operational employees at the Canadian Grain Commission's facility in Thunder Bay, Ontario, who challenged the Commission's decision to place them and their coworkers on off-duty status, the Court commented on the wide managerial powers that the Treasury Board exercised under statutory authority. See also *Canada (Attorney General) v. Association of Justice Counsel*, 2016 FCA 92 at para. 24, where the same Court stated, "… The law is well settled: in exercising its duties, the employer may do anything that is not expressly or implicitly prohibited by a collective agreement or a law …".

[209] The employer issued a policy to fill the gap. The grievor did not meet the fundamental conditions that would have entitled him to the application of the directive. The employer properly denied his reimbursement request.

C. The grievor's reply

[210] It is important to read the *Lannigan* decision along with the National Joint Council decisions. At paragraphs 27 to 29 of *Lannigan*, the adjudicator made it clear that escorting inmates and hospital watch were two distinct functions and that correctional officers engaged in surveillance functions on the hospital squad were not covered by appendix D of the relevant collective agreement and accordingly that the grievors' travel expenses had to be reimbursed according to the directive. The grievors did not escort inmates, and when they performed surveillance functions on the hospital squad, they worked outside their headquarters area.

[211] The bargaining agent agreed that appendix D does not apply in the circumstances of this case.

[212] The fact situation in *Baird* is similar to the situation in this case. In that case, the employer argued that when on-board ship, the grievors were in their headquarters

area, as defined by the directive. The adjudicator found that their regular workplace was the FMFCS in Halifax.

[213] Similarly, the grievor's headquarters never changed.

[214] With respect to the 4 conditions that had to be satisfied for the grievor to be entitled to the directive's benefits, firstly, he was required to travel because his work could not be done at Dorchester Penitentiary. Secondly, his headquarters could be changed only if the change was identified and he was advised of it in writing 30 days in advance. Thirdly, the concept of an employee not profiting or gaining from an assignment does not apply as he carpooled while he worked at Dorchester, and he had to drive 5 days a week to the assignment. The directive does not require meal receipts. He did try to find the free parking lot.

[215] With respect to the authorization of government travel, The grievor did not accept the employer's position that the directive did not apply to his situation by filing the grievance. He applied the principle of obeying now and grieving later.

[216] The *Hamilton* case can be distinguished as the grievor sought the position. He did not seek a PM position; it was presented to him to address the employer's duty to accommodate.

[217] Based on the grievor's clear testimony, based on the review of the employer's guidelines and his obligation to comply, he had no choice but to accept the assignment as he used his leave credits to maintain a full salary. His obligation was to accept the assignment or he would not be paid.

[218] Ms. Leger's evidence stated that the grievor was paid as a correctional officer while he was assigned to the PM-02 position; however, he performed only some of the duties and was not substantively a PM-02. These should be considered exceptional circumstances within the meaning of bulletin 2014-03.

[219] With respect to the lack of authorization for being placed on travel status, it is clear that he made it known that he would seek to be placed on travel status. Ms. Leger testified to that effect.

VI. Events subsequent to the hearing

[220] During the decision-writing process, the panel of the Board became aware of a Board decision that might be relevant to resolving the issues in this case and that was released after the hearing in this case ended on March 22, 2022, i.e. *Cabelguen v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 32. The parties were provided with an opportunity to comment in writing to the Board on that case's relevance if any to resolving the issues in this case.

[221] In *Cabelguen*, the Board considered two grievances, an individual grievance and a policy grievance, both concerning the CSC's decision on applying the directive.

[222] The policy grievance involved employees who accepted temporary voluntary assignments. The employer had advised them in advance that they would not be entitled to the directive's benefits and that they would not be placed on travel status.

[223] The Board noted that it and its predecessors had to rule on the directive's application in situations comparable to those that gave rise to the issues in those grievances. Having referred to its decisions in *Lannigan*, *Hamilton*, and *Campeau*, the Board stated as follows at paragraph 45:

> *[45] Therefore, given the case law, and based on what has been submitted to me, I dismiss the policy grievance because the bargaining agent did not convince me on the balance of probabilities that employees who accept temporary assignment offers to positions different from their regular positions should be considered on government travel. The new workplaces of their assignments become their usual workplaces is within the meaning of the Travel Directive.*

[224] The Board noted that his conclusion could be different based on the facts that apply in a particular situation.

A. The grievor's comments

[225] The file does have some similarities with this one, including these:

> 1) Both grievors were in temporary assignments. Both grieved the employer's application of the directive.
> 2) The directive's substantive language was the same for both grievances, with rates of reimbursement being the only difference.

[226] In *Cabelguen*, the grievor applied for a temporary position. In this case, the grievor did not apply; he was presented with the Executive Services position by the employer so that it could meet its duty to accommodate him. As was heard at the hearing, the grievor was pressured to accept the offered position because it met his needs, WSNB could have suspended his loss of earning benefits had he not taken it, and he was out of leave and would have had no income. Mr. Cabelguen had a choice and was not pressured or forced to take the position, but the same cannot be said for the grievor.

[227] The grievor remained at his substantive CX-01 level and received its pay while he worked in Executive Services. He was not paid the salary of the position he was assigned to. Mr. Cabelguen was paid at the rate of pay of the position he applied to. No CX-01s are headquartered at regional headquarters. They are assigned to medium- and maximum-security institutions and preform front-line security duties. That work is not available at regional headquarters.

[228] The grievor's regular and permanent workplace was Dorchester Penitentiary, not regional headquarters; it is where he performed his CX-01 duties. The temporary workplace, regional headquarters, was outside the Dorchester Penitentiary headquarters.

[229] Neither Mr. Cabelguen nor the grievor could have two headquarters. It was clear that in *Cabelguen*, the Board agreed that Mr. Cabelguen could not have two headquarters. The bargaining agent asked that I apply that decision to the grievor and that I find that he could not have two headquarters.

B. The employer's comments

[230] The employer's position is on all fours with *Cabelguen*. At the hearing on March 22, 2022, it argued that the grievor did not meet the basic requirements for government travel status under the directive because of the following:

> 1) The grievor did not work outside his headquarters area, as defined in the "Definitions" section and Module 2 of the directive.
> 2) The employer did not authorize his travel status within the meaning of section 1.1 of the directive.
> 3) The employer did not require him to travel within the meaning of the "Purpose and scope" section of the directive.
> 4) All three points informed the Board's decision to dismiss the grievance in *Cabelguen*. Its main findings are set out as follows at paragraphs 44 and 45:

> *[44] … an employee on a voluntary assignment to a position outside his or her headquarters area changes his or her usual workplace. The new workplace becomes the employee's usual workplace, located in a new headquarters area. Therefore, it is not government travel as a result of an employer requirement. He or she simply goes to the new workplace and therefore cannot claim the reimbursement of travel expenses unless, of course, for different reasons, the employer authorized it in advance.*
>
> *[45] Therefore, given the case law, and based on what has been submitted to me, I dismiss the policy grievance because the bargaining agent did not convince me on the balance of probabilities that employees who accept temporary assignment offers to positions different from their regular positions should be considered on government travel. The new workplaces of their assignments become their usual workplaces within the meaning of the Travel Directive.*

[231] At paragraph 44, the Board found that when Mr. Cabelguen accepted his assignment, the assigned workplace became his new headquarters area. This finding is consistent with the Board's decisions in *Campeau* and *Hamilton*.

[232] Applying the same principle to this case, the grievor's headquarters became regional headquarters when he accepted the assignment there. Therefore, during his assignment there, he did not qualify for "Travel Outside Headquarters Area" under Module 2 of the directive.

[233] He was not on travel; he was commuting to and from his new headquarters. Contrary to the grievor's written arguments, dated June 20, 2022, his level and rate of pay are irrelevant to how the directive defines his headquarters.

[234] At paragraph 44 of *Cabelguen*, the Board also considered that Mr. Cabelguen lacked advance authorization from the employer for government travel. Similarly, the grievor in this case lacked employer authorization. Nevertheless, he claimed travel reimbursement, despite the clear requirement in section 1.1.2 of the directive that "[g]overnment travel shall be authorized in advance …". In addition, still at paragraph 44, the Board considered that Mr. Cabelguen was under no "employer requirement" to travel. Rather, Mr. Cabelguen voluntarily accepted the assignment.

[235] The directive, under its "Purpose and scope", states this: "The purpose of this directive is to ensure fair treatment of employees required to travel …".

[236] The grievor attempted to distinguish *Cabelguen* on this point by alleging that unlike Mr. Cabelguen, he was required, under duress, to accept the assignment to RHQ. This argument is entirely without merit.

[237] There is no evidence of pressure or duress. The employer offered the RHQ assignment to the grievor as part of an accommodation process. It is well established that accommodation is a cooperative process between an employer and an employee. Accordingly, it offered him an assignment that met his particular accommodation needs, and after taking several days to consider it and to consult his bargaining agent, he accepted the offer.

[238] While the grievor does have a legal obligation to accept reasonable accommodation offers, the employer did not create or impose that obligation.

[239] That obligation certainly does not amount to duress or pressure, as alleged. It is difficult to see how duress could even have arisen in this accommodation context, in which the employer actively responded to the grievor's needs and looked for a position that fit his restrictions. At paragraph 46 of *Cabelguen*, the Board remarked that there may be circumstances in which an employee on assignment may also be on government travel. The Board further stated that "… an employer announcing that it will not pay for travel is certainly not sufficient to absolve it of its obligation under the Travel Directive to pay for it." Ultimately, the Board concluded that each case should be determined on its own facts.

[240] In response to these obiter comments, the employer submitted first that its position did not rest solely on the fact that the grievor's assignment agreement explicitly stated that he would not be on travel status. Still, the employer maintained that it was persuasive evidence that the employer did not authorize travel status and that the grievor understood that he was not so authorized.

[241] Second, on the facts, there are no factual circumstances suggesting that the grievor was on government travel during his assignment. His assignment to RHQ became the single location within the new headquarters area where he regularly performed the work of his assigned position between January 14 and June 15, 2016.

[242] During his assignment, he was not required to travel anywhere. Again, the evidence points to a commute, not to travel.

C. The grievor's reply comments

[243] When the grievance was filed, the grievor clearly identified that he signed the assignment agreement under duress. It included the language from WSNB's policy on a worker complying with reasonable, available work. He testified that he was about to exhaust his leave credits and that he would have been placed on leave without pay and would have received WSNB benefits as his source of income.

[244] He further testified that WSNB's benefits were significantly less than his salary.

[245] The employer's assertion that there is no evidence that the grievor signed the agreement under duress is simply wrong and does not reflect his testimony.

[246] At all times, the grievor was a Dorchester employee. He does not agree with the assertion that his headquarters changed as a result of the assignment. His substantive position remained a correctional officer at Dorchester. It was his headquarters, and he was temporarily assigned to regional headquarters, which never became his headquarters.

[247] The grievor did incur expenses to work at regional headquarters. As he outlined in his testimony, he could no longer use a carpool arrangement, he paid for parking, and as a straight day worker, he traveled to work more frequently than he did as a correctional officer working a variable-hour schedule. He addressed the availability of free parking in his testimony; he could not find it, and the employer's witness introduced no evidence that anyone asked the grievor why he did not use the alleged free parking or offered to help him find it.

[248] The grievor submitted that for these reasons and those previously stated, the *Cabelguen* decision does not apply to the grievor; he did not apply for the position but was placed in it as an accommodation, he signed the agreement under duress, he incurred expenses as a result of the assignment, and his headquarters was Dorchester, not regional headquarters, as the employer asserted.

VII. Analysis

[249] The grievor's collective agreement sets out the terms and conditions of employment as agreed to by his bargaining agent and the employer. Clause 41.01 provides that agreements concluded by the National Joint Council and endorsed by the

bargaining agent and the employer form part of the collective agreement. Clause 41.03 sets out the directives that form part of the agreement and includes the directive.

[250] The relevant extracts from the directive are as follows:

> …
>
> *Principles*
>
> *The following principles were developed jointly by the bargaining agent representatives and the employer representatives on the National Joint Council. These principles are the cornerstone for the management of government travel and shall guide all employees and managers in achieving fair, reasonable and modern travel practices across the public service.*
>
> ***Trust** - increase the amount of discretion and latitude for employees and managers to act in a fair and reasonable manner.*
>
> ***Flexibility** - create an environment where management decisions respect the duty to accommodate, best respond to employee needs and interests, and consider operational requirements in the determination of travel arrangements.*
>
> ***Respect** - create a sensitive, supportive travel environment and processes that respect employee needs.*
>
> ***Valuing people** - recognize employees in a professional manner while supporting employees, their families, their health and safety in the travel context.*
>
> ***Transparency** - ensure the consistent, fair and equitable application of the policy and its practices.*
>
> ***Modern travel practices** - introduce travel management practices that support the principles and are in keeping with travel industry trends and realities; develop and implement an appropriate travel accountability framework and structure.*
>
> *General*
>
> *Collective agreement*
>
> *This directive is deemed to be part of collective agreements between the parties represented on the National Joint Council, and employees are to be afforded ready access to this directive.*
>
> …
>
> *Purpose and scope*
>
> *The purpose of this directive is to ensure fair treatment of employees required to travel on government business consistent with the principles above. The provisions contained in this directive are mandatory and provide for the reimbursement of reasonable expenses necessarily incurred while travelling on government business and to ensure employees are not out of pocket. These*

provisions do not constitute income or other compensation that would open the way for personal gain.

Application

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

Definitions

…

Employee *(*fonctionnaire*) - a person employed in the public service.*

Employer *(*employeur*) - Her Majesty in Right of Canada as represented by the Treasury Board, and includes persons authorized to exercise the authority of the Treasury Board.*

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

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

…

Travel status *(*déplacement*) - occurs when an employee or traveller is on authorized government travel.*

Traveller *(*voyageur*) - a person who is authorized to travel on federal government business.*

Workplace *(*lieu de travail*)*

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

Part I - Administration

1.1 Authorization

1.1.1 The employer has the responsibility to authorize and determine when government travel is necessary, and to ensure that all travel arrangements are consistent with the provisions of this directive. Following consultation between the employer and the employee, the determination of travel arrangements shall best accommodate the employee's needs and interests and the employer's operational requirements.

1.1.2 Government travel shall be authorized in advance in writing to ensure that all travel arrangements are in compliance with the provisions of this directive. In special circumstances, travel shall be post authorized by the employer.

1.1.3 Expenses resulting from misinterpretations or mistakes are not a basis for reimbursement or non-reimbursement. However, such situations shall be reviewed on a case-by-case basis.

…

1.5 Responsibilities

1.5.1 The employer shall:

a) establish the proper delegation framework to comply with this directive;

b) ensure that this directive is available at the employee's normal workplace during the employee's working hours;

c) ensure that the manager with delegated authority, in consultation with the employee and the employee's immediate supervisor:

i. determine whether travel is necessary;

ii. ensure that travel arrangements are consistent with the provisions of this directive; and

iii. ensure that accommodation of needs is provided to the point of undue hardship.

d) authorize travel, including blanket travel authority;

e) verify and approve travel expense claims before reimbursement; and

f) ensure that all travel arrangements comply with relevant federal government legislation and employer policies, such as employment equity, official languages.

1.5.2 The traveller shall:

a) become familiar with the provisions of this directive;

b) consult and obtain authorization including blanket travel authority, where applicable, to travel in accordance with the directive;

c) inform the employer or its suppliers of his/her needs that may require accommodation;

d) complete and submit travel expense claims with necessary supporting documentation as soon as possible after the completion of the travel. In travel situations exceeding one month, the traveller may submit interim travel expense claims prior to the completion of the travel; and

e) be responsible for cancelling reservations as required, safeguarding travel advances and funds provided, and making outstanding remittances promptly.

> *1.5.3 When the employer and the employee are unable to resolve barriers affecting persons with disabilities that may flow from the application of this directive, the employer and the employee shall consult with the appropriate departmental and/or union employment equity professional.*
>
> …
>
> *1.9 Workplace change (applies within the headquarters area only)*
>
> *1.9.1 When an employee is assigned from a permanent workplace to a temporary workplace for a period of less than 30 consecutive calendar days, the provisions of this directive shall apply.*
>
> *1.9.2 When an employee is assigned from a permanent workplace to a temporary workplace, for a period of 30 consecutive calendar days or more, the provisions of this directive shall apply unless the employee is notified, in writing, 30 calendar days in advance of the change in workplace. In situations where the employee is not notified of a change of workplace in writing, the provisions of the directive shall apply for the duration of the workplace change up to a maximum of 60 calendar days.*
>
> *1.9.3 When conditions under workplace change outlined above are not met, transportation shall be provided to the temporary workplace, or the kilometric rate paid for the distance between the home and the temporary workplace, or between the permanent workplace and the temporary workplace, whichever is less.*
>
> …
>
> *3.2 Module 2 - Travel outside headquarters area - no overnight stay*
>
> *The provisions outlined in this travel module apply when a traveller is away from the workplace on government travel outside the headquarters area without an overnight stay in Canada or worldwide.*
>
> …

[251] Also relevant is bulletin 2014-03, the purpose of which is to help delegated managers determine whether an employee should be on travel status, according to the directive, in situations of assignments, acting appointments, or secondments.

[252] While the parties did not bargain or agree to bulletin 2014-03, the directive, which the parties have agreed to, expressly confers on the employer wide responsibilities and discretion. I agree with the Board in *Doran* that it must be examined.

[253] The relevant extracts of bulletin 2014-03 are as follows:

> …

> ***1. Application***
>
> *This Bulletin applies to public service employees who accept an assignment, acting appointment or secondment.*
>
> *If the assignment, acting appointment or secondment is for more than one year, the* NJC Relocation Directive *may apply.*
>
> ***2. Definitions***
>
> Employee*: a person employed in public service.*
>
> Headquarters area*: spans an area of 16 kms [sic] from the assigned workplace using the most direct, safe and practical road.*
>
> Travel status*: occurs when an employee or traveler is on authorized government travel.*
>
> ***3. Delegated Manager Responsibilities***
>
> *The delegated manager is responsible for:*
>
> - *ensuring that they had the delegated financial authority to authorize travel status;*
> - *deciding whether an employee will be on travel status or not;*
> - *ensuring that the formal agreement or letter of offer states whether the employee is on travel status or not during the period of the assignment, acting appointment or secondment;*
> - *discussing the formal agreement (form or letter of offer) with the employee before the agreement and letter of offer is signed by the employee; and*
> - *when travel status is authorized, ensuring that the travel request is submitted and approved through the Expense Management Tool and that the employee is provided with a confirmation beforehand.*
>
> …

[254] In *Allain*, at para. 25, to resolve cases of this nature, the adjudicator stated, "… one must simply apply the Directive's plain wording, which is part of the collective agreement."

[255] The employer argued that Mr. McCarthy did not meet the conditions of government travel set out in the directive and that therefore, it properly exercised its discretion to not authorize travel status. The condition raised was: Did the employer require the grievor to travel outside his headquarters area?

[256] The employer argued that it did not require the grievor to go to regional headquarters or, in the words of the collective agreement and the directive, the

employer did not require him to travel outside his headquarters area on government business.

[257] In response, the grievor argued that he was required to travel because his work could not be done at Dorchester Penitentiary. While it is true that he was no longer able to perform his correctional officer duties at Dorchester Penitentiary, it does not follow that the employer required him to travel on government business to perform an ATIP officer's duties in an accommodated position.

[258] The case law is clear, as stated in *Bourdeau* at para. 168, that accommodation is a cooperative process. An employee is obligated to cooperate in that process and to accept a reasonable accommodation. A cooperative process is inconsistent with a process agreed to by the parties that confers on the employer the unilateral authority to authorize government travel by requiring an employee to perform his or her duties at another location outside his or her headquarters area.

[259] I am unable to conclude on the facts that the employer **required** the grievor to travel on government business in accordance with the collective agreement and directive's requirements. Was he assigned from a permanent workplace, Dorchester Penitentiary, to a temporary workplace, regional headquarters, within the meaning of those terms in the directive, or did regional headquarters become his permanent workplace?

[260] The bargaining agent argued that section 3.2 of the directive, in Module 2, entitled "Travel outside headquarters area - no overnight stay", applies to the fact situation and relied upon a number of National Joint Council decisions applying the directive in which it determined that the grievors had not been treated within the directive's intent.

[261] The directive defines a temporary workplace as the single location to which an employee is temporarily assigned to perform the work of his or her position or reports to within the headquarters area.

[262] NJC File No. 21.4.1112 was referred to. In that case, over a weekend, management advised an employee occupying an indeterminate position at one work location to report to an alternate temporary work location because protesters were

occupying the grievor's work location. The Executive Committee concluded that the employee had not been treated within the intent of the directive.

[263] Similarly, in NJC File No. 21.4.1113, a new employee was advised that the employee's permanent work location was Location A; however, due to operational issues, the employee never started working at that location, having been assigned to Location B.

[264] In NJC File No. 21.4.1092, there had been a recognition that the directive applied to a temporary assignment; however, the employer decided to cease paying benefits based on a deficit-reduction initiative.

[265] In my respectful view, all these cases may be distinguished from this one as it appears that management required those employees to perform their positions' duties temporarily at a temporary work location.

[266] Similarly, in *Lannigan*, the adjudicator determined that surveillance work performed by correctional officers on the hospital squad fell within the directive's intent. The correctional officers performed their position's duties outside their headquarters area at the employer's direction and at a temporary work location. This case is similar to the National Joint Council decisions mentioned earlier and in my view is readily distinguishable from that of the grievor.

[267] In *Baird*, the adjudicator determined that surveillance and electronic warfare technologists located at the FMFCS in Halifax were entitled to the directive's benefits when they participated in sea trials on ships and submarines. Again, there is a common theme not present in this case in which employees are required to perform their duties at a temporary work location outside their headquarters area.

[268] In *Hamilton*, the grievors had accepted secondments to course manager positions at the CMLC for three years, during which they would not report to their designated regular places of employment.

[269] The grievors sought reimbursement for travel to and meals at their seconded place of work in Cornwall. The adjudicator stated this at paragraph 34:

> *[34] In these circumstances, the grievors' regular place of work while employed by the CMLC was the Cornwall campus. It defies logic that they should be compensated for mileage to and from*

> *their homes to their new place of work (which coincidentally was closer than their regular work locations in Kingston and Ottawa) when on temporary assignments that they eagerly and actively sought out [sic]. It also defies logic that a person who goes home for lunch, because the workplace to which he or she was seconded is closer than his or her regular work location, then claims the meal on the basis that, while working at the new place of work, he or she is on travel status.*

[270] In *Campeau*, the grievor worked for the CLC and was assigned to the following locations on the following dates:

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

[271] During that time, he lived at the same address, in a municipality north of Montréal.

[272] The employer refused to pay the travel time that the grievor claimed. The grievance was dismissed at all three levels of the grievance process. At the first level, the employer cited as its reason the fact that the grievor required less time to travel to his assigned workplace than to his substantive workplace.

[273] In its reasons, at paragraphs 42 and 43, the Board had to interpret and apply the directive and the terms “Headquarters area” and “Government travel”, as follows:

> *[42] I am of the view that the reasoning in* Hamilton *entirely resolves the issue in this case. The grievor did not work outside his headquarters area while on assignment; he worked in a new headquarters area. He assumed the duties of the positions at those locations during the established times. Government travel means all travel authorized by the employer to a place other than the usual workplace. While the grievor worked at an office other than that of his substantive position, his usual workplace (“assigned workplace” in the definition of “headquarters area”) became that office. That is not government travel, which refers to travel, as the title of the Directive quite clearly indicates.…*

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

[274] As noted in *Cabelguen*, the Board applied the decisions in *Hamilton* and *Campeau* and concluded that an employee on a voluntary assignment to a position outside his or her headquarters area changes his or her usual workplace. The new workplace becomes the employee's workplace located in a new headquarters area and therefore it is not government travel as a result of an employer requirement.

A. Applying these decisions to the facts of this case

[275] The grievor was no longer able to perform the duties of his correctional officer position at Dorchester due to the limitation that he could no longer work with inmates. He was offered the job as the ATIP regional coordinator from January to June 2016 as part of an ongoing accommodation process, which he accepted.

[276] I am persuaded to adopt the reasoning in *Hamilton*, *Campeau*, and *Cabelguen*. The grievor did not work outside his headquarters area while on assignment; he worked in a new headquarters area in a new position. While he worked at an office other than that of his substantive position, his usual workplace (the assigned workplace) became that office.

B. Did the grievor stand to personally gain from travelling on government business?

[277] The employer also argued that an employee must not profit if he or she is required to travel on government business as the expenses must be reasonably incurred and must not constitute income or other compensation that would open the way for personal gain. The grievor in this case had a shorter commute as he resided in Moncton, which was the same location as regional headquarters. Furthermore, employees were not reimbursed for parking, and the grievor did not make reasonable efforts or exercise due diligence to find the available free parking. In addition, I have

difficulty understanding how being reimbursed for meals in these circumstances was an expense that was reasonably incurred.

C. Did the employer preauthorize or authorize the grievor to travel on government business?

[278] The directive clearly states that the employer has the responsibility to authorize and determine when government travel is necessary and that such travel must be authorized in advance in writing to ensure that all travel arrangements comply with the directive.

[279] The employer argued that on the facts in this case, it did not authorize or preauthorize the grievor to travel on government business.

[280] It is clear on the facts that government travel was neither preauthorized nor authorized in this case.

D. Did the grievor initial under duress the provision in the assignment agreement acknowledging that he would not be granted travel status?

[281] In *Hassard v. Treasury Board (Correctional Service of Canada)*, 2014 PSLRB 32, the adjudicator considered the case of a grievor who was demoted as a result of a complaint made under the *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46). Rather than accept the demoted position, the grievor retired.

[282] She filed a grievance claiming that among other things, her retirement had not been voluntary and that the employer had coerced it.

[283] Paragraph 143 of *Hassard* notes the quality of evidence that would constitute duress or undue influence and refers to *Lawton v. Canada National Revenue*, 2012 FC 1074 at paras. 43 to 46, stating that duress required a threat of death or serious physical injury; coercion, intimidation, or the application of illegitimate depression; or an ability of one person's will to dominate that of another.

[284] Rejecting the evidence that the grievor's termination had been coerced by the employer, the Board stated in part at paragraph 163 of *Hassard* as follows: "First, there is simply no evidence of coercion, as that term is … legally understood. Neither the grievor nor someone near and dear to her was threatened with physical harm. She was not deceived as to the relevant facts. She was not subject to any undue duress."

[285] In *Lawton*, at para. 43, the Federal Court reviewed the legal interpretation of the concept of duress in the context of an application by a Canada Revenue Agency employee to nullify an agreement to terminate her employment.

[286] The Federal Court explained that the original concept of duress was established in the common law to permit a court to set aside a contract that one party was compelled to execute by the application of a threat of physical violence. Equity expanded upon that concept to enable a court to set aside or to not require the performance of a contract when wrongful pressure had been brought to bear to compel a party to sign or enter into the contract.

E. Applying these principles to the facts of this case

[287] The grievor testified that the employer did not order him to execute the assignment agreement and acknowledged that he would not be subject to the directive's travel status provisions.

[288] He requested that he be permitted to take the assignment document and review it with his bargaining agent advisors, which he did. He returned it signed some four days later.

[289] He concluded that he had no choice but to accept the offer as an employee who required accommodation.

[290] He testified that WSNB's policy stated that benefits could be lost if employees failed to accept suitable employment offers. He observed that by failing to sign, he could have lost all his income and worker's compensation benefits.

[291] He stated that it was more reasonable to accept the assignment. He had to accept things that were not perfect.

[292] As noted, accommodation is a cooperative process. Employers have a duty to accommodate disabled employees. The accommodation need not be instant, perfect, or the employee's preferred accommodation.

[293] An employee is obligated to cooperate in the accommodation process and to accept a reasonable accommodation.

[294] As the grievor stated, it was more reasonable to accept the offer. There is no evidence that the employer wrongfully pressured him to sign the document.

[295] The only reference to any consequence of failing to sign the agreement is a WSNB policy that provides that injured workers are expected to accept offers of suitable employment, that injured workers are required to actively participate in rehabilitation and returning to work, which includes accepting suitable employment offers, and that WSNB may temporarily reduce or suspend benefits if evidence shows that an injured worker is not complying with the worker's compensation legislation provisions or did not accept an offer of suitable employment.

[296] That is not evidence that the employer pressured the grievor to sign the document. WSNB was not a party to the agreement. Its policy, in so far as it sets out the obligations of injured workers, reflects that of employees' obligation under the duty to accommodate. I am not persuaded that the grievor initialed the assignment agreement provision or its renewal stating that he would not be under travel status under duress.

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

(The Order appears on the next page)

VIII. Order

[298] The grievance is denied.

January 27, 2023.

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