Date: 20250623

File: 569-02-48050

Citation: 2025 FPSLREB 78

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

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD

Employer

Indexed as
Public Service Alliance of Canada v. Treasury Board

In the matter of a policy grievance referred to adjudication

Before: Guy Grégoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Zeni Andrade, counsel

For the Employer: Noémie Lebel, counsel

Decided on the basis of written submissions, filed June 12 and 18 and August 8 and 30, 2024.
[FPSLREB Translation]

I. Policy grievance referred to adjudication

[1] Clause 28.10 of the collective agreement for the Program and Administrative Services (PA) group, which was signed in 2017 and 2020, provides for reimbursing reasonable transportation expenses when an employee is called to work overtime. On January 18, 2021, the employer issued its new interpretation of that clause to include the concept of short notice.

[2] On February 9, 2021, the Public Service Alliance of Canada ("the bargaining agent" or PSAC), on behalf of the Canada Employment and Immigration Union (CEIU), filed this policy grievance against the Treasury Board ("the employer"). On August 18, 2023, it was referred to the Federal Public Sector Labour Relations and Employment Board ("the Board").

[3] The bargaining agent argues that the employer's interpretation of clause 28.10 of the collective agreement contravened the collective agreement.

[4] For the following reasons, I conclude that the grievance is founded, and the corrective measures granted are those described in the conclusion.

[5] The Board made its decision on this policy grievance based on the parties' written submissions filed June 12 and 18 and August 8 and 30, 2024.

II. Summary of the evidence

[6] For the analysis of this policy grievance, I read all the parties' written submissions. I do not intend to reproduce them all. In my opinion, they are part of the file, and I will refer to the relevant arguments that led to my conclusion. The parties also submitted a brief joint statement of facts.

[7] The grievance reads as follows:

> [Translation]
>
> …
>
> *On January 18, 2021, management informed employees in writing of its new interpretation of clause 28.10, about reimbursing transportation expenses when overtime is planned in advance or is on short notice.*
>
> *That decision contravened the collective agreement, including clause 28.10, which covers transportation expenses.*
>
> *Corrective measures requested*

> *That management revise its decision and reimburse transportation expenses retroactively to January 18, 2021, to all employees who reported for work under the conditions set out in clauses 28.05(b) and (c) and 28.06(c) and who used a transportation service other than normal public transportation services.*
>
> *All other corrective measures deemed relevant that may be raised over the course of the proceedings to deal with this grievance.*

[8] The joint statement of facts provides relevant information. When the facts occurred, the parties were bound by the PA group collective agreement that expired on June 20, 2018, and after that by the one for the same group signed on October 23, 2020, which expired on June 20, 2021. The clauses covered by this policy grievance remained the same in both collective agreements.

[9] The employer is the Treasury Board, and the internal service involved is the Benefits Delivery Services Branch (BDSB) of Employment and Social Development Canada (ESDC).

[10] In 2017, the BDSB learned of a processing disparity between its national offices for reimbursing reasonable employee transportation expenses when they were called to work overtime under clause 28.10 of the collective agreement. In February 2020, the bargaining agent asked the employer to take a clear position on the issue, to facilitate the understanding of the situation and the applicable parameters.

[11] On January 7, 2021, without the parties reaching an understanding or agreement, by email, the assistant deputy minister notified the Human Resources (HR) Branch of a review of departmental practices for overtime worked, to ensure that it was being applied consistently nationally as of January 18, 2021. In the email, the policy on reimbursing transportation expenses when overtime is planned in advance or on short notice (“the policy”) was sent to managers, for distribution to employees.

[12] On January 21, 2021, PSAC was informed of the policy. During the week of January 25, 2021, an HR bulletin communicated the relevant updates. Through that correspondence, ESDC decided to align all its practices nationally.

[13] On February 22, 2021, a notice to bargain collectively was sent for the PA group. On May 29, 2023, for the Quebec Region, no grievances were filed that specifically addressed the issue of reimbursing overtime transportation expenses.

[14] On August 3, 2023, the policy grievance was denied at the final level of the grievance process. The employer considered that to be entitled to the reimbursement of reasonable transportation expenses, it must require an employee's services on short notice, and the employee cannot use public transportation.

[15] The joint statement of facts adduced into evidence includes the relevant collective agreements that expired respectively on June 20, 2018, and June 20, 2021; an email exchange on January 7 and 8, 2021, with the subject line "[translation] Important: Alignment of departmental practices: Overtime …"; an undated document entitled "[translation] Reimbursement of transportation expenses when overtime is planned or on short notice"; an email exchange dated January 18 and 28, 2021, between Roger Otis and Sylvain Archambault, with the same subject line as stated earlier; an email dated January 21, 2021, with the same subject that included a document entitled, "[translation] Allowance for overtime meals"; an HR bulletin that had an amendment date of November 28, 2023; the bargaining agent's policy grievance document dated February 15, 2021; and the final-level response to the grievance.

III. Summary of the arguments

A. For the bargaining agent

[16] From the start, PSAC states that the employer is not entitled to unilaterally impose new requirements, as it did when it agreed to reimburse employees' transportation expenses who agree to work overtime on a weekend day or a day of rest under a variable schedule, under clause 25.09 of the collective agreement.

[17] PSAC contends that the employer unilaterally amended the working conditions by adopting the policy. It argues that despite the terms that were used, it was not an update but in fact the adoption of a new policy since it did not exist before. It claims that the employer is trying to do indirectly what it cannot do directly, which is to amend the collective agreement's provisions and its employees' working conditions.

[18] PSAC states that clause 28.10 of the collective agreement is clear and unambiguous. Clause 28.10 refers to clauses 28.05(b) and (c) and 28.06(c). It argues that those clauses must be interpreted according to the normal and usual meanings of the words found in them.

[19] PSAC contends that employees who must work overtime, under clause 28.10 of the collective agreement, are entitled to their transportation expenses being

reimbursed only if they meet the conditions, criteria, or requirements that are expressly set out. It argues that less than four hours' notice is not a condition set out in any of clauses 28.10, 28.05(b), 28.05(c), or 28.06(c).

[20] PSAC contends that through the policy, the employer wants to restrict the right to reimbursement by making a new requirement, which is that overtime be approved with less than four hours' notice. It considers that a unilateral imposition of a new condition of employment without going through the bargaining process.

[21] PSAC argues that 15 times in the collective agreement, the parties agreed to the obligations or rights requiring 4 hours' notice. They could have done the same with clause 28.10, but they chose not to. They could have just as easily referred to clause 28.04 in clause 28.10. However, the employer rightly cited that not complying with clause 28.04 gives "[translation] … rise to reimbursing transportation expenses, which is an illogical, irrational, and superficial argument". PSAC continued by stating that the new requirement is incompatible with the text of the collective agreement itself since clause 28.05(b) clearly stipulates that no notice is necessary.

[22] PSAC argues that it has difficulty understanding the employer's reasoning since four hours' notice, set out in clause 28.04(c) of the collective agreement, is only an obligation that the employer must try to honour, with no specific consequences in the event that it does not comply. The obligation is very recent and did not apply to the Quebec Region. Moreover, the practice that had been in force in Quebec for decades was that the employer would reimburse transportation expenses in accordance with clause 28.10 without requiring any sort of notice.

[23] PSAC argues that there is no disparity in the Quebec Region for applying clause 28.10 of the collective agreement and that a current and accepted practice was in place that did not require less than four hours' notice.

[24] PSAC argues that the employer relies on *Ulmer v. Canada Customs and Revenue Agency*, 2004 PSSRB 36. It contends that that decision does not apply to this case because it deals with overtime compensation and not reimbursing transportation expenses. It also contends that the employer simply bases its interpretation on the expression "… is required to report for work and reports …". According to it, this interpretation is erroneous because it is an isolated interpretation that does not account for the rest of the clause.

[25] PSAC argues that the purpose of clause 28.10 of the collective agreement is just to reimburse the transportation expenses of employees who have to incur travel expenses to work overtime and that there is no requirement for any sort of notice anywhere. It adds that it must be remembered that surely, the parties negotiated clause 28.10 to encourage, convince, and attract employees to work overtime. It contends that it is not a premium or an allowance but a reimbursement of expenses that employees incur to help their employer, which is in need of labour, and they must meet several requirements to be entitled to it. Clause 28.10 clearly provides that to be entitled to transportation expense reimbursement, employees must be in one of the three situations set out in clauses 28.05(b), 28.05(c), and 28.06(c).

[26] PSAC explains that clause 28.05(b) of the collective agreement covers when an employee is approved for overtime during his or her workday, and the additional overtime shift is not contiguous to his or her regular shift. Clause 28.05(c) covers when an employee has completed his or her workday and has left his or her workplace but is called back, without notice, to work overtime. Finally, clause 28.06(c) covers when an employee agrees to work overtime on a day of rest.

[27] Employees who are in one of those three situations will also have to demonstrate that they had to use a transportation service other than public transportation, to be entitled to reimbursement.

[28] PSAC argues that that confirms that the parties took the time and made the effort to negotiate precise situations and specific conditions to meet to be entitled to transportation expense reimbursement. It states that by adding the condition of less than four hours' notice, the employer simply added to the collective agreement.

[29] It contends that the employer's attitude and decision are illegal and that by adopting the policy, the employer contravened the collective agreement and abused its management rights. An employer cannot be allowed to change negotiated conditions of employment unilaterally by adding new conditions to restrict the right to reimbursement. The employer could just as easily have standardized transportation expense reimbursement by assigning it to everyone, in accordance with the collective agreement's provisions, but decided to withdraw it.

[30] The bargaining agent states that it has difficulty understanding the employer's claim that its argument and interpretation are logical and give meaning to each word

in the provisions. The bargaining agent argues that incredible mental gymnastics are required to connect the employer's position to the collective agreement's text.

[31] The bargaining agent argues that the employer's claims are contradicted by the evidence in the file and that its interpretation is so inconsistent that even its managers cannot make sense of it. The bargaining agent claims that Quebec Region managers have applied its interpretation, which is more logical and is evident from the very wording of clause 28.10 of the collective agreement.

[32] The bargaining agent contends that it is not asking for a collective agreement amendment but simply compliance with clause 28.10 of it, as drafted and negotiated. It agrees that, as does the employer, the collective agreement's words must be given their ordinary meanings. In addition, it must be presumed that all the words in a clause were chosen, so why the parties failed to set out a requirement for any sort of notice, either short or long, must be interpreted.

[33] The bargaining agent argues that contrary to the employer's claims, neither the employer nor its members ever informed it that the interpretation of clause 28.10 of the collective agreement creates "[translation] an inconsistency and a conflict between the overtime provisions".

B. For the employer

[34] The employer's submission has 37 pages, including the list of authorities and the 3 documents adduced into evidence. I considered them all, and I will mention only the salient points.

[35] In its introduction, the employer submits the following:

> [Translation]
>
> …
>
> *Considering the collective agreement's overall context, the employer submits that an employee must receive short notice; that is, less than four (4) hours, to report for work and arrive there to be entitled to the reimbursement of his or her reasonable expenses related to transportation costs. In addition, to obtain the reimbursement of his or her transportation expenses, the conditions set out in clauses 28.05(b) and (c) and 28.06(c) must be met. In addition, the employer must require and authorize, in advance, using transportation services other than normal public transportation services.*
>
> …

[36] The employer submits that the interpretation in the HR bulletin complies with a logical interpretation that allows giving meaning to each of the words and each collective agreement provision.

[37] The employer provides services to citizens, and consequently, overtime may sometimes be required and offered to employees. The practice is to approve overtime in advance and voluntarily. It adduced into evidence an email dated February 28, 2020, with the subject line, "Overtime planning starting SATURDAY, FEBRUARY 29th 2020". Those are forecasts of overtime needs for the coming period for different employee classifications, levels, and profiles.

[38] In 2017, the BDSB learned of a processing disparity between its national offices when reimbursing reasonable overtime transportation expenses under clause 28.10 of the collective agreement.

[39] The employer adduced into evidence an email dated November 28, 2019, which Fabienne Jean-François, the CEIU's national vice-president, Quebec Region, sent to Rui Costa, the BDSB's director general. Ms. Jean-François asked the employer to confirm its position on reimbursing transportation expenses, even though in the past, some managers had agreed to reimburse them. She acknowledged that in recent years, the region chose several times not to reimburse those expenses. She stated that a final position on the issue would be useful. Ms. Jean-François raised the same concern in a second email, dated February 4, 2020.

[40] On January 7, 2021, Darlène De Gravina, the assistant deputy minister, notified the Human Resources Branch of a review of departmental practices for paying overtime by issuing an HR bulletin about "[translation] [t]he reimbursement of transportation expenses when overtime is planned in advance or on short notice", which was to apply of January 18, 2021.

[41] In its arguments, the employer states the following:

> [Translation]
>
> …
>
> *… The approach stated in the bulletin confirmed that an employee is entitled to the reimbursement of his or her transportation expenses only if one of three conditions set out in clauses 28.05(b) or (c) or 28.06(c) is met and if he or she had to use transportation services other than normal public transportation services. In*

> *addition, the bulletin confirms the employer's position that clauses 28.10(a) and 28.06(c) cover when the employer requires an employee's services on short notice; that is, anything less than the notice period set out in clause 28.04(b), which is less than four (4) hours.*
>
> …

[42] It states that an employee would be entitled to having his or her transportation expenses reimbursed only if the overtime was unplanned or was approved with less than four hours' notice. On January 21, 2021, the Labour Relations Service sent the bargaining agents and all the employer's managers three overtime bulletins, to ensure national consistency for collective agreements' parameters.

[43] The employer argues that the practice in different offices was neither consistent nor constant. It asserts that despite the bargaining agent's statement that there was a current practice in the Quebec Region, different offices in different regions each had their own way of processing reimbursement requests. How they were handled depended on several factors, namely, the management of the overtime budget in the different regions, and the incumbent managers.

[44] The employer illustrates it by the example of the Québec City office, which, for a specific period, reimbursed transportation expenses only when overtime was approved on short notice, while the Laval office reimbursed the same expenses at all times on a day of rest and when public transportation services were unavailable. As for the Moncton, Halifax, and Toronto offices, they reimbursed those expenses only on a day of rest and when normal public transportation services were unavailable. It argues that that processing disparity led to the national review of departmental practices and that it demonstrates that there was no established and consistent practice, contrary to the bargaining agent's assertions.

[45] The employer refers to the relevant collective agreement provisions, citing clause 28.10, which must be read jointly with clauses 28.04, 28.05, and 28.06.

[46] I reproduce as follows the excerpts that the employer highlighted in each of those collective agreement clauses:

> [From the collective agreement that expired in June 2018:]
>
> … […]

28.10 *a. When an employee* ***is required to report for work and reports under the conditions described in paragraphs 28.05(b), (c) and 28.06(c) and is required to use transportation services other than normal public transportation services*** *….*	***28.10*** *a. L'employé-e qui* ***est tenu de se présenter au travail et qui s'y présente dans les conditions énoncées aux alinéas 28.05b) et c) et à l'alinéa 28.06c), et qui est obligé d'utiliser des services de transport autres que les services de transport en commun*** […]
…	[…]

[From the collective agreement that expired in June 2021:]

28.04 *c. The Employer shall, wherever possible,* ***give at least four (4) hours' notice*** *of any requirement for overtime work, except in cases of emergency, call-back or mutual agreement with the employee.*	***28.04*** *c. l'employeur doit, dans la mesure du possible,* ***donner un préavis d'au moins quatre (4) heures*** *à l'employé-e visé lorsqu'il est nécessaire d'effectuer des heures supplémentaires, sauf dans les cas d'urgence, de rappel au travail ou d'accord mutuel avec l'employé-e.*
…	[…]
28.05 *b. If an employee is given instructions* ***during the employee's workday*** *to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be paid a minimum of two (2) hours' pay at straight-time rate or for actual overtime worked at the applicable overtime rate, whichever is the greater.*	***28.05*** *b. Si l'employé-e reçoit l'instruction,* ***pendant sa journée de travail****, d'effectuer des heures supplémentaires ce même jour et qu'il ou elle se présente au travail à un moment qui n'est pas accolé à ses heures de travail à l'horaire, l'employé-e a droit à la plus élevée des deux rémunérations suivantes : un minimum de deux (2) heures au tarif normal ou les heures supplémentaires réellement effectuées au tarif des heures supplémentaires applicable.*
c. An employee who is called back to work after the employee has completed his or her work for the day and has left his or her place of work, and who returns to work shall be paid the greater of:	*c. L'employé-e qui est rappelé au travail* ***sans préavis****, après avoir terminé son travail de la journée et avoir quitté son lieu de travail, et qui rentre au travail touche la plus élevée des deux (2) rémunérations suivantes :*
…	[…]
28.06 *c. When an employee* ***is required to report for work and reports on a day of rest****, the*	***28.06*** *c. L'employé-e qui* ***est tenu de se présenter au travail un jour de repos et qui s'y présente*** *touche la*

employee shall be paid the greater of ….	*plus élevée des deux (2) rémunérations suivantes* […]
…	[…]

[Emphasis in the original]

[47] I will cite the entirety of the relevant clauses in the analysis portion of this decision. However, the excerpts just quoted were taken from the employer's arguments. It argues that after reading all those collective agreement provisions, the interpretation that it put forward is the only possible one that ensures that all those overtime provisions are aligned.

[48] The employer submits that the bargaining agent states that the grievance arose from the fact that the employer decided to unilaterally amend the employees' conditions of employment by adopting the HR bulletin. It submits that that is not the question to decide. It presents the issue as follows: "[translation] Does the employer's interpretation in the labour relations bulletin contravene the collective agreement, specifically clause 28.10?"

[49] The employer argues that it did not contravene the collective agreement and that it did not unilaterally impose new requirements for agreeing to reimburse employee transportation expenses under clause 28.10. Transportation expenses are reimbursed only when the overtime is not planned and when it is approved with less than four hours' notice. According to the employer, this is the only possible interpretation when the collective agreement's clauses are analyzed in the strict sense.

[50] The employer lists the general interpretation principles and contends that the Board's jurisdiction is limited to the terms expressly set out in the collective agreement. It argues that it is not possible to amend terms that are clear or to establish new ones, citing *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 50; and s. 229 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA* or "the *Act*").

[51] The employer lists the principles as follows:

> [Translation]
>
> *a. The collective agreement's terms must be considered in their usual and ordinary meanings.*

> *b. The collective agreement as a whole forms the context in which the words used must be interpreted. Otherwise, the ordinary meaning could conflict with other provisions.*
>
> *c. Each word of a collective agreement provision must be interpreted to mean something, to avoid any redundancy. In the event that a provision confers a financial advantage, there must be a clear expression of that intent.*
>
> *d. A more specific collective agreement provision takes precedence over a more general one.*
>
> *e. The fact that a provision seems unfair is no reason to ignore it when it is clear.*
>
> *… when there is no ambiguity or lack of clarity in the meaning of the collective agreement's words, it is expedient to give effect to the current meaning of the words in the collective agreement.*
>
> *…*

[52] The employer also elaborates on the principles that must guide interpreting the collective agreement's clauses. Although I did not reproduce them in this decision, I will consider them in my analysis of this grievance.

[53] Applying the interpretation principles that the employer proposes, it asserts that clause 28.10, "Transportation expenses", of the collective agreement must be interpreted jointly with clause 28.05, "Overtime compensation on a workday", clause 28.06, "Overtime compensation on a day of rest", and clause 28.04, "Assignment of overtime work". It argues that reading them jointly allows standardizing all the clauses instead of creating ambiguities and inconsistencies. It contends that it is reasonable that when the conditions for reimbursing transportation expenses are referred to, they should be interpreted in conjunction with the conditions for assigning overtime, which involve the notice about overtime being approved.

[54] The employer rejects the bargaining agent's assertions that a specific reference to clause 28.04 should have been added to clause 28.10 of the collective agreement and that had it been the intention, the assertions are erroneous and without a basis in law. It contends that the interpretation principles demonstrate that a specific reference was not necessary since the provisions of the same section obey the same rules.

[55] The employer also rejects the bargaining agent's argument that no notice is necessary and that this requirement is incompatible with the collective agreement's text since it would create an inconsistency and conflict between the overtime provisions and would lead to absurd results.

[56] The employer contends that its interpretation of clause 28.10 of the collective agreement is the only possible one and that the clause lists the prerequisite conditions for an employee to be entitled transportation expense reimbursement. It argues that in fact, the clause states that an employee who is "… required to report for work and reports …" under the conditions set out in clauses 28.05(b), 28.05(c), and 28.06(c), and who must use transportation services other than normal public transportation services is entitled transportation expense reimbursement.

[57] The employer relies on the wording of clauses 28.05(b), 28.05(c), and 28.06(c) of the collective agreement to assert that it can determine the compensation that an employee is entitled to. It argues that consequently, to be entitled to the reimbursement, the employee must be required to report for work and must report. According to the employer, based on the interpretation of those clauses, there is no doubt that an employee is required to report for work on short notice to work unscheduled overtime. The use of the terms "on that day" and "a day of rest" clearly support that assertion.

[58] In its arguments, the employer submits the following about the related compensation mentioned in those clauses: "[translation] … which is more advantageous for employees and considers the impact that overtime required with short notice can have on employees' personal lives".

[59] The employer submits that to interpret the expression "required to report for work and reports" and the concept of short notice in clause 28.05(c) of the collective agreement, each of those collective agreement clauses must be analyzed with respect to the other, to give consistent meaning to all of them, particularly article 28, on overtime.

[60] The employer states that since clause 28.04(c) of the collective agreement provides that it must give at least four hours' notice to employees to work overtime, based on the modern interpretation principles, the expression "short notice" necessarily means any notice that is less than four hours. It argues that that interpretation complies with the definitions set out in the key decisions cited in the next paragraphs.

[61] The employer recognizes that no decision in the case law specifically addresses interpreting clause 28.10 of the collective agreement. However, several decisions have interpreted the expression "required to report for work and reports" and the accessory

allowances, such as those related to reimbursing transportation and meal expenses to employees working overtime.

[62] *Jefferies v. Canadian Food Inspection Agency*, 2003 PSSRB 55 at paras. 35 and 38, contends that the expression "required to report for work and reports" is for when the employer requires an employee's services on short notice and public transportation is not available.

[63] *Graham v. Treasury Board (Department of National Revenue - Customs and Excise)*, Board file nos. 166-02-2735 to 2737 (19770119), states that the parties to the collective agreement wanted to give the same meaning to the expression "required to report for work", since they used the same words at clauses 25.08 and 25.05(b).

[64] The employer submits that the Board concluded that the expression "required to report for work" draws its meaning from the context, which applies to unplanned attendance at work. In addition, it refers to clauses 30.08 and 30.09 of the collective agreement, to assert that it is clear that the expression's purpose is to designate when employees report for work outside their normal positions, as opposed to employees who work outside their work positions and the work was scheduled. It further argues that the collective agreement's text upholds that interpretation because it uses the phrase, "When an employee **works** on a holiday …", compared to "When an employee **is required to report for work** …" [emphasis in the original].

[65] According to the employer, *Public Service Alliance of Canada v. Canadian Food Inspection Agency*, 2023 FPSLREB 55 at para. 44, is very relevant because it confirms the interpretations in *Jefferies* and *Graham*, namely, the expression "required to report for work and reports" covers when the employer requires an employee on short notice, and a premium is paid. The employer submits that the same conclusions must be drawn in this grievance when interpreting clause 28.10 of the collective agreement because it repeats the same terms. In addition, it submits that the terminology used in the different clauses is unambiguous, and therefore, the words' usual and current meanings must be used.

[66] The employer insists that it is clear that the expression "required to report for work and reports" in clauses 28.10 and 28.06 of the collective agreement covers when the employer requires an employee's services and they report for work outside their normal hours to work overtime that is not contiguous to their work position and is approved on short notice.

[67] In its arguments, the employer analyzes the reasons that led to the concept of transportation expense reimbursement in clause 28.10 of the collective agreement. It acknowledges that that reimbursement is provided to compensate employees who are advised that they must work overtime on short notice. The reference to public transportation in clause 28.10 allows presuming that if the employer agrees to reimburse transportation expenses, it is because public transportation is unavailable, which certainly comes from the fact that the request to work overtime was made on short notice. In addition, the parties cannot have intended to reimburse an employee who reported for work in his or her vehicle and worked overtime on the same day.

[68] The employer reiterates that overtime compensation associated with transportation expenses as it relates to the application of clause 28.10 of the collective agreement is for the specific circumstances of short notice from the employer and public transportation services being unavailable.

[69] The employer argues that short notice must be defined according to the English expression “reasonable notice”, which is drawn from *Black’s Law Dictionary* (11th ed., 2019; Bryan A. Garner, editor in chief). That expression means, “Notice that is fairly to be expected or required under the particular circumstances.” The term “short notice” is defined as, “Notice that is inadequate or not timely under the circumstances.” The employer submits that clause 28.04 of the collective agreement must be referred to. It specifies that four hours’ notice is required and that consequently, short notice is less than four hours.

[70] The employer maintains that it is clear that the parties’ intention was not to reimburse employees for expenses incurred by using transportation modes other than normal public transportation services once they work overtime. Instead, the collective agreement’s text reveals that clause 28.10 requires very specific conditions, namely, overtime is approved on short notice that does not allow using public transportation services.

[71] Relying on the interpretation of the HR bulletin, the employer concludes that clause 28.10 of the collective agreement arose from the need for short notice to be entitled to transportation expense reimbursement, which becomes the only interpretation that favours a harmonious interpretation of the different overtime provisions.

[72] The employer analyzes the extrinsic evidence that the bargaining agent cited; namely, there was reportedly a past practice in the Quebec Region of reimbursing transportation expenses. It submits that such evidence is irrelevant since to be relevant, the collective agreement's text would have to contain on its face ambiguity, ambivalent vocabulary, imprecise terms, and, overall, an equivocal character. However, the employer submits that none of those characteristics appear on the face of clause 28.10's wording. It submits that the bargaining agent shares with it the opinion that clause 28.10 is unambiguous and that the collective agreement's provisions are harmonious. It submits that when the new collective agreement was signed on October 23, 2020, with no changes to the language of the terms at issue, it confirmed the unambiguity of the terms and that had the bargaining agent deemed otherwise, it was free to make representations about it at the bargaining table.

[73] The employer submits that the bargaining agent did not adduce any uncontradictory extrinsic evidence of a past practice that was consistent, regular, and continuous, in accordance with the legal requirement of a past practice. A mere statement by the bargaining agent is not sufficient and conclusive to establish a past practice that was sufficiently long, consistent, known by the parties, and tolerated during several collective agreements, and no weight should be assigned to the bargaining agent's position. Instead, it argues that the evidence demonstrates that a problem existed between the regional offices and that there was no consistent, regular, and continuous national practice.

[74] The employer supports its argument with the emails dated January 8, 2021, and the undated document with the subject line, "[translation] The reimbursement of transportation expenses when overtime is planned in advance …". That is the updated interpretation of how to apply the terms for reimbursing transportation expenses. The employer submits that it can be presumed that the objective behind those communications was that there was no consistent, regular, and continuous national practice of reimbursing transportation expenses.

[75] The employer submits that the bargaining agent could have adduced evidence confirming a consistent, regular, and continuous national practice of reimbursing transportation expenses, but it did not, so nothing in its arguments allows concluding that the employer's intention was to reimburse employees based on clause 28.10 of the collective agreement, independent of whether overtime was approved in advance or on short notice.

[76] It submits that instead, the evidence demonstrates that it was necessary to harmonize all its national practices, so that processing transportation expense reimbursements could be standardized based on the overtime approved, whether in advance or on short notice, and paid consistently by the different regions.

[77] In the alternative, the employer submits that if I conclude that there was a past practice, even though it denies that there was one, the past practice cannot have the effect of creating a right, as the collective agreement is silent about it. Among other things, it cited the following decisions to support its argument: *Durham District School Board v. Canadian Union of Public Employees, Local 218*, 2022 CanLII 103597 (ON LA) at para. 68; *Eckert v. Treasury Board (Agriculture Canada)*, [1985] C.P.S.S.R.B. No. 196 (QL); and *Syndicat canadien de la fonction publique, section locale 4041 v. Transat A. T. inc.*, 2018 CanLII 41770 (CA SA) at paras. 131 to 133. Essentially, those decisions refer to employer errors that would not generate employee rights.

[78] The employer submits that as *John Bertram & Sons Co. v. International Association of Machinists, Local 1740*, 1967 CarswellOnt 782, [1967] O.L.A.A. No. 2 (QL), (1967) 18 L.A.C. 362, requires, nothing in the bargaining agent's evidence establishes that the past practice was accepted by those "… who have some real responsibility for the meaning of the agreement …" and who would have set out that the Treasury Board was aware of and accepted the practice. On the contrary, the employer decided to correct the practice once it was legally in a position to, after the statutory freeze was lifted.

[79] The employer submits that in January 2021, it was perfectly justified aligning its departmental practice for reimbursing transportation expenses, since the statutory freeze had been lifted, considering that the collective agreement that applied to this group grievance had expired on June 20, 2018, and the new one, which was signed on October 23, 2020, expired on June 20, 2021. It was also justified since notice to bargain was not sent until February 22, 2021. It concludes its arguments by stating that if I conclude that there was a past practice, it was not required to let the error persist, that it was lawful to correct the error, and that it did not generate rights.

[80] The employer also asserts that it is possible for it to end a past practice in exchange for notice and reasonable grounds. It refers to its management rights for assigning work. It relies on *Durham District School Board*, which concludes that the employer can end a practice that falls outside the collective agreement by giving the bargaining agent adequate notice.

[81] In this case, the bargaining agent knew that the employer wanted to standardize its practices for reimbursing transportation expenses and that it no longer agreed to reimburse them when the overtime was planned in advance. The bargaining agent had ample time to become informed about it and to bring the issue to the bargaining table if it desired. It did nothing to change the language of the terms for reimbursing transportation expenses, and no individual grievance was filed to challenge the employer's interpretation, apart from this policy grievance.

[82] The employer submits that I should not analyze the extrinsic evidence to interpret the collective agreement. However, it submits that if I decide to consider it, it was within it rights to end the past practice, and that there was a remedy in accordance with the case law's requirements.

[83] The employer submits that if I allow this policy grievance, my jurisdiction is limited by s. 232 of the *FPSLRA*. It asserts that through this grievance, the bargaining agent asks the Board to order the employer to take individual action and to revise its decision on the reimbursement retroactive to January 18, 2018, for all employees who reported for work under the conditions set out in clauses 28.05(b), 28.05(c), and 28.06(c) and who used a transportation service other than normal public transportation services and any other measure deemed relevant.

[84] The employer argues that all the requested individual actions would have been the subjects of individual grievances under s. 208 of the *FPSLRA* and that no one filed one. It states that consequently, my powers are limited strictly to a declaration and to directing the employer to interpret and apply the collective agreement under the terms that I will set. It submits that the corrective action that the bargaining agent requests exceeds my jurisdiction and oversteps my jurisdictional powers over policy grievances. It also contends that it is impossible to take individualized corrective action with the evidence adduced for the policy grievance.

[85] The employer relies on *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 84, and states that a policy grievance challenges the application or interpretation of a collective agreement's provisions. Section 232 of the *FPSLRA* makes no mention of individual redress. If the bargaining agent so desired, it should have filed individual grievances or a group grievance; it did not. Additionally, this policy grievance's facts do not allow for an individual assessment retroactive to 2018 to determine who was eligible for transportation expense reimbursement. As an example, the employer states that to be entitled to that

reimbursement, "[translation] … the employee must demonstrate that it was impossible for him or her to use normal public transportation services …". However, several years have since passed, and it would be impossible for an employee to provide such retroactive evidence.

[86] The employer analyzes the reasons that led to the concept of transportation expense reimbursement in clause 28.10 of the collective agreement. It acknowledges that that reimbursement is provided to compensate employees who must work overtime on short notice. The reference to public transportation in clause 28.10 allows presuming that if the employer agrees to reimburse transportation expenses, it is because normal public transportation is unavailable, which certainly stems from the fact that the request to work overtime was made on short notice. In addition, it argues that the parties cannot have intended to reimburse an employee who reported for work in his or her vehicle and worked overtime the same day.

[87] The employer reiterates that compensating transportation expenses related to applying clause 28.10 of the collective agreement is for the specific circumstance of short notice from the employer. It stated that it seems clear that to receive a reimbursement, the provision requires that a very specific condition is met, namely, the employee receives only short notice to work overtime.

[88] The employer maintains that it is clear that the parties' intention was not to reimburse employees for expenses incurred using transportation modes other than normal public transportation services once they worked overtime.

[89] Instead, according to the employer, the collective agreement's text reveals that clause 28.10 requires very specific conditions; namely, overtime approved on short notice such that public transportation services cannot be used.

[90] In conclusion, the employer submits that the bargaining agent failed to discharge its onus of proof and that it did not demonstrate that the employer contravened the collective agreement. The employer states that its interpretation proposed in the HR bulletin is appropriate under the collective agreement's provisions provided that it is analyzed in terms of its strict meaning. It submits that if I allow the grievance, the corrective measures granted should be limited to just a declaration under s. 232 of the *FPSLRA*. Finally, it asks that the principles set out in *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), (1983) 25 A.C.W.S.

(2nd) 104 F.C.A., be applied; namely, the corrective measures should be limited to the 25-day period that preceded the policy grievance.

[91] In *Canada (National Film Board)*, the Federal Court of Appeal decided that the applicant's grievance could only be about the salary that the employer should have paid the applicant during the 20 days before the grievance was filed.

IV. Reasons

A. The interpretation of clause 28.10 of the collective agreement

[92] For the following reasons, I determine that 1) clause 28.10 of the collective agreement is unambiguous, 2) clause 28.10 does not require less than four hours' notice to be entitled to transportation expense reimbursement, and 3) the employer's interpretation of clause 28.10 violates the collective agreement.

[93] In a policy grievance, the burden of proof falls to the party that filed it and is based on a balance of probabilities. *Arsenault v. Parks Canada Agency*, 2008 PSLRB 17, and *Chafe*, cited by the employer, rightly specify as much. Therefore, the bargaining agent had the burden of proof in this policy grievance. Those decisions also add that I do not have jurisdiction to amend the collective agreement's wording (see *Arsenault*, at para. 38; and *Chafe*, at para. 50).

[94] The employer detailed the general principles of interpretation that were listed earlier. Although I intend to apply them all, I would like to draw attention to the principle that the collective agreement must be read in its entirety and that it forms the context in which the words used must be interpreted. In addition, it is expedient to give the current meanings to the words used in it.

[95] In this case, both parties allege that clause 28.10 of the collective agreement is unambiguous but do not agree on the its interpretation. The employer asserts that its interpretation of clause 28.10 is the only possible one. The fact that the bargaining agent made another interpretation implies that the employer's proposed interpretation may not be the only possible one. The evidence also establishes that the clause was applied unequally, which implies a different interpretation based on the regions and their offices. It is appropriate to conclude that the clarity of clause 28.10 is cast into doubt within the employer's own organization.

[96] *Arsenault*, at paras. 38 and 40, also states that according to the usual interpretation rules, if the terms used are clear and unambiguous, there is no need to

try to determine the parties' true intent. It is appropriate to assign the ordinary meaning to the words that the parties selected. That is what I intend to apply in my analysis.

[97] Article 1 of the collective agreement is entitled, "purpose and scope of agreement". Clauses 1.01 and 1.02 state that its purpose is to maintain harmonious and mutually beneficial relationships between the signatories. In addition, the parties share a desire to improve the quality of the public service and to promote its employees' well-being and increased efficiency. I approach reading the collective agreement and article 28 with that in mind, particularly the clauses that apply to reasonable transportation expenses.

[98] Article 28 deals with overtime. Apart from the particulars about assigning overtime, clause 28.04(b) provides that wherever possible, the employer shall give four hours' notice to employees, except in cases of emergency, callback, or agreement. Note that the word "emergency" is not defined in the collective agreement.

[99] That clause also forms the basis of the employer's interpretation for establishing the existence of the concept of notice.

[100] Clause 28.04 of the collective agreement that expired in June 2021 reads as follows:

28.04 Assignment of overtime work	***28.04 Attribution du travail supplémentaire***
Subject to operational requirements, the Employer shall make every reasonable effort to:	*Sous réserve des nécessités du service, l'employeur s'efforce autant que possible :*
a. avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees,	*a. de ne pas prescrire un nombre excessif d'heures supplémentaires et d'offrir le travail supplémentaire de façon équitable entre les employé-e-s qualifiés qui sont facilement disponibles,*
and	*et*
b. endeavor to allocate overtime work to employees at the same group and level as the position to be filled, that is, CR-4 to CR-4, PM-2 to PM-2 etc.,	*b. d'attribuer les heures supplémentaires aux employés du même groupe et du même niveau que le poste à combler, c'est-à-dire CR-4 à CR-4, PM-2 à PM-2, etc.,*

and	*et*
c. The Employer shall, wherever possible, give at least four (4) hours' notice of any requirement for overtime work, except in cases of emergency, call-back or mutual agreement with the employee.	*c. l'employeur doit, dans la mesure du possible, donner un préavis d'au moins quatre (4) heures à l'employé-e visé lorsqu'il est nécessaire d'effectuer des heures supplémentaires, sauf dans les cas d'urgence, de rappel au travail ou d'accord mutuel avec l'employé-e.*

[101] The general interpretation principles require considering the context in which the words are used. For clause (a), it can be seen that "… the Employer shall make every reasonable effort to …" "… offer overtime work on an equitable basis …", and in clause (c), "The Employer shall, wherever possible". In my opinion, this choice of words does not lead to a formal obligation for the employer. Instead, the words are expressions of its respect and goodwill toward its employees out of concern for maintaining harmonious relationships and promoting their well-being.

[102] As a result, when the parties to the collective agreement included the words, "The Employer shall, wherever possible, give at least four (4) hours' notice … except in cases of emergency …", the employer's argument did not convince me that on a balance of probabilities, they created an obligation for it. In my opinion, they are much more a sign of courtesy than a demarcation of what short or long notice would be.

[103] The determinative clause in this policy grievance is clause 28.10 of the collective agreement that expired in June 2021, which reads as follows:

28.10 Transportation expenses	***28.10 Frais de transport***
a. When an employee is required to report for work and reports under the conditions described in paragraphs 28.05(b), (c) and 28.06(c) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows:	*a. L'employé-e qui est tenu de se présenter au travail et qui s'y présente dans les conditions énoncées aux alinéas 28.05b) et c) et à l'alinéa 28.06c), et qui est obligé d'utiliser des services de transport autres que les services de transport en commun normaux, se fait rembourser ses dépenses raisonnables de la façon suivante :*
i. the kilometric rate normally paid to an employee when authorized by the Employer to use his or her automobile, when the employee	*i. le taux par kilomètre normalement accordé à l'employé-e qui est autorisé par l'employeur à*

travels by means of his or her own automobile;	*utiliser son automobile, si l'employé-e se déplace avec sa propre voiture;*
or	*ou*
ii. out-of-pocket expenses for other means of commercial transportation.	*ii. les dépenses occasionnées par l'utilisation d'autres moyens de transport commerciaux.*
b. Other than when required by the Employer to use a vehicle of the Employer for transportation to a work location other than the employee's normal place of work, time spent by the employee reporting to work or returning to the employee's residence shall not constitute time worked.	*b. À moins que l'employé-e ne soit tenu par l'employeur d'utiliser un véhicule de ce dernier pour se rendre à un lieu de travail autre que son lieu de travail habituel, le temps que l'employé-e met pour se rendre au travail ou pour rentrer chez lui ou elle n'est pas considéré comme du temps de travail.*

[104] That clause refers to clauses 28.05(b) and (c) and 28.06(c) of the same collective agreement.

[105] Clause 28.05(b) reads as follows:

28.05 *b. If an employee is given instructions during the employee's workday to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be paid a minimum of two (2) hours' pay at straight-time rate or for actual overtime worked at the applicable overtime rate, whichever is the greater.*	***28.05*** *b. Si l'employé-e reçoit l'instruction, pendant sa journée de travail, d'effectuer des heures supplémentaires ce même jour et qu'il ou elle se présente au travail à un moment qui n'est pas accolé à ses heures de travail à l'horaire, l'employé-e a droit à la plus élevée des deux rémunérations suivantes : un minimum de deux (2) heures au tarif normal ou les heures supplémentaires réellement effectuées au tarif des heures supplémentaires applicable.*

[106] Analyzing that clause highlights that an employee must be instructed during their workday to work overtime and that they will work it at a time that is not contiguous to their scheduled work hours.

[107] Clause 28.05(c) of the collective agreement reads as follows:

28.05 *c. An employee who is called back to work after the employee has completed his or her work for the*	***28.05*** *c. L'employé-e qui est rappelé au travail sans préavis, après avoir terminé son travail de la journée et*

day and has left his or her place of work, and who returns to work shall be paid the greater of:	*avoir quitté son lieu de travail, et qui rentre au travail touche la plus élevée des deux (2) rémunérations suivantes :*
i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each call-back, to a maximum of eight (8) hours' compensation in an eight (8) hour period; such maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision,	*i. une rémunération équivalant à trois (3) heures de rémunération calculée au tarif des heures supplémentaires applicable pour chaque rappel au travail, jusqu'à concurrence de huit (8) heures de rémunération au cours d'une période de huit (8) heures; ce maximum doit comprendre toute indemnité de rentrée au travail versée en vertu de l'alinéa b) ou sa disposition de dérogation;*
or	*ou*
ii. compensation at the applicable overtime rate for actual overtime worked ….	*ii. la rémunération des heures supplémentaires réellement effectuées au tarif des heures supplémentaires applicable* […]

[108] Once again, analyzing that clause highlights that "[a]n employee who is called back to work after the employee has completed his or her work for the day and has left his or her place of work …" and that the concept of notice in the circumstances is not defined in terms of duration or length. The employer argues that it refers to "short notice", while the collective agreement states "[translation] without notice" (in the French version). However, it does specify that the employee left the workplace and must return to it.

[109] Clause 28.06(c) of the collective agreement reads as follows:

28.06 *c. When an employee is required to report for work and reports on a day of rest, the employee shall be paid the greater of:*	***28.06*** *c. L'employé-e qui est tenu de se présenter au travail un jour de repos et qui s'y présente touche la plus élevée des deux (2) rémunérations suivantes :*
i. compensation equivalent to three (3) hours' pay at the applicable overtime rate for each reporting, to a maximum of eight (8) hours' compensation in an eight (8) hour period;	*i. une rémunération équivalant à trois (3) heures de rémunération calculée au tarif des heures supplémentaires applicable pour chaque rentrée au travail, jusqu'à concurrence de huit (8) heures de rémunération au cours d'une période de huit (8) heures;*

or	*ou*
ii. compensation at the applicable overtime rate.	*ii. la rémunération calculée au tarif applicable des heures supplémentaires.*

[110] That clause also refers to an employee who is required to report for work on a day of rest and who reports. Once again, there is no reference to time for any type of notice.

[111] The preceding paragraphs are included in clauses 28.05 of the collective agreement ("Overtime compensation on a workday") and 28.06 ("Overtime compensation on a day of rest"). They apply to overtime pay. They do not in any way deal with reimbursing the costs that an employee incurs who does that work.

[112] Clause 28.10 of the collective agreement refers to an employee who is "… required to report for work and reports …". The employer refers to that expression several times in its arguments. It maintains that because it is repeated in clause 28.06(c), it necessarily refers to the concept of short notice. I do not share that opinion.

[113] Given the general principles of interpretation, and considering the fact that article 28, "overtime", includes clauses 28.04(b), 28.05(b) and (c), and 28.06(c), I find that the expression "required to report for work and reports" describes an employee who is required to work overtime and does, as opposed to someone who is asked to but does not.

[114] Given the general principles of interpretation, what stands out from analyzing clause 28.10 of the collective agreement is that the intention of the signatories to the collective agreement was in fact to reimburse reasonable expenses to an employee who is obliged to use transportation services other than normal public transportation services, in accordance with the terms set out in clauses 28.10(a)(i) and (ii).

[115] My interpretation is that the parties recognized that overtime is worked over and above an employee's usual schedule and that he or she may have to use alternative transportation to return home. Consequently, the parties wanted to ensure that reasonable transportation expenses would be reimbursed.

[116] The employer submitted that the extrinsic evidence that the bargaining agent adduced was not relevant; namely, there was reportedly a past practice in the Quebec

Region of reimbursing transportation expenses. The employer submitted that the bargaining agent did not adduce any uncontradicted extrinsic evidence of a past practice that was consistent, regular, and continuous, in accordance with the legal requirement of a past practice.

[117] However, the evidence demonstrates that the regional managers applied clause 28.10 of the collective agreement according to their own understandings, overtime budget availability, and discretion.

[118] At no time did the employer adduce any evidence that one of the criteria for managers to consider was the length of the notice given to employees. While the interpretation of clause 28.10 of the collective agreement gave rise to inconsistencies between offices, it was because not of its wording but of external factors imposed on managers, such as available budgets or their individual discretion. (That was also so in *Jefferies*. Both managers disagreed as to the application of a similar collective agreement clause.)

[119] The employer strongly emphasized the lack of ambiguity in clause 28.10 of the collective agreement. The bargaining agent did the same, and I share that point of view. There is no ambiguity. There is no need to interpret it restrictively, as the employer suggests or as some managers did. The employer's managers who applied clause 28.10 did so because the employees met its terms. Those who did not apply it refused to on grounds other than the employer's proposed length of notice.

[120] The employer's proposed interpretation compels introducing new requirements that are not set out in the collective agreement and for which its terms do not make those requirements implicit. To me, they are new requirements that the employer introduced unilaterally.

[121] I do not find that reimbursing reasonable transportation expenses under clause 28.10 of the collective agreement, which some managers accepted systematically, established a past practice that created any sort of right. Instead, I find it the literal and appropriate interpretation of the clause.

[122] The employer relied on clauses 28.05(b) and 28.06(c) of the collective agreement to establish a parallel between the compensation to which an employee working overtime is entitled and transportation expense reimbursement. It argued that the

same conditions apply to an employee for the entitlement to reasonable transportation expense reimbursement as for entitlement to pay.

[123] The employer submitted that those clauses are more beneficial to employees in that they set out a minimum of two or three hours of compensation, based on the circumstances. However, the reimbursement of reasonable transportation expenses set out in clause 28.10 of the collective agreement does not constitute compensation but the reimbursement of expenses incurred, namely, the reasonable transportation expenses.

[124] Remuneration is the counterpart of work performed, while reimbursing reasonable transportation expenses seeks to provide someone with money that was spent. That reimbursement is neither remuneration nor a financial advantage conceded to an employee. Consequently, the employer's parallel cannot act as justification that supports its interpretation of clause 28.10 of the collective agreement.

[125] The employer argues that according to *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55, a benefit to an employee that has a monetary cost to the employer must be clearly and expressly granted under the collective agreement. As for applying clause 28.10 of the collective agreement, there is no doubt that it clearly and expressly states the advantage to the employee. The employer's argument does not apply in this case.

[126] The employer considers that *Public Service Alliance of Canada v. Canadian Food Inspection Agency*, at para. 44, is very relevant, because it confirms the interpretations in *Jefferies* and *Graham*; namely, the expression "required to report for work and reports" covers when the employer needs an employee on short notice, and a premium is paid. The paragraph cited in that decision refers to the argument that the employer put before the adjudicator in this matter. In addition, I find that that decision is different from this policy grievance since many individual grievances had been filed about overtime processing, but it remained silent about reimbursing reasonable transportation expenses.

[127] In addition, *Jefferies* can also be distinguished by the fact that the expression "required to report for work and reports" does not include any other condition, while in this case, it is under the conditions set out in clauses 28.05(b) and (c) and 28.06(c), and the employee is required "… to use transportation services other than normal public transportation services …".

[128] In this case, the evidence before me is that no individual grievances were filed about the application of clause 28.10 of the collective agreement, and the grievance does not deal with overtime compensation.

[129] The bargaining agent submitted that the employer's decision to unilaterally amend the applied terms of clause 28.10 of the collective agreement was an abuse of its management rights. The employer referred to its management rights for assigning work, relying on *Durham District School Board*, which concluded that an employer can end a practice that falls outside a collective agreement by giving the bargaining agent adequate notice.

[130] Article 6 of the collective agreement also states that except to the extent provided in it, the agreement in no way restricts the employer's authority.

[131] *Public Service Alliance of Canada v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLREB 99 at paras. 132 to 135, proposes a relevant analysis of the concept of the employer's management rights. Those rights arise from the application of the *Financial Administration Act* (R.S.C., 1985, c. F-11) and recognize the employer's authority in human resources matters in general.

[132] At paragraph 133 of that decision, the Board affirms that those rights are limited by the collective agreement and by applying it in good faith. It refers to *Bodnar v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 71 (set aside on other grounds in *Canada (Attorney General) v. Bodnar*, 2017 FCA 171), which states the following:

> *[133] …*
>
> … Management does have the right as stated earlier to implement policy, but it is restricted by not only anything stated in the collective agreement but also anything that has the effect of violating provisions of the collective agreement.…

[133] In this case, the language of clause 28.10 of the collective agreement is clear and unambiguous, and the parties completely agree on it. The policy that the employer introduced in its information bulletin violates the collective agreement's clauses by adding restrictive conditions to its application that have no basis in the wording of article 28 and that are contrary to the spirit of clause 28.10 as well as the collective agreement's purpose, which is cited at clauses 1.01 and 1.02. Consequently, I conclude that the employer's interpretation is an abuse of management rights.

[134] Given all that, I conclude that the policy grievance is founded as the bargaining agent filed it. I declare that the employer violated clause 28.10 by not reimbursing the expenses of employees who reported for work.

B. Corrective measures

[135] The bargaining agent requests that the employer revise its decision and that it reimburse the transportation expenses retroactively of all employees who reported for work in accordance with the terms of clause 28.10 of the collective agreement.

[136] The employer relies on *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 84, to state that a policy grievance challenges applying or interpreting a collective agreement's provisions. Section 232 of the *FPSLRA* makes no mention of individual redress. If the bargaining agent so desired, it should have filed individual grievances or a group grievance, but it did not.

[137] Section 232 of the *Act* states that in a decision about a policy grievance that was or could have been the subject of an individual or group grievance, I can take only the following corrective measures:

> a) declare the exact interpretation or application of a collective agreement or an arbitral award;
> b) declare that the collective agreement or arbitral award has been contravened; or
> c) require the employer or bargaining agent, as the case may be, to interpret or apply the collective agreement or arbitral award in a specified manner.

[138] In the circumstances, I order the employer to revise its interpretation of clause 28.10 of the collective agreement, to apply my conclusions.

[139] The bargaining agent requests that employees who reported for work in accordance with clause 28.10 of the collective agreement's terms be reimbursed their expenses.

[140] Employees who complied with the terms of clause 28.10 of the collective agreement were entitled to individual grievances, which they could have filed had the employer refused to reimburse them.

[141] Through the case law (*Canada (Attorney General) v. Canadian Merchant Service Guild*, 2009 FC 344 at paras. 19 to 23, and *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 22 at para. 193), s. 232 allows the Board to grant the

reimbursement of the transportation expenses requested in this grievance. That said, in the circumstances, I do not believe that it would be appropriate to order it, as the unequal practice that was established according to the region allowed everyone to request it and if it was refused, the grievance remedy was available, despite the employer's erroneous interpretation.

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

(The Order appears on the next page)

V. Order

[143] The policy grievance is allowed.

[144] The Board declares that the employer violated clause 28.10 by not reimbursing the expenses of the employees who reported for work.

June 23, 2025.

FPSLREB Translation

Guy Grégoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board