CATCA

File: 166-2-11959

No. 122.

PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

ROBERT WHITE,

Grievor,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

DECISION

Before: J.C. Mayes, Board Member and Adjudicator.

For the Grievor: Catherine H. MacLean, Counsel.

For the Employer: Luc Leduc, Counsel.

JB
3/10/82
ART 28
CODE 402/82

Heard at Ottawa, April 6, 1982.

Grievor claimed "Employer requested" mileage rate for weekend travel home while on course at TCTI. Adjudicator found that weekend travel home was not "required" travel, as per article 28.

Grievance dismissed.

DECISION

1. Mr. Robert White, the grievor, is employed as an Air Traffic Controller (AI-4) in the Air Traffic Control Section, Air Traffic Services, at Toronto, Ontario. At the time relevant to this proceeding the grievor's terms and conditions of employment were governed by the provisions of the collective agreement for all employees in tne Air Traffic Control Group between the Treasury Board and the Canadian Air Traffic Control Association, Code 402/79 which expired on December 31, 1980.

2. In his grievance Mr. White states that he was required to attend an automation training course at the Transport Canada Training Institute (TCTI) in Cornwall, Ontario. He states further that he decided to avail himself of the weekend travel home provisions of the Administrative Policy Manual, Chapter 370, Travel, and elected to use privately owned transportation as per clause 28.03(c) of the collective agreement. He claims that he has not received the compensation to which he was entitled under the provisions of the collective agreement and the travel directives applicable to him. By way of corrective action he requests compensation for a two-day weekend travel home at the rate of $74.40 per weekend for the weekends of November 21, 28, December 5, and December 12, 1980. He further seeks the payment of the appropriate meal allowance of $10.85 for each of November 17 and December 19, 1980.

3. At the outset of this reference under paragraph 91(1)(a) of the Public Service Staff Relations Act, counsel for the grievor informed this adjudicator that the grievor wished to withdraw his claim respecting the payment of meal allowance for November 17 and December 19, 1980.

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4. The following Agreed Statement of Fact signed by counsel for the parties to this proceeding was received in evidence.

> 1. The employee is an Air Traffic Controller employed at the Toronto area Control Centre, Toronto International Airport, Ministry of Transport.
>
> 2. At all material times his terms and conditions of employment were governed, inter alia, by Collective Agreement 402/79 between Treasury Board and The Canadian Air Traffic Control Association.
>
> 3. The Grievor resides in the City of Hamilton, Province of Ontario.
>
> 4. The employer sent the Grievor on a course entitled "Phase 1 - Introduction Automation Training 21" at the Transport Canada Training Institute (hereinafter referred to as TCTI) which is located in the City of Cornwall, Province of Ontario.
>
> 5. Attached to this Agreement as Annex "A" is a copy of a memorandum sent to the Grievor from the Program and Administration Office, Air Traffic Services, Ontario Region dated November 10, 1980. The "YZ" referred to in the memorandum is the identifier for Toronto International Airport.
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> 6. The Grievor attended the course in Cornwall between November 17, 1980 and December 19, 1980. He went home on the following weekends:
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> November 21st, 28th, December 5th and 12th.
>
> 7. The distance from the Grievor's home to TCTI is 300 miles.

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8. Attached to this Agreement as Annex "B" is a copy of the expense claim filed by the Grievor relating to his attendance at the course.

9. At all material times, the return air fares for the Grievor were $144.70 return from Ottawa and $166.30 return from Montreal.

10. The Grievor's claim for weekend travel home was denied. In lieu of the $74.40 claimed for travel for each weekend, the Region was prepared to pay Mr. White $54.00.

11. Attached to this Agreement as Annex "C" is a copy of the travel directive in force in the Fall of 1980.

This Agreement is entered into without prejudice to the rights of either party to introduce further evidence at the hearing.

5. In addition to the Agreed Statement of Fact and its accompanying documents the following exhibits were received in evidence:

Exhibit 1 - A reproduction of article 28 - Travel - of the collective agreement between Treasury Board and the Canadian Air Traffic Control Association in effect from January 2, 1977 to December 31, 1977.

Exhibit 2 - The collective agreement between Treasury Board and the Canadian Air Traffic Control Association, Code 402/78, which expired December 31, 1978.

Exhibit 3 - Administrative Policy Manual, Chapter 370 - Travel - and appendix "C" thereto dated December, 1978.

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Exhibit 4 - The collective agreement between Treasury Board and the Canadian Air Traffic Control Association, Code 402/79, which expired December 31, 1980.

6. It would appear that the issue which I must determine is whether or not clause 28.03 of the relevant collective agreement applies to the grievor on the facts of this case. Article 28 of the collective agreement reads as follows:

> 28. 01 Where an employee is required by the Employer to travel to or from his Headquarters area as normally defined by the Employer, his method of travel shall be determined by the Employer. However, if an employee wishes to use a different method, his wish will not be arbitrarily refused provided that the method chosen is consistent with the purpose of the travel and does not entail additional costs.
>
> 28.02 When required to travel, he will be compensated in the following manner:
>
> (a) On a normal working day on which he travels but does not work, the employee shall receive his regular pay for the day.
>
> (b) On a normal working day on which he travels and works, the employee shall be paid:
>
> (i) His regular pay for the day for a combined period of travel and work but not exceeding eight (8) hours,
>
> and

(ii) at the applicable overtime rate for additional travel time in excess of an eight (8) hour period of work and travel, with a maximum payment for such additional travel time not to exceed eight (8) hours' pay at the applicable overtime rate in any day.

(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 ten (10) hours' pay at the applicable overtime rate.

28.03 When an employee is required by the employer to travel to or from his Headquarters area as normally defined by the employer, he may in accordance with pararagraph 28.01 above:

(a) Elect to travel via scheduled air carrier at the applicable economy fare or its equivalent; or

(b) Elect to use privately-owned transportation and be reimbursed at the rate shown in paragraph 3.03(b) of the Treasury Board Travel Directive; or

(c) Be requested by the Employer, or elect to use privately-owned transportation and be reimbursed at the rate shown in paragraph 3.03 (a) of the Treasury Board Travel Directive.

(d) When the employee elects under paragraph (b) or (c) above to use privately-owned transportation, he shall be paid at the applicable

rate for the time normally required to travel portal to portal by air carrier.

(e) Employees travelling to or from Ottawa or the Transport Canada Training Institute for temporary assignments in excess of five days, whose Headquarters area is in Newfoundland or the Pacific or Western Region, who elect to use privately-owned transportation under paragraphs (b) or (c) above shall be allowed an additional day in which to travel and shall receive normal pay for that day. An employee travelling to or from Ottawa or the Transport Canada Training Institute for temporary assignments in excess of five days, whose Headquarters is in the Pacific Region will be allowed a day with pay in addition to the day noted immediately above.

(f) An employee who elects to use privately-owned transportation under paragraph (c) above shall be reimbursed at the rate shown in paragraph 3.03 (a) of the Treasury Board Travel Directive, or an amount equal to economy air fare including the normal airport limousine fares, whichever is the least, in lieu of travel expenses.

28.04 When an employee requires hotel accommodation, he will select a hotel that has been approved and is listed in the Department of Supply and Services Hotel Directory. He will choose accommodation which his supervisor agrees is covenient for the purposes of the travel and which does not require unnecessary related transportation costs. Where the work site is an

> airport, transportation costs between the airport and the hotel which do not exceed the official airport limousine fares shall not be deemed to be unnecessary related transportation costs.
>
> 28.05 Except as may be modified in this agreement, employees will be reimbursed for all travel expenses in accordance with the current Treasury Board Travel Directive.

7. Counsel for the grievor sought leave to call upon Mr. William James Robertson, National President of the Canadian Air Traffic Control Association, who had been involved in the negotiation on behalf of the bargaining agent of clause 28.03 of the applicable collective agreement. It was pointed out that Mr. Robertson had also been involved in the bargaining sessions in the negotiation of the previous contract where clause 28.03 was worded somewhat differently. Counsel for the grievor contended, that while no ambiguity appeared to be present in the wording of clause 28.03, a latent ambiguity did exist and that the parties to the collective agreement had agreed to a special meaning to the words "required by the employer to travel" found in the opening sentence of clause 28.03. Mr. Robertson, counsel claimed, would be able to provide evidence respecting the parties intent at the time that the current wording of clause 28.03 was agreed upon by the parties.

8. Counsel for the employer contended that the wording of clause 28.03 was clear and without ambiguity. He argued that extrinsic evidence should not be allowed. In the alternative, he argued that should Mr. Robertson be allowed to testify, the adjudicator should satisfy himself from the testimony heard that in fact a latent ambiguity had been demonstrated before affording any weight to such evidence.

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9. I informed counsel for the parties that I would hear Mr. Robertson's testimony and that I would rule on the admissibility of such evidence and/or decide on the weight to be given to such evidence in my written decision.

10. Mr. Robertson testified that the current wording of clause 28.03 evolved from a proposal made at the bargaining table by the Canadian Air Traffic Control Association which would allow the employee the option of the method of travel to be used and set the expense rates which may be claimed. He stated that the phrase "required by the employer to travel" was discussed at the bargaining table between the parties and that the phrase appears in the opening words of the clause because of the employer's desire to maintain control of the global question of whether travel expenses would be paid or not in any set of circumstances. He said that an example which was discussed at the negotiation table was that an employee, under such control, would not be allowed to decide on his own to travel to another city. He could not recall which of the parties to the negotiations put forward the example; but he said he was convinced that the wording that was agreed upon was meant to apply to the employer's control over whether or not an employee would travel at all. The safeguard for the employer was to be with respect to the over-all travel authorization. Clause 28.03 then allowed the employee three options. Asked whether any synonyms for the word "required" had been put forward at the bargaining table, Mr. Robertson stated he could not recall.

11. No other witnesses were called to testify on behalf of the grievor and no witnesses were called to testify on behalf of the employer.

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Argument for the Grievor

12. Counsel for the grievor divided her representations into three distinct arguments. She noted that from the Agreed Statement of Fact the grievor went on course in Cornwall as directed by the employer. He was told that he could go home on weekends. Therefore the question is: what rate, to what maximum is applicable regarding reimbursement of travel expenses? The grievor was told that the rate was to be calculated at 9.0¢ per mile. That is the lower rate provided in the Travel Directive and is the same rate as provided in clause 28.03(b) of the collective agreement. The grievor, however, contends that he is entitled to the option of the higher rate provided under clause 28.03(c) of the collective agreement while using his own private vehicle. This position, counsel argued, is based on the evidence provided by Mr. Robertson that the phrase "required by the employer to travel" in effect means "when the employee is authorized to travel". The authorization having been granted by the employer for the grievor to attend the course at the TCTI in Cornwall, it follows that the grievor was entitled to the three options provided by the collective agreement. Counsel for the employer did not raise the issue respecting those options provided in clause 28.03 when he cross-examined Mr. Robertson. Therefore the grievor was entitled to elect to use his own vehicle for transportation and was entitled to be paid at the higher rate up to the cost of economy air fare as provided in clause 28.03(f).

13. In her second argument counsel for the grievor argued that since he was required to attend the course at the Cornwall Training Institute he should be deemed while on course to have been required to travel on government business and therefore to be on "travel status" as defined at pages 7 and 8 of the Administrative Policy Manual, Chapter 370 - Travel. He should then be seen to be entitled to the provisions of clause 28.03, i.e., entitled to travel status and the higher rate.

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14. In her final argument counsel for the grievor noted that clause 28.05 of the collective agreement provides that the reimbursement to employees for all travel expenses in accordance with the current Treasury Board Travel Directive may be modified by the collective agreement. The entitlement provided by the Travel Directive, she contended, has been modified by clause 28.03(c) which provides to the employee who elects to use his own vehicle the higher rate (which replaces the applicable rate in the Travel Directive).

Argument for the Employer

15. The issue, as seen by counsel for the employer, is whether or not clause 28.03 of the collective agreement provides for reimbursement of travel expenses on travel home on the weekends. The argument put forth by counsel for the grievor presupposes that weekend travel is travel on government business and therefore clause 28.03 governs the rate of reimbursement of expenses incurred in such travel. The employer's position is that clause 28.03 is only applicable if the employee is required to travel or, in other words, is obliged by the employer to travel. The employer further contends that only the Travel Directive provides for reimbursement of expenses for weekend travel. That directive deals with certain expenses not provided for in the collective agreement. Should the grievor's position be upheld the adjudicator would, in counsel for the employer's view, be amending the collective agreement contrary to subsection 95(2) of the Act. Clause 28.03, when read in its entirety, can clearly be seen to deal with travel on government business and not travel for personal reasons on weekends. Another element to be considered is clause 28.03(d). If clause 28.03(c) applies to the grievor the employer will have to apply clause 28.03(d) and will have to pay wages to employees travelling on weekends including overtime if applicable. That is a preposterous

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meaning and could not have been intended by the parties to the collective agreement. Weekend travel expenses have always been paid in accordance with the Travel Directive and if the parties had intended otherwise clear language to that effect would have been provided in the collective agreement. The fact that it is not included in the collective agreement cannot now be overlooked even if it is argued that it was an oversight by the parties to the collective agreement. Indeed, there has been no oversight; and if the parties had so intended they would have provided clear language such as that which is provided in clause 28.03(e) of the collective agreement which deals with a special situation.

16. Counsel for the employer referred to the language of the Travel Directive as it has evolved and more specifically from the year 1977 up to the time of the instant claim by the grievor. He noted that none of the language has been changed except for the allowance shown in the appendices. He argued therefore that clause 28.03(c) cannot apply to the current situation in the absence of clear language in the collective agreement to that effect. He argued rather that clause 28.05 of the collective agreement clearly indicates that where the reimbursement for travel expenses has not been modified by clear provisions of the collective agreement then the Treasury Board Travel Directive applies.

17. In reply to counsel for the grievor's first argument respecting "travel status", counsel for the employer argued that an employee, while travelling to and from his home on the weekend, is not travelling on government business. He noted also that the grievor's travel to Hamilton (his home) was not travel to or from the headquarters area as is contemplated by 28.01. Clearly the grievor was not required by the employer to travel home on the weekend. Regarding the final argument brought by counsel for the grievor, counsel for the employer agreed that

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the changes made by the parties to clause 28.03 were modifications which are contemplated by clause 28.05. He did not agree, however, that clause 28.03 had any application to weekend travel to an employee's nome.

18. On the question of admissibility of extrinsic evidence counsel for the employer referred to the text Collective Agreement Arbitration in Canada by Palmer, and specifically to the following comments at page 113:

> Before extrinsic evidence can be admitted, it must be shown that the provisions of the collective agreement which govern the matter, are ambiguous.

and further:

> The mere disagreement of the parties, or the fact that different interpretations may be offered of collective agreement language, does not mean that sucn language is 'ambiguous' within the technical legal meaning of that term. There are often difficulties of construction of language and different views may oe put forward as to the correct construction of any provisions. This is not an ambiguity and does not call for extrinsic evidence, but simply for argument. If it were not so, extrinsic evidence would be appropriate in every case and the value of the agreement itself as a document governing the parties relationsnip would be greatly diminished.

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Counsel also cited Re County Place Nursing Home Ltd. and Canadian Union of Public Employees, Local 1854 (1981) 1 L.A.C. (3d) 341 at p. 345:

> While not entirely free from doubt, it appears that evidence of the negotiating history may be admitted as an aid to the interpretation of the words of the collective agreement where there is no clear preponderance of meaning stemming from the words and structure of the agreement. It must be emphasized that this principle applies to the use of extrinsic evidence as an interpretative aid and that wholly different considerations may apply when an attempt is made to rely on extrinsic evidence as an independent source of obligations between the parties. Furthermore, it is also important to recognize that evidence of the negotiating history may often be of little assistance in interpreting the words of an agreement since the very nature of negotiations often results in the production of compromise language which is purposely ambiguous.

Counsel argued that in the present case the purpose of the extrinsic evidence adduced was not to clarify the meaning of words but to create a new obligation. Extrinsic evidence cannot be used for that purpose.

Reply Argument for the Grievor

19. In reply to counsel for the employer's position that the grievor could not be seen to have been on government business during the periods in question, counsel for the grievor again referred to the definition "travel status" found at page 7 of the Travel Directive, and to the "purpose and scope" of the Travel Directive quoted at page 5 of

said Directive. She argued that the whole period of the course at the Cornwall Training Institute should be seen as government business and therefore saw no merit in the employer's argument. Regarding the application of clause 28.03(d) to employees who opt for clause 28.03(c) counsel noted that the payment to employees as on-duty time was restricted to the time normally required to travel portal to portal by air carrier. She said that the bargaining agent was not sure whether the grievor had been refused payment under clause 28.03(d) but said that such a claim would be supported by the bargaining agent, if made. She noted that, while the grievor perhaps had not made claim for all of his entitlement, the bargaining agent was prepared to support such claim by the grievor, if made. However, the grievor was not prepared to accept the employer's interpretation of clause 28.03 which refused him the option to which he believed he was entitled. The employer's claim that, if the parties had intended that clause 28.03 would apply to weekend travel, they would have provided clear language to that effect in the collective agreement, is without substance. The example given by counsel for the employer of the language to be found in clause 28.03(e) is not relevant and no inference should be drawn from such an argument. The argument made respecting the headquarters area versus the employee's home in Hamilton is also without substance. It is common knowledge that most individuals in the Toronto/Hamilton area must of necessity live a considerable distance from the workplace. The grievor is prepared to relinquish any claim which might add minutely to the employer's cost in that regard.

Reasons for Decision

20. The admissibility of, or the weight to be given to, Mr. Robertson's evidence may now be addressed. Mr. Robertson testified that the current language of clause 28.03 was agreed upon following a

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proposal made by the Canadian Air Traffic Control Association which would provide certain options to employees which had not previously existed. There is no question in my mind that Mr. Robertson is more than qualified to make such a statement. He described what he felt was the degree of control envisaged by the employer when the words "an employee is required by the employer to travel" were introduced. He cited an example of such but could not recall whether it was the employer's representatives at the bargaining table or the bargaining agent's representatives who cited the example. In reply to a direct question from counsel for the grievor, he said he could not recall any synonyms for the word "required" which may have been discussed during the bargaining session. Counsel for the grievor admitted that there was no apparent ambiguity in the opening words of clause 28.03. She did, however, hold the view that having regard to Mr. Robertson's posture and involvement at the bargaining table a latent if not apparent ambiguity existed. I am not convinced from Mr. Robertson's testimony that the employer during the negotiations shared his view with regard to limited control. Had the employer shared the bargaining agent's view it seems to me that much clearer language to that effect would have resulted. Counsel for the employer did not deny, nor could he deny, that certain modifications had been made to the collective agreement which provided certain options to employees which had not previously existed. He did, however, argue that the employer had sought a greater degree of control than that described by Mr. Robertson. I agree with counsel for the grievor that there appears in the opening words of clause 28.03 no apparent ambiguity. I am not assisted by Mr. Robertson's testimony in finding that there exists any latent ambiguity. Having regard to that and supported by the argument made by counsel for the employer, I must assume that the opening words of clause 28.03 mean precisely wnat they say. That is, in effect, that only when the employer requires an employee to travel to or from his headquarters area may he be afforded the options provided in that clause.

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21. There is no question that the grievor was required to travel to the Training Institute in Cornwall and there is no claim made that for that period of travel and for the final return to his headquarters area when the course was finished, the grievor was inadequately compensated. There exists no evidence that the grievor's weekend trips home were for any reason required by the employer. I was referred by counsel for the grievor to the purpose and scope of the Travel Directive found at page 5 of the Administrative Policy Manual, Chapter 370 - Travel. The second paragraph states as follows:

> The purpose of the travel policy is to ensure consistent, prudent treatment of employees throughout the Public Service. The provisions contained in this policy are mandatory; once travel has been pre-authorized, the entitlements of the traveller shall be calculated accordingly. These provisions represent reimbursement of reasonable expenses necessarily incurred while travelling on official business and do not constitute income or other compensation.

Later, at page 32 of the Travel Directive, certain rights are provided to employees on weekend travel home. Item .8.3.3 states, inter alia:

> ... If the employee elects to travel home on a weekend by private vehicle, the reimbursable transportation costs shall be calculated at the rate applicable when an employee requests permission to use a vehicle and the employer agrees, as shown in article .1.2 of Appendix C, or one-half that rate if a motorcycle is used for the trip.

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Looking to article .1.2 of appendix C, it is found that the employee's entitlement is 9.0¢ per mile. Counsel for the employer contends that it is from those sections of the Travel Directive that employees, and particularly the grievor, find their entitlement to weekend cost reimbursement.

22. Counsel for the grievor argued that should it be found that the grievor was in travel status as that term is defined in the directive, then he should be seen to be entitled to the options provided by clause 28.03(c) of the collective agreement. I can find nothing in the collective agreement nor in the Travel Directive which would lead me to that conclusion. Indeed the portion of the Travel Directive dealing with weekend travel home describes the employees covered by the directive as employees "in travel status" who return to their home over a weekend.

23. Finally, counsel for the grievor has argued that under clause 28.05 the employees' entitlements have been modified by clause 28.03 as amended. As stated by counsel for the employer that is true only to the degree that it applies to employees in circumstances described in the opening words of clause 28.03. I have already found that the grievor was not required by the employer to travel home on each of the weekends mentioned in his grievance. His entitlement to reimbursement for travel costs therefore must be found outside the provisions of clause 28.03 and I find that the employer has not misinterpreted nor misapplied those provision with respect to the grievor. Clause 28.05 provides that except as modified by the collective agreement employees will be reimbursed for all travel expenses in accordance with the current Treasury Board Travel Directive. I find, as contended by counsel for the employer, that the proper provisions of the Travel Directive have

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been applied to the grievor in his circumstances. The claim for meal allowance made by the grievor was withdrawn on his behalf at the hearing. The grievance respecting the other claims made is dismissed and the corrective action is denied.

For the Board,

J.C. Mayes,
Board member and Adjudicator.

OTTAWA, July 20, 1982.