

Files: 166-2-9763  
166-2-9937  
166-2-9996 to 9998

No 5.

PUBLIC SERVICE STAFF RELATIONS ACT  
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

V. DELLA-SERRA, N. NIEDZWIECKIA, V.E. GLASS,  
G.A. SCHWARTZ, K.D. YURICK,

grievors,

AND:

TREASURY BOARD  
(Department of Transport)

employer.

DECISION

Before: S.J. Frankel, Board Member and Adjudicator.

For the Grievor: C.H. MacLean, Counsel  
W.J. Robertson, Canadian Air Traffic Control  
Association

For the Employer: H.A. Newman, Counsel.

Heard at Ottawa, November 17, 1981

TRAVEL EXPENSES TO ATTEND AN APPEAL  
HEARING

LTR 2/79  
CORRE 402/79

## DECISION

1. The five grievors in this proceeding are all members of Air Traffic Control Group Bargaining Unit, employed at different air traffic control facilities in various parts of the country. Their grievances are referred to adjudication pursuant to paragraph 91 (1)(a) of the Public Service Staff Relations Act. The grievances are related to the interpretation or application of the Letter of Understanding 2-79, dated March 21, 1979, and annexed to the collective agreement between Treasury Board and the Canadian Air Traffic Control Association (code 402/79, expiry date December 31, 1980).

2. At the outset of hearing I was informed by counsel for the parties that the grievance of V. Della-Serra had been settled and the reference in respect of him is therefore withdrawn. The "Agreed Statement of Facts" in respect of the grievors V.E. Glass, N. Niedzwieckia, G.A. Schwartz and K.D. Yurick indicates that their grievances were allowed in part by the employer. They were granted compensation at the appropriate rates for the time spent in travel and attendance at Appeal Board hearings pursuant to section 21 of the Public Service Employment Act. The issue that remains to be determined is whether the grievors were entitled to reimbursement of the travel expenses incurred as a result of their attendance at these hearings. Both counsel requested that I determine the issue in principle, leaving it to the parties to work out the details on the basis of my decision.

3. The Letter of Understanding 2-79 reads as follows:

This letter will confirm an understanding reached during the current Air Traffic Control negotiations in respect of an employee's attendance at any function of the personnel selection process of the Public Service.

5. In addition, counsel argued that there were good policy reasons for the interpretation that she was putting forward. It is in the employer's interest that as large a number of candidates as possible should participate in the selection process, and that all members of the bargaining unit should be treated in an equitable manner in relation to the selection process. Given the fact that members of the bargaining unit are spread across the country they should not be prejudiced because they might be required to travel significant distances at their own expense in order to participate in the personnel selection process. She therefore urged that the Letter of Understanding be interpreted to mean that the employer is obliged to authorize the reimbursement of travel expenses in accordance with the current Treasury Board Travel Directive.

6. Mr. Newman, counsel for the employer, argued that it was trite law to state that, in order to succeed, the grievances must be founded on rights that are contained in the collective agreement. The Letter of Understanding 2-79 is clear, and the employer is not contesting the grievors' entitlement to pay for the time spent in attendance at Appeal Board hearings as well as for the related travel time. Any payment for other than "hours of work" must be specifically provided for in the collective agreement (or Letter of Understanding). The only provisions that might have relevance to travel expenses are to be found in Article 28. Clause 28.01 specifically establishes the limiting conditions - "Where an employee is required by the Employer to travel to or from his headquarters area as normally defined by the Employer..." The clauses that follow 28.01 are essentially administrative, setting out rates of compensation and the norms to be applied, but always in the context of Clause 28.01 - i.e. that the employee is required by the Employer to travel. There is no evidence that the grievors in the present case had been required by the

An employee's attendance at any function of the personnel selection process of the Public Service, as well as necessary travel time shall form part of the employee's hours of work.

4. Ms. MacLean, counsel for the grievors, made the preliminary observation that in dealing with the claims for travel expenses no distinction can be made between employees attending Appeal Board hearings as applicants (Glass), or as successful candidates (Niedzwieckia, Schwartz and Yurick). George Schwartz v. Queen, et al., F.C.C. File A-109-80 (unreported). In conceding the compensation for the hours spent in travel and attendance at the Appeal Board hearings, the employer did not make such a distinction and the same principle should be seen to apply to the reimbursement of their travel expenses. Counsel's main submission was that the very broad language of the Letter of Understanding, which includes "attendance at any function of the personnel selection process... as well as necessary travel time" and states that taken together they "shall form part of the employee's hours of work" indicates that the employees should be treated for this combined period of time as if they were at work. She adverted to Clause 28.05 of the collective agreement which states: "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". It followed, in her opinion, that since the travel time involved in this case forms part of the hours of work of the employees concerned, it clearly calls for the reimbursement of their travel expenses by the employer. This was the only interpretation consistent with the Letter of Understanding 2-79.

employer to travel. Persons normally attend personnel selection proceedings on their own behalf or at the request of some other employee. If, in specific cases, they were to be required by the employer to attend such proceedings they would be covered by Article 28 of the collective agreement. There would be no need to rely on the Letter of Understanding.

7. In rebuttal, counsel for the grievors admitted that they had not been required by the employer to attend the relevant personnel selection proceedings. It was her submission, however, that the employer's interpretation was too restrictive. The obligation to pay travel expenses is a necessary implication of the Letter of Understanding. It is the employer that initiates the personnel selection process; therefore anything that occurs during the course of this process must be seen as flowing from the employer's initiative. The fact that the Letter of Understanding considers travel time as forming a part of the employee's hours of work implies that there is a requirement to travel. Employees should not be penalized in the sense that they may be deterred from attending a function of the personnel selection process by reason of the travel expenses they would have to incur.

#### Reasons for Decision

8. The only question before me is whether by virtue of the Letter of Understanding 2-79, the grievors Glass, Niedzwieckia, Schwartz and Yurick who attended a "function of the personnel selection process of the Public Service" were entitled to their travel expenses. The answer to that question must be found in the Letter of Understanding itself, unless the Letter's particular context or the ambiguity of its language either qualify its meaning

or require some reference to extrinsic material in order to overcome its ambiguity. The language of the Letter of Understanding is, in my opinion, clear and unambiguous. It provides compensation at the appropriate rates for the hours spent by an employee in attending a function of the personnel selection process as well as for the hours spent in the travel related to such attendance. There is absolutely nothing in the language of the Letter of Understanding that either necessarily implies, or leads to a reasonable inference that there is an obligation on the employer to pay the travel expenses that might be incurred by employees who attend such functions. I can only infer that had the parties intended the payment of travel expenses it would have been stated explicitly, as it was in fact done in Letter of Understanding 3-79.

9. It follows that the grievances in respect of travel expenses were properly denied by the employer, and their reference to adjudication is hereby dismissed.

For the Board,

S.J. Frankel,  
Board Member and  
Adjudicator.

OTTAWA, January 18, 1982.