Files: 149-2-156
166-2-26146

No. 62.

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

BRUCE ARTHUR CORAM

Applicant/Grievor

and

TREASURY BOARD
(Transport Canada)

Employer

Before: Muriel Korngold Wexler, Deputy Chairperson

For the Applicant/Grievor: Peter Barnacle, Counsel, Canadian Air Traffic Control Association

For the Employer: Roger Lafrenière, Counsel

Heard at Winnipeg, Manitoba,
April 10 and 11, 1996.

DECISION

On December 14, 1992, Mr. Bruce Coram, an air traffic controller employed at the St. Andrews Tower, Manitoba, Transport Canada, presented the following grievance:

> *On Nov. 9/92 a letter was submitted formally requesting expense reimbursement entitlements for short term relocation (Personnel Management Manual Vol. 13, Chapt. 375, Sect. 1.1, Article 9.3 and Travel Entitlements (Article 7.2.1(c) - Travel Policy). A response letter Nov. 18/92 from RAEA, P.L. Leech, Regional Super, Admin. & Resources, ATS, stated the request is deemed not justifiable or practical for the tax payer to incur.*
>
> *Corrective Action Requested:*
>
> *As I am currently incurring both the stress and expense of this inconsiderate ruling, I request full compensation as outlined in my Nov. 9/92 letter (file copy can be obtained from either CATCA Regional Director-Central or WG ACC Branch Chairman).*
>
> (Exhibit 1(a))

The November 9, 1992 letter from Mr. Coram reads as follows:

> *Mr. Duane Clefstad*
> *Manager, A.T.S. School*
>
> *From available information to me, under provisions of the NJC letter and the Personnel Management Manual (PMM) concerning provisions for air traffic controllers who are undergoing operational training, I understand that I qualify for employer requested relocation expense reimbursement. As required in PMM Vol. 13, Chapt. 375, Sect. 1.1.9; after I have relocated, the distance between my new residence and WG. ACC. new work location (4 km.) will be 40 km or more closer than my distance between my present residence and WG. ACC. (48 km.). Accordingly, I request short term relocation provisions of the relocation policy (Article 9.3) in travel status (Article 7.2.1(c)) of the travel policy.*
>
> *Through Regional Director (C.A.T.C.A.) Mr. F. Bhimji, I have been requesting confirmation of the above relocation and travel entitlements since June/92 after accepting the WG. ACC. IFR training offer.*
>
> *Mr. Bhimji was informed by Mr. A. Sutherland that the entitlements were denied but has now requested me to have*

> *the refusal confirmed in writing so that there may be a statement of record for the foundation of the commencement of a formal grievance procedure. The details of the grievance will include temporary daily mileage costs of $28.32 plus lunch costs $16.86 totaling $45.18 till short term relocation is established.*
>
> *The long daily commute time of 2 hours roundtrip has been a factor, both in fatigue and financial cost, which has contributed to my personal difficulty in maintaining the course 92-14 schedule and may lead me to request recoursing if the problems cannot be resolved.*
>
> *Your assistance in this matter would be appreciated.*
>
> (Exhibit 1(e))

The employer denied the grievance at level one of the grievance procedure on December 17, 1992 and at level 2 on August 23, 1993. The grievance was then transmitted to the Executive Committee of the National Joint Council (NJC) for consideration. On January 5, 1994, the employer replied to the grievance as follows:

> *The Executive Committee of the National Joint Council (NJC) met on December 15, 1993 and considered your grievance in regard to short term relocation.*
>
> *The Executive Committee noted that the Government Travel Committee reported that according to the departmental representative and the departmental training guidelines, employees who commit themselves to such training relinquish all rights to their former position, and as a direct result of such training, the employee is normally transferred to a position in another geographical location. The Government Travel Committee members therefore agreed that under those conditions, and as a result of having met the minimum distance requirement of the directive, you qualified for relocation.*
>
> *The Executive Committee agreed with the report of the Government Travel Committee in that you had not been treated within the intent of the directive. The Executive Committee further agreed that the decision was based on the fact that you had not been given clear instructions in regard to the pre-conditions for the training.*
>
> *Consequently, in accordance with paragraph 14.1.13 of the NJC By-Laws, the decision is to uphold the grievance and in accordance with paragraph 14.1.15 of the By-Laws,*

> *the Executive Committee's decision is being transmitted to you.*
>
> (Exhibit 1(d))

On January 19, 1994, Ms. Carole LaPointe, Staff Relations Officer, Transport Canada, wrote to Mr. Fazal Bhimji, Vice-President, Canadian Air Traffic Control Association (CATCA), that Mr. Coram would receive commuting assistance (Exhibit 19). The grievor had requested a higher mileage rate whereas the employer had granted the mileage rate as if Mr. Coram had requested the use of his vehicle. In April 1994, Mr. Coram received a cheque for mileage expenses but at the lower mileage rate and the cheque was cashed. Mr. Coram was not satisfied with the employer's interpretation of his entitlement. However, the grievance was referred to adjudication well beyond the time limits. The grievance was referred to adjudication at 8:21 a.m. on November 3, 1994. The parties agree that the reference to adjudication was untimely.

The reference to adjudication of this grievance was first scheduled to be heard on November 28, 1995 and to follow Mr. Coram's other reference to adjudication of a grievance concerning a dispute with respect to vacation leave credits (Board file 166-2-26681). However, the reference of the grievance with respect to the mileage rate was postponed at that time. On November 23, 1995, Mr. Roger Lafrenière, counsel for the employer, raised an objection to my jurisdiction to decide this grievance on the grounds that it was untimely.

As a result of Mr. Lafrenière's objection, on November 23, 1995, CATCA presented on behalf of Mr. Coram, an application to extend the time limits to refer this grievance to adjudication (Board file 149-2-156). This decision concerns both, the application to extend the time to refer the grievance to adjudication and the merits of the grievance.

Evidence Concerning the Timeliness Issue and the Merits of this Grievance

Mr. Bruce Coram has been employed as an operational controller (AI-02) at the St. Andrews Tower, Manitoba, since 1972. In 1992, Mr. Coram had made a "seniority bid" on the IFR training course at the Winnipeg Area Control Centre. Thus, on June 1, 1992, Mr. H.D. Buchanan, Superintendent, Training and Human Resources, Air

Traffic Services, in Winnipeg, offered Mr. Coram the training for an IFR control position in the Winnipeg Area Control Centre in the Winnipeg Specialty. The training was tentatively scheduled to commence on October 12, 1992, and Mr. Coram was to report for duty on October 5, 1992 (Exhibit 5). On June 3, 1992, Mr. Coram requested the application of the short term relocation provisions of the Relocation Directive (Exhibit 2) and to be considered on travel status (Exhibit 3). At the time, Mr. Coram resided in Selkirk, Manitoba, some 48 kms from Winnipeg.

On June 4, 1992, Mr. Coram was informed that no travel or relocation entitlement had or would be approved. Therefore, his request of such was denied (Exhibit 6(b)). Nevertheless, on June 7, 1992, Mr. Coram accepted Mr. Buchanan's offer (Exhibit 7).

However, on February 28, 1992, Mr. Coram had written further to his bid for the IFR course and he had set out three conditions under which he would undertake the IFR training. One of the conditions was that he not be relocated for the training course on compassionate grounds. Mr. Coram was unable to change residences. The second condition was that he be informed of which specialty he was targeted for and the third condition was that he be entitled to the car mileage allowance during this training. Mr. Coram wrote that he would be entitled to relocation and, since he was not relocating, he would be entitled to compensation for the transportation costs (66 kms round-trip) (Exhibit 13). On March 30, 1992, Mr. Buchanan replied that the employer was not prepared to alter the selection by Seniority Bid Program Guidelines or accept any of the conditions outlined by Mr. Coram (Exhibit 15).

Mr. Coram attended the training in October 1992 and found that the initial part of the course required lots of studying. There were weekly exams. The course was very intense and it was to be for a period of one year. On November 9, 1992, Mr. Coram wrote to Mr. Duane Clefstad, Manager of the AIS school, indicating that he qualified for employer requested relocation expense reimbursement under the Relocation Directive, Chapter 375, Volume 13. He requested short term relocation under the Relocation Directive (Exhibit 2) and to be considered in Travel Status under the Travel Directive (Exhibit 3) (Exhibit 1(e)). Mr. Coram explained that he claimed daily mileage costs of $28.32 plus lunch costs $18.86 totaling $45.18 until the "short term relocation" was established (Exhibit 1(e)). On November 18, 1992, Mr. Coram's

request of November 9, 1992, was denied. Consequently, on December 14, 1992, Mr. Coram presented the grievance.

In addition, on November 20, 1992, Mr. Coram wrote again to Mr. Leech, Regional Superintendent, indicating that on February 28, 1992, he had not been aware that the reimbursement for expenses was an entitlement because his residence (Selkirk) was located more than 40 kms from the Winnipeg Area Control Centre. In this letter, Mr. Coram did not elaborate further on his claim except that he referred to his February 28, 1992 letter where he requested the car mileage allowance from St. Andrews Tower to the Winnipeg Area Control Centre (66 kms round-trip) (Exhibit 9). Mr. Coram testified that he made this request because he needed more time to study and traveling back and forth was not working out. He was wasting 50 minutes each way. He had to be at the Winnipeg Area Control Centre from 8:00 a.m. to 4:00 p.m. In addition, he had a couple of 100 hours of study. Mr. Coram was on the course 56 days and he logged 360 hours of study. Mr. Coram took the course from October 16, 1992 to January 18, 1993 when the employer decided to stop his training because his training course had been "flattening out". Mr. Coram returned to St. Andrews Tower on January 20, 1993. On December 17, 1992 and August 23, 1993, the grievance was denied at the first and second levels of the grievance procedure respectively. The grievance was then transmitted to the National Joint Council Government Travel Committee for consideration.

By letter dated October 26, 1993, Mr. Coram's grievance was referred by the Secretary of the National Joint Council to the Government Travel Committee (Exhibit 16). On November 4, 1993, the Government Travel Directive found that Mr. Coram qualified for relocation. Thus, he was entitled to temporary dual residence assistance or commuting assistance in lieu of dual residence assistance (Exhibit 17).

On December 22, 1993, the Secretary of the National Joint Council informed Transport Canada of this decision (Exhibit 18) who in turn advised the grievor on January 5, 1994 (Exhibit 1(d)). The bargaining agent was also advised on January 19, 1994 (Exhibit 19). The employer informed Mr. Coram and Mr. Fazal Bhimji, Vice-President, CATCA, that Mr. Coram would receive commuting assistance (Exhibits 1(d) and 19). Mr. Coram was advised to submit a claim and he did so on February 25, 1994 (Exhibit 10). Mr. Coram claimed 29.5¢/km which he later

changed to 29¢/km in addition to interest and lunches. Mr. Coram calculated his expenses on the basis of 29¢/km because this is the rate he had received when he went on refresher courses which he attended annually since 1973. In response to this claim, March 1, 1994, Mr. Al Sutherland, Regional Director, Air Traffic Services, reduced the claim to 10.5¢/km and denied the reimbursement of his meals (lunches) and interest. Mr. Sutherland decided to pay only $564.48 (Exhibit 11). On April 11, 1994, Mr. Coram replied to Mr. Sutherland's letter informing him that on March 10, 1994 he had received the cheque for $564.48 and he was depositing it without prejudice to pursuing his grievance (Exhibit 12). Mr. Coram was not satisfied with the employer's response to his claim.

Mr. Coram declared that he calculated the cost of his drive from his home (Selkirk) to the Winnipeg Area Control Centre for the 56 days he attended the IFR training. Mr. Coram added that he kept the gas receipts but these were not submitted in evidence. No evidence was produced in regard to Mr. Coram's expenditures except for his oral declaration that he kept gas receipts and his insurance had increased because he was driving in a city (Winnipeg) instead of a community. Mr. Coram testified that he did not submit these expenses to the employer (nor to this adjudicator) because he requested the higher mileage rate under the Travel Directive (the employer requested travel rate) which in his view covers all these expenses. He added that this rate reflects the realistic expenses of commuting. Mr. Coram testified in examination in chief that had the employer allowed the relocation, he would have acquired a second residence in Winnipeg. For him, a final settlement to this grievance would be compensation at the employer requested mileage rate.

However, in cross-examination, Mr. Coram explained that he has lived in Selkirk, on the Southside of Highway 9, since 1981 or 1982. He is married and has three children who at the time were attending school in Selkirk from September to June of the following year. Mr. Coram testified that he "would not have been moving while [his] three children were in school". Mr. Coram testified concerning his letter of February 28, 1992 (Exhibit 13). He explained that he wrote it prior to the June 1, 1992 offer for training and he requested to return to the St. Andrews Tower if he was not successful in the course. Moreover, at the time, he did not know that he was entitled to relocation. Thus, he offered to use his car but the employer refused to compensate him. Moreover, Mr. Coram did not consider Mr. B. Roos' refusal of June 3, 1992, a

proper answer (Exhibit 6). Mr. Coram did not take his response seriously and he accepted the offer to take the IFR training.

Mr. Coram first learned that his claim was allowed on February 10, 1994 and when Mr. Alan Ashton, Acting Staff Relations Consultant, wrote on February 25, 1994, that he was granted commuting assistance (Exhibit 14), he submitted a ten-page claim (Exhibit 10 is part of this claim). On March 11, 1994, Mr. Coram learned that his claim had been reduced to $564.48 and, at no point, did the employer indicate that it was reconsidering the issue of the claim.

Mr. Fazal Bhimji has been Vice-President, Labour Relations, CATCA, since July 1, 1993. Mr. Bhimji is responsible for the representation of CATCA members at level 2 of the NJC grievance procedure and at level 3 of any grievance alleging a violation of a provision of the collective agreement. Mr. Bhimji prepares reports to the membership on any labour relations matter concerning CATCA. In addition, he makes recommendation to the Executive of CATCA on whether or not a grievance should proceed to adjudication. Mr. Bhimji is the one responsible to refer grievances to adjudication with the assistance of a labour assistant.

Mr. Bhimji became aware of Mr. Coram's grievance in 1992 and he dealt with it as Vice-President shortly before it was transmitted to the third level of the grievance procedure. On October 26, 1993, Mr. D.S. Davidge, the then General Secretary of the National Joint Council, wrote acknowledging CATCA's and Mr. Bhimji's participation in the grievance (Exhibit 16). The meeting dealing with this grievance took place on November 4, 1993 (Exhibit 17) and Mr. Dave Lewis, President of CATCA, made the representations on behalf of Mr. Coram. Mr. Bhimji briefed Mr. Lewis on the case. Mr. Bhimji received the decision granting the grievance on December 22, 1993 (Exhibit 18). Then, Mr. R.-Daniel Paris, Director General, Staff Relations and Compensation, wrote to Mr. Coram on January 5, 1994, confirming the decision to grant the grievance (Exhibit 1(d)). Mr. Bhimji had discussions with Ms. Carole LaPointe, Staff Relations Officer, and on January 19, 1994, she confirmed that Mr. Coram would be granted commuting assistance (Exhibit 19).

Mr. Bhimji followed up on the grievance and when Mr. Coram would receive payment. Then, when the mileage rate became an issue, Mr. Bhimji wrote on

March 22, 1994, to Mr. Paris requesting a third level reply to the grievance on this issue (Exhibit 20). The employer maintained that Mr. Coram was only entitled to the lower mileage rate under the Relocation Directive (Exhibit 2). Paragraph .3.9.2 provides that the deputy head may approve payment of commuting assistance between the residence at the old place of duty and the new work place and the rate shall be the employee requested rate (10.5¢/km). Mr. Bhimji argued that Mr. Coram should be made whole, not be out of pocket, and be reimbursed for reasonable expenses. Mr. Coram had explained that he had no option but to take his private vehicle. Thus, he should be compensated at the higher rate. In addition, Mr. Coram requested overtime for the travel to and from his residence.

On March 28, 1994, Mr. Coram received a reply to his further claims. The letter signed by Mr. R.-Daniel Paris and addressed to Mr. Bhimji (Exhibit 21) explained that during the representations made on November 4, 1993, before the Travel Committee with respect to Mr. Coram's grievance, Mr. Dave Lewis had requested that commuting assistance be granted to Mr. Coram. Thus, commuting assistance was granted under paragraph 3.9 of the Relocation Directive which provides compensation at the lower rate. Furthermore, Mr. Coram was not entitled to any other benefit under the Travel Directive (Exhibit 21). Mr. Dave Lewis did not testify in this case. Mr. Bhimji testified that prior to the November 4, 1993, meeting he had briefed Mr. Lewis. They discussed in a general sense the commuting assistance and what would be a proper compensation in this case. The "relocation" could not be applied retroactively.

Mr. Bhimji declared that following the March 28, 1994 letter, he had further discussions with Ms. LaPointe reiterating CATCA's view concerning a reasonable remedy for this case. Mr. Bhimji could not recall when he last discussed the matter with the employer or Ms. LaPointe.

Mr. Bhimji explained the reasons why Mr. Coram's grievance was referred to adjudication on November 3, 1994 and why an extension of time to refer this grievance to adjudication had not been requested before November 23, 1995. CATCA had just hired a Labour Assistant and Mr. Bhimji had been in office as Vice-President less than a year when Mr. Coram referred his grievance to the third level of the grievance procedure in March 1994 (Exhibit 20). Mr. Bhimji took office on July 1, 1993. At the time, Mr. Bhimji had over 900 active files in the office and they

were the only two doing all the work which had to be done manually. Mr. Bhimji and the Labour Assistant were under the impression that Mr. Coram's grievance had been referred to adjudication. The Labour Assistant had informed Mr. Bhimji that the grievance had been referred to adjudication and it was only at the end of October 1994 that Mr. Bhimji found out that this was not so. In late October 1994, Mr. Terry Barclay, Regional Director, CATCA, called Mr. Bhimji requesting an update on the grievance. When Mr. Bhimji opened Mr. Coram's file, he found no letter referring the grievance to adjudication which he normally signs. Thus, he promptly referred the grievance to adjudication.

Mr. Bhimji realized there was a problem because the Board had not provided a date for hearing which is normally done within three months of the referral of the grievance to adjudication. Mr. Bhimji realized that the reference to adjudication was untimely. Mr. Bhimji could not recall if he had further discussions with the employer on Mr. Coram's case after he had referred it to adjudication. He did recall asking Ms. LaPointe to go back to the National Joint Council to clarify the meaning of "commuting assistance" but Mr. Bhimji could not recall the date of this discussion. It could have been early in 1995. The first time Mr. Bhimji learnt of the employer's objection was when Mr. Lafrenière sent his letter of November 23, 1995. Thus, CATCA promptly filed an application to extend the time limits to refer this grievance to adjudication. CATCA did not see a need to file this application prior to November 23, 1995 because the employer had not objected to jurisdiction and the amount claimed was less than $1,100.00. Mr. Bhimji thought that he would deal with the objection when it arose. In his view, the grievance and the timeliness issue had no serious ramifications except for Mr. Coram. However, the grievance was important for Mr. Coram.

Prior to July 1, 1993, Mr. Bhimji had been the Central Region Director responsible for grievances at the second level of the grievance procedure. Mr. Bhimji was well aware of the time limits provided under the collective agreement. He knew these time limits had to be met and pursuant to clause 5.17 of the CATCA collective agreement, these time limits could be extended. Mr. Bhimji had sought extensions of time when necessary. There was an agreement between the employer and CATCA to be flexible in this regard. Mr. Bhimji was aware that the employer had taken a firm position to deny the higher mileage rate since March 22, 1994 (Exhibit 20). Thus,

Mr. Bhimji acknowledged that he could have referred the grievance to adjudication then.

ARGUMENT

Mr. Peter Barnacle, counsel for the grievor, recognized that the grievance had been referred to adjudication out of time. The delay is in the nature of some six or seven months. In this regard, Mr. Barnacle cited authors Brown and Beatty in Canadian Labour Arbitration, in support of his submission that the application for an extension of time should be granted because no evidence was presented regarding any prejudice that such a delay may have caused the employer. The Vincent (Board file 166-2-21022) and Hitchcock et al (Board files 166-2-16651 to 16654 and 149-2-78) decisions dealt with the issue of prejudice. In the case of Mr. Coram, the employer adduced no evidence that the delay caused a prejudice. This delay has created no difficulty to the employer. However, to deny the request of Mr. Coram for an extension of time would deprive him of an opportunity for his grievance to be decided on its merits and this would cause an injustice to him which would far outweigh the inconvenience to the employer of having the grievance heard at this date. The oversight did not create problems or hardship for the employer. The claim is a monetary one and easy to redress. In support of his argument, Mr. Barnacle quoted Quellette (Board file 166-2-21255), Brochu (Board files 166-2-17574 and 149-2-84) and The Canadian Labour Arbitration by Brown and Beatty, 3rd edition (paragraph 2.3140).

On the merits of this grievance, Mr. Peter Barnacle submitted that, originally, this grievance related to the entitlement to relocation for the period during which Mr. Coram was undertaking IFR training at the Winnipeg Area Control Centre. Mr. Coram did request relocation under the Relocation Directive or travel status under the Travel Directive. The employer denied his request on November 18, 1992 (Exhibit 8). Subsequently, Mr. Coram restated his claim on November 20, 1992 (Exhibit 9) and presented his grievance on December 14, 1992 (Exhibit 1). Mr. Coram claimed daily mileage at the 29¢/km and reimbursement for lunches. The employer reimbursed the mileage at 10.5¢/km and refused the payment for the lunch meals. Mr. Coram received a cheque which he cashed without prejudice. Thus, the sole issue remaining is the rate to which Mr. Coram is entitled for his commuting. Mr. Barnacle argued that the issue remains alive because the remedy provided by the employer

does not satisfy the grievance. The grievor is entitled to compensation at the employer requested rate because he was entitled to relocation and this is the only way to make him whole. The employer denied his entitlements under the Relocation and Travel Directives. Had the relocation been granted, the Travel Directive would not apply. Mr. Barnacle referred to paragraph 3.9.3 of the Relocation Directive and .7.2.1(c) of the Travel Directive (which refers back to the Relocation Directive). The remedy requested is on the basis of the actual cost of travelling by car. Thus, the claim is under the Travel Directive because there is already a rate concerning the usage of a vehicle.

Mr. Coram requested compensation for 56 days at 29¢ per kilometer which is the employer requested rate as a means to remedy the losses he experienced. He chose that rate because this is the rate he had been paid on other occasions. Mr. Barnacle submitted that the evidence showed that Mr. Coram would have relocated and he wrote the February 28, 1992, letter (Exhibit 9) before he was aware of his entitlements. He is entitled to be made whole and the only way to do it is with compensation at the higher rate. Mr. Barnacle argued further the paragraph .3.9.1 of the Relocation Directive only applies when the employer requests the opportunity to commute instead of relocating. In this regard, Mr. Barnacle cited Canadian Labour Arbitration by authors Brown and Beatty, 3rd edition, paragraph 2:1300 to 1:1412, Degaris (Board file 166-2-22490), The Professional Institute of the Public Service of Canada (Board file 125-2-63) and Grant and Stoykewich (Board files 166-2-3323 and 3324).

Mr. Roger Lafrenière, counsel for the employer, replied that the prejudice factor is only one among others and he cited the Stubbe decision (Board file 149-2-114). The grievor had the responsibility to exercise due diligence. The prejudice in the case of Mr. Coram is for the employer to be forced to go through a proceeding at this time. There is an obligation for the grievor and the bargaining agent to justify the delay. The grievor took no action following the receipt of the cheque and Mr. Sutherland's letter of March 11, 1994 (Exhibit 11). Mr. Coram provided no evidence concerning any steps he may or may not have taken to pursue his grievance after March-April, 1994. Moreover, the Labour Assistant was not called to testify to explain why the grievance had not been referred to adjudication on time. When Mr. Bhimji became aware that the grievance had not been referred to adjudication, he had an obligation to file an

application for extension of time at that time. Messrs. Bhimji and Coram took no steps to remedy the situation. Mr. Lafrenière also quoted the Quellette (supra) decision.

Concerning the merits of the grievance, Mr. Lafrenière submitted that the substance of the grievance cannot be changed at adjudication. The grievor and CATCA are not relying on any provision of the collective agreement to support their claim. They are relying on the National Joint Council Government Travel Committee decision. Mr. Lafrenière pointed out that the issue before the National Joint Council Government Travel Committee was short term relocation and that Mr. Coram be placed in travel status. Mr. Coram's grievance claimed reimbursement for the travel rate and lunch costs. This is the issue that was before the National Joint Council Government Travel Committee (Exhibit 1(e), letter of November 9, 1982). The decision of the National Joint Council Government Travel Committee decided this issue on November 4, 1993. It was agreed that Mr. Coram qualified for relocation and that he was entitled to temporary dual residence assistance or commuting assistance in lieu thereof (Exhibit 17). Mr. Lafrenière argued that this decision clearly refers to paragraph .3.9.1 of the Relocation Directive (Exhibit 2). Mr. Coram was entitled to one or the other: temporary dual residence assistance or commuting assistance.

Moreover, it is up to the Deputy Head to decide whether to approve the payment of commuting assistance and if such is approved, the rate shall be the employee requested rate.

Mr. Lafrenière submitted that Mr. Coram's claim "to be made whole" was not an issue at the NJC Government Travel Committee. Mr. Lafrenière referred to the Canada (Attorney General) v. Lussier decision rendered by the Federal Court of Appeal (Court file A-1235-91, unreported) where it was decided that the claim for compensation could not be granted because there was no evidence adduced to justify such a claim and the adjudicator could not grant punitive damages. Similarly, Mr. Coram testified that he used his personal vehicle and no other evidence was adduced to suggest that the employee requested rate was deficient. The NJC Government Travel Directive recognizes this rate as proper compensation. Thus, to award damages in general is well beyond the adjudicator's jurisdiction because such a claim does not arise out of

the application and interpretation of any provision of the relevant collective agreement.

In reply, Mr. Barnacle referred to the Stubbe decision (supra). Mr. Coram did consult Mr. Bhimji when he received the cheque for $564.48 (Exhibit 11). Mr. Coram, CATCA and Mr. Bhimji intended to refer the grievance to adjudication. Mr. Barnacle submitted that I have all the evidence needed as to what Mr. Bhimji ordered and intended in this regard. Mr. Bhimji is taking the responsibility for the omission. Moreover, the grievance is alive because the remedy is lacking.

The NJC Government Travel Committee decision has to be read in the context of the circumstances (Exhibit 17). Mr. Coram would have had the choice between the temporary dual residence assistance and the commuting assistance back in 1992. It was Mr. Coram's choice and he had decided to relocate. However, at this stage the only remedy is compensation. Mr. Barnacle argued that the Lussier decision (supra) does not apply. Here the issue is the cost of the commuting between Selkirk and Winnipeg.

DETERMINATION

Application for Extension of Time to Refer the Grievance to Adjudication

Section 63 of the P.S.S.R.B. Regulations and Rules of Procedure provides:

> *63. Notwithstanding anything in this Part, the times prescribed by this Part or provided for in a grievance procedure contained in a collective agreement or in an arbitral award for the doing of any act, the presentation of a grievance at any level or the providing or filing of any notice, reply or document may be extended, either before or after the expiration of those times*
>
> > *(a) by agreement between the parties; or*
> > *(b) by the Board on the application of an employer, an employee or a bargaining agent, on such terms and conditions as the Board considers advisable.*

The evidence disclosed that the reference to adjudication of Mr. Coram's grievance was untimely by six or seven months. However, no evidence was adduced as to the prejudice this delay may have caused the employer. The witnesses were available to testify. As a matter of fact, only the grievor was called to testify on the

merits of the grievance. The evidence is also to the effect that Messrs. Coram and Bhimji had at all times the intention to refer the grievance to adjudication. The delay resulted because of inadvertence. Mr. Bhimji thought that the reference to adjudication of this grievance had been filed with the Board when CATCA and Mr. Coram had received Mr. R.-Daniel Paris' reply of March 28, 1994 (Exhibit 21).

It was only in October 1994, when Mr. Bhimji examined Mr. Coram's file that he discovered this had not been done. At that point, he realized that the reference to adjudication was untimely but he decided to file it late and deal with the untimeliness issue when it arose.

It could be argued that Messrs. Coram and Bhimji may not have exercised due diligence. However, the evidence did demonstrate that they intended to contest the employer's interpretation of the Relocation and Travel Directives. Mr. Bhimji's letter of March 22, 1994 (Exhibit 20) attests to this. I have decided to grant the application to extend the time to refer this grievance to adjudication and, in doing so I have considered various factors. The nature of the grievance affects only Mr. Coram. Moreover, this grievance is important to Mr. Coram. The delay caused no prejudice to the employer and Messrs. Coram and Bhimji had the intention all along of referring the grievance to adjudication.

The Merits

This grievance concerns the interpretation and application of the Relocation and Travel Directives which are incorporated by reference into the collective agreement between Treasury Board and CATCA (Code: 402/91) by virtue of Article 29 and, in particular, clause 29.01:

> *29.01 Agreements concluded by the National Joint Council of the Public Service on items which may be included in a collective agreement, and which the parties to this agreement have endorsed after December 6, 1978, will form part of this agreement, subject to the Public Service Staff Relations Act (PSSRA) and any legislation by Parliament that has been or may be, as the case may be, established pursuant to any Act specified in Schedule III of the PSSRA.*

The relevant provisions of the Relocation Directive read as follows:

> *.3.9 Commuting assistance in lieu of temporary dual residence assistance*
>
> *.3.9.1 When an employee qualifies for assistance and the old and new places of duty are within commuting distance, the deputy head may approve the payment of commuting assistance between the residence at the old place of duty and the new workplace. This assistance shall be paid under the same conditions and for the same duration as the temporary dual residence assistance; for the use of a private vehicle, the rate shall be the employee requested rate, as set out in article 1.2 of Appendix C, Chapter 370 - Travel; however, the monthly maximum payment shall not exceed that paid for private accommodation (see article .3.2(a)).*
>
> (Exhibit 2)

The Travel Directive provides:

> *.7.2.1 There are situations where the employee is required to leave the headquarters area for a number of months to live in another community for reasons of training or work assignments. In such cases:*
>
> ...
>
> *(c) when the period of stay at another location is in excess of four months, the short-term relocation provisions of the Relocation policy shall apply;*
>
> (Exhibit 3)

The grievance (Exhibit 1(a)) requests the reimbursement for short term relocation under the Relocation Policy and travel entitlements under the Travel Policy. In the grievance, Mr. Coram referred also to a letter he had written on November 9, 1992 (Exhibit 1(e)). In this letter, Mr. Coram refers to the Relocation Directive, paragraphs .1.1.9 and .9.3. He requested to be considered in travel status under paragraph .9.3. He requested to be considered in travel status under paragraph .7.2.1 (c) of the Travel Policy. However, he also added that "the details of the grievance will include temporary daily mileage costs of $28.32 plus lunch costs $16.86 totaling $45.18 till short term relocation is established".

This letter must be read with another letter Mr. Coram wrote on February 28, 1992 at the time he made his bid for the IFR course (Exhibit 13). In the February 28, 1992 letter, Mr. Coram explained that he made the bid under three conditions. The first condition clearly indicates that "I would not be on relocation for the training course because of compassionate grounds, which I can detail if required...". The message is unambiguous. Mr. Coram informed the employer that he would not relocate to Winnipeg for the training program. Once Mr. Coram wrote this, it was up to the deputy head to exercise his discretion under paragraph .3.9.1 to approve the payment of commuting assistance between Selkirk and the Winnipeg Area Control Centre. Moreover, according to this provision, this assistance shall be paid at the employee requested rate.

I find the details of the grievance and corrective action requested confusing. In the grievance, Mr. Coram requests the application of both the Relocation and Travel Directives. This is consistent with his February 28, 1992 letter. In his November 9, 1992 letter, he repeats the same request but adds that this request is made "until short term relocation is established". Mr. Coram did not explain what he meant by this. Mr. Coram testified that "had the employer allowed the relocation, he would have acquired a second residence in Winnipeg" but this is inconsistent with the documentary evidence, in particular, the February 28, 1992 letter. That letter is very important because it was written to explain his bid for the IFR Course. Furthermore, that statement also contradicts a declaration he made in cross-examination when he told Mr. Lafrenière that he "would not have been moving (to Winnipeg) while [his] three children were in school".

I have decided to give more weight to the contents of the February 28, 1992 letter where he indicates that he does not want to relocate during the training course on compassionate grounds and to his declaration in response to Mr. Lafrenière's cross-examination. The statement made in examination in chief is self serving and, at this time, not believable.

Furthermore, Mr. Coram's claim would fail even if I accepted his declaration that he intended to temporarily relocate to Winnipeg for the duration of the course and that he was out of pocket because his expenses exceeded the employee requested rate. Mr. Coram produced no evidence of these expenses and the costs of the

commuting. I have no evidence that the employee requested rate is inadequate or that it did not cover Mr. Coram's expenses for the use of his vehicle.

In conclusion, I find that the employer did not violate the provisions of the Relocation Directive. That Directive is clear that compensation was to be paid at the employee requested rate. There is no dispute that Mr. Coram received compensation at that rate. Furthermore, even if I accepted Mr. Coram's claim that he should be made whole, he was required to adduce evidence of the actual costs of travelling by car. Without such evidence, the Relocation Directive must apply and the employee requested rate is the only one provided for under that Directive. The Lussier decision (supra) had to deal with a similar issue. Mr. Lussier requested compensation for the losses and inconveniences resulting from the employer's refusal to grant him the requested leave. The Federal Court of Appeal found that without evidence of such losses and inconveniences, such claim could not be granted. The Federal Court of Appeal decided that when Mr. Jean Galipeault, the then adjudicator, granted Mr. Lussier's request for compensation, he in fact had granted punitive damages and in doing so, he had exceeded his jurisdiction.

For all these reasons, the grievance of Mr. Coram requesting compensation at the employer requested rate is denied.

Muriel Korngold Wexler,
Deputy Chairperson

OTTAWA, August 19, 1996.