

IN THE MATTER OF A GRIEVANCE ARBITRATION

BETWEEN:

GOVERNMENT OF NORTHWEST TERRITORIES
(REFERRED TO AS THE "EMPLOYER" OR "GOVERNMENT")

AND:

UNION OF NORTHERN WORKERS (PUBLIC SERVICE ALLIANCE OF CANADA)
(REFERRED TO AS THE "UNION")

GRIEVANCE OF JAMES STEWART

Medical Travel

ARBITRATOR: Allen Ponak

AWARD OF THE ARBITRATOR

For the Union: Krista Devine

For the Employer: Erin Delaney

Hearing by Teleconference
October 4, 2007

ISSUE

Ms. James Stewart (the “Grievor”) is a Government employee in Yellowknife. Due to a medical condition, he required appointments in Edmonton with two different physicians, with one day separating the two appointments. He received travel time (leave with pay) for the day he travelled to Edmonton and for the day he returned to Yellowknife, but not for the day between appointments, for which he was able to access sick pay. The Union took the position that the calculation of the Grievor’s travel time should include the time spent between the two appointments, since it was unreasonable to expect him to return to Yellowknife between appointments. The Employer, on the other hand, submitted that since the contract provided leave with pay only for “actual” travel time, the day in between appointments did not qualify.

EVIDENCE

Evidence was provided through an agreed statement of facts and the testimony of one witness. The following exhibits were provided by the parties:

1. Collective agreement between the Union of Northern Workers and Minister Responsible for the Public Service.
2. Grievance documents and correspondence, May 25, 2006 - August 11, 2006.
3. Expense claim for James Stewart.
4. Medical appointments confirmation for James Stewart.
5. Internal emails regarding reimbursement.
6. Excerpt from Human Resource Manual, Government of Northwest Territories.

Agreed Statement of Facts

1. The members of the bargaining unit are employed across the public service in the Northwest Territories. They are located in communities that are scattered and that are remote to varying degrees from medical services that are available in larger communities.
2. A policy grievance was filed on June 7, 2005 concerning the interpretation of the Medical Travel provisions of the Collective Agreement expiring March 31, 2005, Article 20.10.
3. The Union takes the position that this article is intended to allow employees access to medical treatment or care that is not available to them within the Northwest Territories.
4. An individual grievance was filed on May 25, 2006 by James Stewart pursuant to the same provision in the Collective Agreement expiring March 31, 2009.
5. James Stewart resides in Yellowknife. He suffers from osteoarthritis and loss of nerve function in his hands for which surgery on his elbow and hands had been recommended.
6. On May 8 and 10, 2006 he had scheduled medical appointments with two different physicians in Edmonton. One physician was to see him about his elbow and the other his hands.
7. On May 1, 2006 he requested leave with pay under article 20.10 of the collective agreement. His request for leave was approved by his supervisor on May 8, 2006. Subsequently, when the request was sent to the Department of Human Resources to record the leave, the request was changed to allow only the actual time taken to travel to and from Edmonton. The remaining day in between the appointments was charged against his sick leave.

Ms. Debbie Meade, Manager of Benefits at the time of the grievance, testified on behalf of the Employer. She stated that Article 20.10 of the collective agreement and the Government human resource manual provided for medical travel time payment for actual time spent traveling to and from an employee's residence to the location of the medical appointment. She was personally involved in the Grievor's claim for travel time. In her view, the Grievor was not

eligible for travel time between the two appointments. She said that he was offered two options:

1) either return to Yellowknife after each appointment; or 2) remain in Edmonton between appointments and receive sick leave plus accommodation and meal expenses for the time spent in Edmonton. He chose the latter. According to Ms. Meade, the Grievor also received paid casual leave for the time spent attending the medical appointments.

COLLECTIVE AGREEMENT

20.09 TRANSPORTATION TO A MEDICAL CENTRE

- (a) Where an employee or an employee's dependant is required to travel from his/her place of residence in the N.W.T. to secure medical treatment, travelling expenses incurred will be reimbursed subject to the following provisions:
- (b) The following expenses, supported by an expense claim with receipts, will be reimbursed:
- (i) taxi fare for required travel.
 - (ii) the most economical airfare.....
 - (iii) up to 25 days hotel accommodation and meal costs.....

20.10 TRAVEL TIME

Every employee who is proceeding to a medical centre under the provisions of Clause 20.09 shall, with the approval of the Employer, be granted leave of absence with pay, which is not to be charged against his/her sick leave credits, for the lesser of three (3) days of the actual time taken to travel from his/her post to a point of departure and return.

UNION ARGUMENT

The Union argued that the purpose of Article 20.10 was to ensure that employees had access to medical treatment outside the Northwest Territories. As such, employees should be no worse off than if they were treated in their home communities. In the Union's view, medical travel, as set out in Article 20.09, is continuous and the Grievor's two medical appointments, separated by one day, were really one continuous medical travel. As such, the Grievor should have had access to paid time off for the in-between day and should not have had to access his sick leave bank. In effect, the Union submitted, the Grievor was being penalized for his

efficiency in making the appointments close together. As a remedy, the Union asked that the Grievor be reimbursed for the sick leave and that the arbitrator reserve jurisdiction on the policy portion of the grievance.

EMPLOYER ARGUMENT

The Employer argued that Article 20.10 is clearly and expressly aimed at the time actually taken to travel to and from the destination where medical treatment is being obtained. It is not a clause intended to overcome all detriment from living in the Northwest Territories. Furthermore, the Grievor was able to use other provisions of the collective agreement to recoup costs for the day in-between his appointment, the time spent during the appointment, and his accommodation and expenses. Each of these provisions had a different purpose than Article 20.10 and Article 20.10 could not be expanded to include items other than actual travel time.

DECISION

It is my decision to deny the grievance. The wording used in Article 20.10 is “the actual time taken to travel.....”. The language is clear and unambiguous in my view. The only element of medical travel for which an employee is to be granted leave with pay under Article 20.10 is the travel time itself. The use of the word “actual” to modify the phrase “time taken to travel” emphasizes the restriction under which the benefit in Article 20.10 (i.e. leave with pay) is to be conferred – it is conferred only for the actual time spent travelling to and from the destination where medical treatment is being provided. Had the parties wished to confer leave with pay for something in addition to the actual time taken to travel, they could have done so. For example, elsewhere in the collective agreement the parties have negotiated casual paid leave (up to two hours) for the time spent at the medical appointment itself (Article 19.06) and also provide

overnight accommodation costs where medical treatment so requires. I conclude that the parties have put their minds to the issue of travel time and have chosen to restrict paid leave to the time actually spent getting to and from the medical centre where the treatment is to occur.

In the current case, the Grievor's in-between day was not spent getting to Edmonton from Yellowknife and back from Edmonton to Yellowknife. It was a waiting period between medical appointments. The time spent in Edmonton simply does not fit within the concept of "actual time taken to travel" and therefore falls outside Article 20.10. The Employer did not violate the collective agreement by rejecting the Grievor's claim for paid travel leave under Article 20.10.

AWARD

For the above reasons, the grievance is denied.

Dated in Calgary Alberta on November 13, 2007

Allen Ponak