

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20090113**

**Docket: A-197-08**

**Citation: 2009 FCA 2**

**CORAM: RICHARD C.J.  
DESJARDINS J.A.  
TRUDEL J.A.**

**BETWEEN:**

**YVES LAMOTHE, CLAUDE FAVREAU, KATIE BERNARD  
SONJA LAURENDEAU, NORMAND BÉLAIR, PAQUETTE DUFOUR  
CARL GAGNON, KARINE NADEAU, JOCELYNE GAUTHIER, HÉLÈNE GAGNON**

**Appellants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on January 13, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on January 13, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RICHARD C.J.

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on January 13, 2009)**

**RICHARD C.J.**

[1] This is an appeal of a Federal Court judgment, 2008 FC 411, which allowed the respondent's application for judicial review of a decision of a grievance adjudicator, a member of the Public Service Labour Relations Board, dated June 7, 2007, in which she determined that the appellants were entitled to compensation for travel time when they attended training courses.

[2] The parties filed an Agreed Statement of Facts with the adjudicator.

[3] In short, the appellants were required to attend training sessions related to their veterinary duties, held outside their headquarters area. They applied for overtime for the time devoted to training in excess of their normal hours of work and for travel time between their residences and/or their accommodations and the training site. The employer compensated them for time devoted to training in excess of their normal hours of work. Their travel expenses were also covered under the Treasury Board Secretariat of Canada's *Travel Directive*. However, compensation for travel time between their residences and/or their hotels and the training site was denied, which is why the appellants filed grievances.

[4] In her decision, the adjudicator allowed the appellants' grievances by concluding as follows:

Taking into account the provisions of the 2003 collective agreement, the arguments of the parties and the evidence before me, I believe the grievances must be allowed for the reasons that follow.

Clause B7.08 of the 2003 collective agreement reads as follows:

...

Compensation under this Article shall not be paid for travel time to courses, training sessions, conferences and seminars unless so provided for in the Article 18, Career Development.

At first glance, this clause is unequivocal. Employees who travel to attend courses or training sessions are not entitled to compensation for their travel time. However, I believe that, in the context of grievances under review, the employer created an exception in the case of employees who are required to attend training.

[5] With regard to the travel between the hotel where the appellants stayed once they had arrived at their destination and the training site, the adjudicator also found that it should be compensated, reasoning as follows:

With respect to the grievors' travel between their accommodations and the training centre, in cases where the employer determines the mode of transport as well as the times of departure and return, I also believe that such time should be compensated. The time that employees spend travelling from their residences to their workplaces differs from the time they spend travelling to a training activity according to a schedule set by the employer. In the first instance, employees are free to decide how they will use their time and to travel as they deem best according to their own constraints. In the second instance, employees must comply with the time of departure and travel time as determined by the employer and cannot choose to act otherwise. They are at the complete disposal of the employer during that time.

[6] The motions judge concluded that the adjudicator had “. . . ignored the plain wording of the collective agreement and did not do an adequate analysis to establish the existence of a past practice”.

[7] After having analysed the evidence presented before the adjudicator, the judge determined that the evidence by no means established that there was a past practice, let alone a well-established past practice. In fact, a simple statement in Mr. Gingras's affidavit attesting to past practice and only one example are far from being convincing or sufficient.

[8] Relying on *Dunsmuir v. New Brunswick*, 2008 SCC 9, the motions judge decided that the standard of review of correctness applied to this case.

[9] The appellants argue that the standard of reasonableness applies in this case.

[10] The respondent is of the opinion that the standard of review of correctness in this case applies according to the principles established in *Dunsmuir*.

[11] Whether it is the standard of review of correctness or the standard of reasonableness that applies, the adjudicator's decision was wrong and unreasonable.

[12] For greater certainty, even if the degree of deference allows us to conclude that we must defer to the adjudicator's decision and apply the standard of reasonableness, we cannot conclude that her decision, considered as a whole, was reasonable.

[13] As to the travel time involved when a public servant travels to a training course, the adjudicator ignored the rules on interpreting collective agreements by attributing a different meaning to the plain, ordinary and unambiguous wording of clause B7.08, which stipulates:

Compensation under this Article shall not be paid for travel time to courses, training sessions, conferences and seminars unless so provided for in the Article 18, Career Development.

[14] The clause is clear: employees who travel for the purpose of training will not be compensated for the time they spend travelling to training sessions.

[15] As to the travel time between accommodation once an employee has reached his or her destination and the training centre, the adjudicator failed to consider those clauses of the collective agreement that unequivocally state the circumstances in which travel time is compensated. In

particular, the adjudicator failed to consider clause B7.02 of the collective agreement, which provides for compensation when an employee travels between his or her residence and workplace; clause B7.01, which deals with compensation only where the employee travels outside his or her employment area for the purpose of performing duties; and clause B7.07, which includes time necessarily spent at each stop-over, to a maximum of three hours, as travel time.

[16] The motions judge therefore concluded that clause B7.08 was clear and unequivocal. This provision provides no compensation for travel time for an employee who travels to attend a training course.

[17] As to the appellants' argument that there was a well-established past practice, the adjudicator, in her decision, stated that the estoppel argument did not apply to the circumstances of this case.

[45] As to the estoppel argument made by the bargaining agent, I believe this principle does not apply to this case due to lack of evidence that the grievors agreed to attend training on the strength of claims made by the employer of its intent to compensate them for their travel time.

[18] The application judge ruled that the conduct or promise on which the doctrine of estoppel relies must be unequivocal, and the existence of such conduct or promise is a question of fact.

[19] The judge concluded that the evidence by no means established that there was a past practice, let alone a well-established past practice, and that, consequently, the lack of evidence of a promise or conduct precluded application of the doctrine of estoppel in these circumstances.

[20] In these circumstances, the appeal will be dismissed with costs.

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**“J. Richard”**  
**Chief Justice**

Certified true translation  
Johanna Kratz

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-197-08

**(APPEAL FROM A JUDGMENT OF THE FEDERAL COURT, 2008 FC 411, DATED  
APRIL 2, 2008, DOCKET NO. T-1244-07.)**

**STYLE OF CAUSE:** YVES LAMOTHE et al. v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** January 13, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** RICHARD C.J., DESJARDINS J.A.  
and TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** RICHARD C.J.

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