

- *Canada Labour Code*
- Travel Time
- Overtime

FINDINGS AND DECISION IN A DISPUTE

BETWEEN: PUBLIC SERVICE ALLIANCE OF CANADA
UNDE, Local 90125

(hereinafter called the "Union")

AND: I.M.P. GROUP LIMITED, AEROSPACE DIVISION
(GANDER, NEWFOUNDLAND & LABRADOR)

(hereinafter called the "Employer")

GRIEVOR: RICHARD HYNES

FOR THE UNION: CHRISTOPHER MAIN

FOR THE EMPLOYER: ROSS LARKIN

SOLE ARBITRATOR: DAVID G. L. BUFFETT, KC

INTRODUCTION

1. The arbitration was held in Gander, Newfoundland and Labrador, on the 29th of January, 2026.

NATURE OF THE GRIEVANCE

2. On December 20th, 2023 the Union filed a grievance on behalf of the Grievor. It was worded as follows:

"What gives rise to the grievance: "Article of Collective Agreement. Letter of Agreement No. 6 and all other relevant articles. I grieve that I was forced to deploy to Comox and

not paid overtime for my weekends when there was open overtime at my home base. While I was away, there was no available overtime when I was in Comox. Mr. Wadman had approved my overtime for travel when it was submitted on December 18th, 2023 and rescinded on December 20th, 2023."

3. It requested that:

"I be compensated at the appropriate overtime rate and that I be made whole again."

4. On January 28th, 2024 the grievance was denied by the Site Manager, Barry Wadman. His denial was worded as follows:

"Richard Hynes was selected to attend work at Comox IAW LOA #6 of the Gander Collective Agreement and was compensated as per LOA #6 of the Gander CA.

LOA #6 of the Gander CA is the procedure requested by MOB Gander Personnel to use when selecting personnel to support the other IMP bases of operation.

Grievance denied."

5. The Site Manager, Barry Wadman transmitted the grievance to Step 2 and it was dealt with at Step 2 by Kate Laing, Director of HR.

6. In her letter of June 2nd, 2024 Ms. Laing maintained there had been no violation of the Collective Agreement or of LOU #6 and wrote:

"This grievance is about overtime for travel which is not addressed in LOU #6, and therefore there can be no violation of this LOU."

She went on to cite and quote Article 24.03, the Travel Article and said it states that:

"When employees are required to travel on any day including Saturdays, Sundays or statutory holidays, they will be entitled to straight time rates for all time spent travelling. Hours travelled for commercial transportation includes a two (2) hour check in period at airports, bus depots or train stations, as well as two (2) hour checkout at each overnight stop over and at the final destination. Hours travelled also include time spent waiting for connecting flights, train or buses but is exclusive of overnight stop overs."

Her letter went on to state that:

"Mr. Hynes travel time was handled in accordance with Article 24, and he was compensated additionally in accordance with LOU #6."

7. During his opening statement Mr. Main for the Union indicated they would not be questioning compliance with the Collective Agreement provisions but instead asserting that the Employer violated the *Canada Labour Code* and that the Collective Agreement does not meet the minimum standards required by the *Code* insofar as it contemplates payment of straight time rather than time and a half while travelling when the travelling occurs after the person has worked in excess of the eight hours a day and 40 hours a week limits.

PRELIMINARY MATTERS

8. The parties agreed:
- (1) As Arbitrator I am properly constituted and have the authority to hear the case.
 - (2) I would take notes and in the event of a dispute as to the evidence or as to what transpired during the hearing, my notes would prevail.
 - (3) All parties likely to be affected by the outcome of the hearing had received adequate notice and been informed of their right to appear.
 - (4) All matters pertaining to the grievance procedure and all time limits whether statutory or arising from the Collective Agreement had been properly observed or were waived.
 - (5) Any time limits for the publication of the Award were waived.
 - (6) There were not any issues of arbitrability or other preliminary issues.
 - (7) Any witnesses who are to give evidence may remain in the hearing room.
 - (8) Any issues of quantum would be dealt with separately and the parties would attempt to reach an agreement and if they were unable to do so, the matter could be referred back to myself as Arbitrator within 30 days of publication of the Award.
 - (9) I would remain seized of the matter for a period of 30 days after publication of the Award to deal with any matters of interpretation should they arise.

THE ISSUES

9. The issues are:
- (1) Whether the actions of the Employer in paying the Grievor straight time as opposed to overtime at the rate of time and a half, amount to a violation of the *Canada Labour Code*.

- (2) Whether travel on a commercial aircraft from Gander, Newfoundland and Labrador, the normal place of the Grievor's employment, on deployment to another Employer worksite at Comox, British Columbia, constitutes work.
- (3) If it does constitute work does the total remuneration received by the Grievor from the Employer in respect of his travel exceed the minimum required by the Canada Labour Code and thereby result in the Employer's actions not being a violation of the *Code*.

RELEVANT SECTIONS OF THE COLLECTIVE AGREEMENT AND THE CANADA LABOUR CODE

10. The relevant section of the Collective Agreement are:

ARTICLE 17 HOURS OF WORK

- 17.01 The parties agree that the work schedule shall be based upon forty (40) hours per week, excluding a lunch period, over a period not to exceed thirteen (13) weeks.
- 17.02 With the exception of deployments, the shift schedule will be posted fourteen (14) days in advance and no less frequently than every thirteen (13) weeks. Seven (7) days prior to posting, the Union will be provided a copy of the proposed schedule for their review and comment. If an employee is given less than seven (7) days advance notice of shift schedule change (with the exception of deployments), the employee shall receive a premium rate of time and one half (1 ½) for work performed on the first changed shift.

Shift Exchange

- 17.03 Shift exchanges between Employees who have qualifications, authorization and ability to do the work shall be permitted, subject to advance notification and where there are no additional costs to the Employer.
- 17.04 Where operational requirements necessitate a change to the established master shift schedules, the Employer will convene a meeting with the Bargaining Committee, the Public Service Alliance of Canada (PSAC), the Site Manager and the Vice President, Human Resources to review those requirements and the proposed new shift schedule to minimize the negative impact on Employees. The Employer shall convene the meeting with the aforementioned parties no later than sixty (60) calendar days prior to the proposed change implementation, except in circumstances where the Employer is not made aware of the operational need for change within this period. In this case, the Employer will convene the meeting as soon as it becomes aware of the need for change.

ARTICLE 18 OVERTIME

- 18.01 For the purposes of this Article 18, "Overtime" is defined as time worked by an Employee in excess of his/her scheduled hours of work.
- 18.02 An Employee is entitled to overtime compensation for each completed fifteen (15) minute period of overtime worked by the employee.
- 18.03 Subject to clause 18.04, an Employee who is required to work overtime shall be compensated at the rate of one and one-half times (1.5X) the Employee's regular hourly rate.
- 18.04 Overtime shall be compensated at the rate of two times (2X) the Employee's regular hourly rate for each hour worked:
- (i) in excess of twelve (12) hours in any twenty-four period; or
 - (ii) after eight (8) hours worked on the Employee's first day of rest; and
 - (iii) for all hours worked on their second or subsequent day of rest.

"First day of rest" is defined as a twenty-four (24) hour period commencing at midnight of the calendar day on which the Employee completed his last regular shift.

When the first and second or subsequent days of rest are consecutive, "second or subsequent day of rest" is defined as the period immediately following expiration of the first day of rest and ending two (2) hours prior to the beginning of the Employee's next regular shift.

When overtime is worked by an Employee, there shall be an elapsed time of eight (8) hours between the end of the overtime and the time an employee reports for his/her regular shift, without loss of regular pay.

It is understood that this clause will have no application when the employee is asked to report for his/her first call-in assignment two and a half hours or less before the commencement of his/her originally-scheduled shift. Rather, the employee in such case will be expected to work a shift comprised of the original number of hours scheduled for that day, inclusive of the hours worked and paid as overtime, and inclusive of a paid break of up to 45 minutes prior to the scheduled shift-time to attend to his or her personal needs.

- 18.05 Where an Employee is required without twenty-four (24) hours' notice to work three (3) or more hours of overtime immediately following his or her regularly scheduled hours of work, the Employer will pay to the Employee a meal allowance in the amount of twelve (12) dollars with no requirement for a supporting receipt.
- 18.06 For overtime not related to deployment, the Employer shall make every reasonable effort to allocate overtime work on an equitable basis among employees who have the qualifications, authorization and ability to do the work and to give an employee reasonable advance notice when the Employee is required to work overtime.

In the case whereby an employee has declined an opportunity, the employee will be deemed to have had an overtime offer, and will not be offered another overtime until their seniority allows (with the exception of employees on standby).

"Scheduled Overtime" is overtime that can be scheduled more than twenty-four (24) hours in advance of the time on which it is to begin. Scheduled Overtime will be offered by seniority to employees who are available and who have the qualifications, authorization and ability to do the work. If there are an insufficient number of volunteers, then the overtime will be offered in order of seniority to employees on Standby who are available and who have the qualifications, authorization and ability to do the work. If the overtime remains unassigned, the overtime will be assigned by the employer in reverse order of seniority to employees who have the qualifications, authorization and ability to do the work. Notwithstanding the above, who are on standby shall not be assigned to work such overtime involuntarily.

"Unscheduled Overtime" is overtime that is scheduled less than twenty-four (24) hours before the work is required. Unscheduled Overtime shall be offered to employees who are available at the site on the same shift and who have the qualifications, authorization and ability to do the work. If there are an insufficient number of volunteers, then the overtime will be offer in order of seniority to employees on Standby who are available at the site on the same shift and who have the qualifications, authorization and ability to do the work. If the overtime remains unassigned, the overtime will be assigned by the Employer in reverse order of seniority to employees who have the qualifications, authorization and ability to do the work. Where an employee travels to and from their place of residence to report for unscheduled overtime work at the MOB. s/he will be paid the kilometer in accordance with Treasury Board Rates. Notwithstanding the above, who are on standby shall not be assigned to work such overtime involuntarily.

For overtime to qualify as "Scheduled Overtime" of "Unscheduled Overtime" under Article 18.06, a fixed start time must be given. Where no fixed time is given to report, and an employee is subsequently called in, Article 21 applies.

Where an employee reports for Scheduled Overtime and the Overtime is cancelled, the employee shall be compensated for two hours at their regular rate of pay.

- 18.07 Employees working overtime may elect, in accordance with Article 18.08 to bank the overtime hours (Compensatory Time Off "CTO") in lieu of receiving payment. CTO accumulates in the bank at the rate of one (1) overtime hour worked equals one and one-half (1.5) hours in CTO except for overtime hours accumulated in accordance with Article 18.04 which accumulates in the bank at the rate of one (1) overtime hour worked equals two (2) hours in CTO. CTO shall be taken by the employee subject to operational requirements and at a time convenient to both the employer and the employee. Requests to use CTO must be received in writing no less than 72 hours in advance and approval will not be unreasonably denied.

Under unusual circumstances where applications to use CTO are made within 72 hours of the requested date, approval shall be given at the employer's discretion.

- 18.08 On the 1st each month, employees will be permitted to request that overtime be placed in an overtime bank in the form of CTO or paid out. Normally overtime will be paid within fourteen (14) days of submission to the Site Manager. In no circumstances and at no time shall CTO exceed a cumulative annual maximum of one hundred (100) hours. CTO hours in excess of the annual maximum will be paid out with earnings for the pay period in which they are earned. Any balance remaining on March 31st will be paid out but employees shall have the right to carry over a maximum of eighty (80) hours from one fiscal year to another provided the annual maximum of one hundred (100) hours is maintained.
- 18.09 An employee who is working on a specific task which may require completion beyond the normal shift time shall be given preference for the overtime.
- 18.10 The only bargaining unit employees who will be required to canvass for or assign overtime will be the Crew Chief and Deputy Crew Chief.

ARTICLE 24 TRAVEL

- 24.01 Employees who travel on the Employer's business, at the request of the Company will receive meal, incidental and kilometre allowances in accordance with Treasury Board rates.
- 24.02 The Employer will normally arrange for payment for commercial transportation and accommodation. If it necessary for an Employee to pay for these expenses, a receipt shall be presented for reimbursement.
- 24.03 When Employees are required to travel on any day including Saturdays, Sundays or Statutory Holidays, they will be entitled to straight time rates for all time spent traveling. Hours travelled for commercial transportation includes a two (2) hour check-in period at airports, bus depots or train stations, as well as two (2) hour check-out period at each overnight stopover and at the final destination. Hours travelled also include time spent waiting for connecting flights, trains, or buses but is exclusive of overnight stopovers.

LETTER OF AGREEMENT #6

BETWEEN

THE PUBLIC SERVICE ALLIANCE OF CANADA UNDE LOCAL 9012

AND

I.M.P. GROUP LIMITED, AEROSPACE DIVISION, GANDER

Re: Deployments

1. For deployments in support of other IMP bases of operation, the following conditions will apply:
 - a) The Employer agrees to canvass for qualified volunteers within the bargaining unit.
 - b) If there are no volunteers, qualified employees may be assigned in reverse order of seniority.
 - c) Employees may volunteer for the duration of the deployment but at no time shall an employee be forced to deploy to another base of operation for more than 3 consecutive weeks at a time.
 - d) The employer will pay each employee who is required to remain at another IMP base of operation incidentals of forty (\$40) dollars per day for each Saturday, Sunday and Statutory Holiday that the employee was not actively working but remained deployed including travel on those days.
 - e) The Employer shall make every reasonable effort to provide each employee with accommodation that has access to a kitchen and to a rental vehicle.

The Canada Labour Code provisions are:

166 In this Part,

overtime means hours of work in excess of standard hours of work; (*heures supplémentaires*)

standard hours of work means the hours of work established pursuant to section 169 or 170 or in any regulations made pursuant to section 175; (*durée normale du travail*)

wages includes every form of remuneration for work performed but does not include tips and other gratuities; (*salaire*)

Saving more favourable benefits

168(1) This Part and all regulations made under this Part apply notwithstanding any other law or any custom, contract or arrangement, but nothing in this Part shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to the employee than his rights or benefits under this Part.

Where collective agreement applies exclusively

(1.1) Divisions II, IV and VII do not apply to an employer and employees who are parties to a collective agreement that confers on employees rights and benefits at least as favourable as those conferred by those respective Divisions in respect of length of leave, rates of pay and qualifying periods for benefits, and, in respect of employees to whom the third party settlement provisions of such a collective agreement apply, the settlement disagreements relating to those matters is governed exclusively by the collective agreement.

Standard hours of work

169(1) Except as otherwise provided by or under this Division

(a) The standard hours of work of an employee shall not exceed eight hours in a day and forty hours in a week; and

(b) No employer shall cause or permit an employee to work longer hours than eight hours in any day or forty hours in any week.

Powers of arbitrator, etc.

60(1) An arbitrator or arbitration board has

(a) The powers conferred on the Board by paragraphs 16(a), (b), (c) and (f.1);

(a.1) The power to interpret, apply and give relief in accordance with a statute relating to employment matters, whether or not there is conflict between the statute and the collective agreement;

(a.2) the power to make the interim orders that the arbitrator or arbitration board considers appropriate;

(a.3) the power to consider submissions provided in the form that the arbitrator or the arbitration board considers appropriate or to which the parties agree;

(a.4) the power to expedite proceedings and to prevent abuse of the arbitration process by making the orders or giving the directions that the arbitrator or arbitration board considers appropriate for those purposes; and

(b) power to determine any question as to whether a matter referred to the arbitrator or arbitration board is arbitrable.

EVIDENCE

11. A number of items were received into evidence as consent exhibits, namely:

1. Collective Agreement – I.M.P. Group Limited, Aerospace Division (Gander) & PSAC UNDE Local 90120 (2019-2023)
2. Collective Agreement – I.M.P. Group Limited, Aerospace Division (Gander) & PSAC UNDE Local 90120 (2015-2019)
3. Collective Agreement – I.M.P. Group Limited, Aerospace Division (Gander) & PSAC UNDE Local 90120 (2011-2015)
4. Collective Agreement – I.M.P. Group Limited, Aerospace Division (Gander) & PSAC UNDE Local 90120 (2006-2011)
5. PSAC UNDE Local 90120 Outstanding Issues for Arbitration (2012)
6. Arbitration Award – Clarke - PSAC UNDE Local 90120 & I.M.P. Group Limited, Aerospace Division (Gander) – 2012
7. PSAC UNDE Local 90120 Outstanding Positions (Gander) 2018
8. Arbitration Award – Mitchnick - I.M.P. Group Limited, Aerospace Division (Gander) and PSAC UNDE Local 90120 – 2018
9. Arbitration Award – Mitchnick - I.M.P. Group Limited, Aerospace Division (Gander) and PSAC UNDE Local 90120 – 2020
10. Arbitration Award – Mitchnick - I.M.P. Group Limited, Aerospace Division (Gander) and PSAC UNDE Local 90120 – 2024
11. Grievance No. 23354-01
12. Step 1 Response and Level 1 Referral
13. Level 2 Grievance and Referral and Step 2 Response
14. Job Postings for MOB Gander – (2019-2021)
15. Richard Hynes - #2 Comox Manning Augmentation (December 2-17, 2023)

16. Christopher Richardson - #2 Comox Manning Augmentation (December 2-17, 2023)
17. Terry West - #1 Comox Manning Augmentation (November 12 – December 3, 2023)
18. Paul Robson - #1 Comox Manning Augmentation (November 12 - December 3, 2023)
19. Martin Coady – Commercial Air Travel (April 2009 – March 2010)
20. Charlie Hilliard - Commercial Air Travel (April 2009 – March 2010)
21. Lewis Noseworthy - Commercial Air Travel (October 2009 – January 2010)
22. Paul Bouzane - Commercial Air Travel (April 2010 – March 2011)
23. Jeff Hanrahan - Commercial Air Travel (April 2011 – March 2012)
24. Gary Howell - Commercial Air Travel (February 2013 – March 2014)
25. Michael Gates - Commercial Air Travel (April 2015 – March 2016)
26. Terry Coates - Commercial Air Travel (April 2015 – March 2016)
27. Gordon Nofall - Commercial Air Travel (April 2009 – March 2010)
28. Gordon Nofall - Commercial Air Travel (April 2015 – March 2016)
29. Samantha Best - Commercial Air Travel (April 2018 – March 2019)
30. Curtis Strickland - Commercial Air Travel (April 2018 – March 2019)
31. Richard Hynes - FE Course (January 17 – February 17, 2023)
32. Joseph Dijker - FE Course (January 17 – February 17, 2023)
33. Brandon Faulkner - FE Course (October 14 – November 25, 2023)
34. Aidan Fancy – AVN Type Course (September 11 – October 15, 2022)
35. Douglas Hardiman - AVN Type Course (September 11 – October 15, 2022)

36. Ryan Gullage - AVN Type Course (September 11 – October 14, 2022)
 37. Stephen Thomas - AVN Type Course (September 11 – October 14, 2022)
 38. Christopher Richardson - AVN Type Course (June 3 – July 8, 2023)
 39. Allan Collins - AVS Type Course (November 5 – November 26, 2022)
 40. Vern Hodder - AVS Type Course (September 9 – September 29, 2023)
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12. The Union and the Employer each called one witness. The Union called the Grievor himself and the Employer called Barry Wadman, its Site Manager at Gander.
 13. The Grievor testified to the effect that he is an employee of the Employer and works at Gander as an Aircraft Maintenance Engineer. His job entails doing inspections and maintenance on aircraft.
 14. He said that he worked his ordinary work week at Gander from November 27th, 2023, a Monday, to and including December 1st, 2023, a Friday. He worked eight hours on each of those five days.
 15. He was deployed by his Employer to travel to the Employer's worksite at Comox, British Columbia to do work there. This deployment involved him leaving Gander on Saturday, December 2nd, 2023 on a commercial flight to Toronto where he stayed overnight. The next day, Sunday, December 3rd, he flew on a commercial flight from Toronto to British Columbia. He then went to a hotel in British Columbia and reported for work the next morning, Monday, at the Employer's worksite at Comox.
 16. Consent 17 shows him leaving Gander at 1430 on December 2nd, arriving at Halifax at 15:57, leaving Halifax at 16:30 and arriving in Toronto at 18:10. It also shows him flying out of Toronto on the 3rd of December at 6:30, arriving in Calgary at 9:03, leaving Calgary at 11:30 and arriving at Comox at 12:40.

17. He said that he worked for two weeks in Comox and left Comox to fly home on December 16th. While in Comox he worked his regular work week from Monday to Friday, eight hours each day.
18. Consent 17 shows him leaving Comox on December 16th, a Saturday, at 6:20, arriving in Vancouver at 7:00, leaving Vancouver at 9:05, arriving in Montreal at 16:47, leaving Montreal at 18:25, arriving at Halifax at 21:01, leaving Halifax at 11:20 Sunday, December 17th and arriving in Gander at 3:34 on December 17th.
19. He said he put in for 21 hours on December 2nd, 2023, 39 hours on December 3rd, 30 hours on December 16th and 16 hours on December 17th, for a total number of hours of 106. He claimed overtime for those hours. He was denied overtime.
20. It appears from the email of Gary Ryan at Consent 15 that the position the Employer took was that he had straight time of 12.5 hours on December 2nd, 19.5 travel hours at straight time on December 3rd, December 16th travel time of 19.0 hours at straight time and on December 17th that he had travel time of eight hours at straight time and that he was determined to have amassed 59 hours of total travel time.
21. Each time, to and from Comox, according to what the Grievor said and the documentation appears to support it, his travel time was on the weekend days of Saturday and Sunday. This was after the Grievor had worked a 40 hour week from Monday to Friday.
22. The Grievor testified that his deployment was difficult as he had child care and family issues and when he was on the other side of the country he could not deal with such issues as he could do if he was at home.
23. He said it was stressful for that reason but one had to also realize that he was also going to work in another bargaining unit space with different pay from the other workers and with a different group of people.
24. During cross examination the Grievor said in addition to being paid straight time for travel he received incidentals and personal car miles to the airport. He also said that he did not wear a uniform or carry tools or spare parts with him during the travel and there were not supervisors on the flight. On the flight he could read a book or watch a movie if the plane

was equipped with that feature or do anything that other regular passengers could do. Christopher Richardson went with him on the deployment.

25. He was asked about Consent Exhibit 31 and travel he undertook in January and February, 2023. He admitted that he did not grieve the fact that he was paid straight time for that travel as opposed to overtime. He said he didn't grieve because he needed the pay.
26. On re-direct he said he did not want to be travelling during December, 2023 but was doing so only because his Employer required it.
27. On cross examination he said that the January and February, 2023 travel was for training purposes and not to do work. He was assigned to go for training.
28. Barry Wadman said that the Employer has a contract with the Government of Canada to provide aircraft maintenance services. He explained that if an aircraft was not ready when needed for search and rescue, it could mean somebody's life. Mr. Wadman said the grievance was filed in December, 2023 and identified the applicable Collective Agreement as being Consent 1. He said Appendix A set forth the rates of pay. An Aviation Technician's rate of pay is \$33.42 per hour. He said that when the Grievor was deployed to Comox in December, 2023, another person, Christopher Richardson, was deployed as well. Richardson did not grieve.
29. Wadman said Article 31 and Letter of Understanding No. 6, deal with offsite deployments. The Employer follows the steps in Letter of Understanding No. 6 and seeks volunteers. If there are none, it assigns the deployment in reverse order of seniority. The Grievor was assigned under this Article. The Grievor so assigned also gets \$40.00 per day when in travel, per diem meals and the incidentals when not actively working.
30. Consent Exhibit 11 is the grievance from the Grievor. It was about the fact that he was not paid overtime for his hours of travel.
31. Consent 12 is where the grievance was denied at Level I.
32. Consents 14 and 15 concern the transmittal to Level II.

33. Mr. Wadman referred to Article 24 – Travel, and said when deployed away the employee is entitled to meals and incidentals and Article 24.03 is stated to apply to all days including Saturdays and Sundays and statutory holidays. Even on those days one gets straight time plus incidentals plus meals. The straight time is the straight time per hour of travel and two hours are allotted for checking in and two hours for checking out.
34. For a five hour flight one would be compensated for nine hours straight time plus incidentals.
35. Mr. Wadman made reference to Letter No. 1 which dealt with hotel entitlement which is not at issue here and to Letter No. 6.
36. When employees avail of commercial air travel they have no duties while flying and no duties when they stay in hotel overnight.
37. Consent 14 on the second page is the job posting for the position that Mr. Hynes holds.
38. Mr. Wadman said in January and February, 2023 the Grievor travelled so that he could attend training. Regulations from National Defence require all of the technicians to undergo training.
39. Consent 14 is the internal job posting where the Grievor was hired.
40. Consent 15 contains the email from Kim Powell showing the scheduled flights that Mr. Hynes and Mr. Richardson took. Travel 6413 is Mr. Hynes' claim for travel by car, 24 kilometres at \$0.59 per kilometre and for incidentals of \$240.00. One MBOT is Hynes claim for overtime.
41. Mr. Wadman said that Hynes submitted it on December 18th and Wadman had a look at it. He said there was a discrepancy with the hours he put in.
42. He was paid in straight time. He asked that it be held back but we did not hold it back as there is no right under the Collective Agreement not to be paid.
43. Consent 16 concerns Richardson's claim. He travelled with the Grievor. He got more kilometres than did the Grievor because he lived further away than did the Grievor but

otherwise he got the same compensation. Like the Grievor he was compensated at straight time.

44. Mr. Wadman took us through a series of Consent Exhibits which showed that for travel other persons were paid straight time.
45. Persons got time and a half when they travelled on military aircraft outside of normal hours but not when they travelled on commercial aircraft outside of the normal hours. For travel on commercial aircraft in all instances they were paid straight time except for one instance where Mr. Wadman made a mistake and paid time and a half for travel on a commercial airline.
46. In January and February, 2023 the Grievor travelled for training. This was on a commercial airline. He was paid straight time and he did not grieve.
47. Reference was made to Interest Arbitration Awards of Arbitrator Clarke on January 17th, 2012 and Arbitrator Mitchnick on July 27th, 2018 and December 16th, 2020 where the Union had sought overtime for travel outside of regular work hours. In each instance it was not awarded.
48. On cross examination Wadman admitted that Consent 14 revealed that it was part of the Grievor's key responsibilities to do deployment.
49. Mr. Wadman was asked about Consent 30 which revealed that an Employer by the name of Curtis Strickland got overtime for travel. Wadman explained that it was actual overtime outside his hours of work and not travel time. He had travelled by rental vehicle during the day to do work at an airport in St. John's and then worked on an aircraft.

Union Argument

50. Travel like that undertaken by the Grievor is disruptive to normal life. It took 59 hours to get there and back. That is a long time in addition to the regular work week.
51. The position of the Union is that the Grievor is entitled to claim at the overtime rate for his travel and that travel time is work for purposes of the Canada Labour Code.

52. This was travel required by the Employer, across the country and over multiple days, in addition to the regular work week.
53. The definition of overtime in the *Canada Labour Code* reveals that one is into overtime once one exceeds eight hours of work a day or 40 hours of work per week. Here the Grievor was clearly into overtime since he had worked 40 hours a week prior to and in addition to his travel time.
54. Reference was made by the Union to Section 168(1.1) of the *Canada Labour Code*. It submitted that the section clearly indicates that regardless of what the terms of the Collective Agreement are, the *Code* sets the minimums and if the Collective Agreement does not meet them the *Code* governs.
55. The *Code* should be interpreted liberally
56. The purpose of the provisions of the *Code* are to ensure that minimums are met particularly for entitlements like overtime and compensation should be awarded for work beyond regular hours so as to discourage excessive work being imposed on employees
57. The travel that the worker was engaged in was work.
58. Reference was made to the case of *Ontario Nurse's Association*, [1998] O.E.S.A.D. No. 199, Ontario Labour Relations Board. That case involved an application for review of an Employment Standards Officer's decision refusing an Order under Section 67 of the *Employment Standards Act* of Ontario. The officer ruled that travel time was not subject to the minimum wage rate or to regular wages and should not be used in the calculation of overtime pay
59. A question that the Labour Relations Board was forced to consider was whether travel time was work for the purposes of the calculation of overtime pay.
60. The Board ruled that time travelling on the Employer's business from place to place as opposed to time travelling between one's home and place of employment, is work and determined that it factors into the determination of whether one has worked beyond their regular hours and is entitled to overtime.

61. There, as here, travel was part of the job. Consent 14 makes clear that in this instance travel was a key responsibility of the employee.
62. The Union submitted that with respect to whether Collective Agreement provisions provide a greater benefit than does the Code, the onus is on the Employer to prove that they do.
63. The Union submitted that past practice and the intention behind the Collective Agreement language is irrelevant to the entitlement under the Code and bargaining history between the parties and Interest Arbitration Awards are likewise irrelevant.
64. In its argument the Union also cited the case of *Canadian Pacific Railway and International Brotherhood of Electrical Workers System Council 11*, a decision of Arbitrator Michel Picher dated July 16th, 2001.
65. That case, though it concerned holiday pay as opposed to overtime pay, involves a similar analysis in determining whether the Collective Agreement breached the *Code*. In that case the Arbitrator at page 2 of the decision said that past practice is not relevant in determining whether the *Code* has been violated. Also at page 3 the Arbitrator noted it's not open to the parties to contract out and the minimums established by the *Code* apply regardless.
66. In support of its position the Union also cited the following authorities:
- 1643749 Ontario Inc. v. Arsenault*, 2009 CarswellNat 5565, [2009] C.L.A.D. No. 394
- Bell Technical Solutions and C.E.P. (Remembrance Day Holiday)*, Re, 2010 CarswellNat 4591, [2010] C.L.A.D No. 355
- Canadian National Railway and Teamsters Canada Rail Conference (Robert)*, Re, 2023 CarswellNat 5712, [2023] C.L.A.D. No. 118
- Canadian Pacific Railway v. I.B.E.W.*, 2001 CarswellNat 2106, [2001 L.V.I. 3216-10, 65 C.L.A.S. 254
- Fresco v. Canadian Imperial Bank of Commerce*, 2009 CarswellOnt 3481, [2009] O.J. No. 2531

I.M.P. Group Limited, Aerospace Division- Gander, Newfoundland and P.S.A.C.U.N.D.E., Local 90210, 2024 (Mitchnick) (Unreported)

Machtinger v. HOJ Industries Ltd., [1992] 1 SCR 986

Parry Sound (District) Welfare Administration Board v. O.P.S.E.U., Local 324, 2003 CarswellOnt 3500, 2003 SCC 42

Santec Tool Services Ltd. And Towner, Re, 2002 CarswellNat 6275

Saskatoon (City) v. P.S.A.C., 2004 CarswellNat 3799, 132 L.A.C. (4th) 367

U.F.C.W., Local 175 v. Zehrs Markets, 2002 CarswellOnt 4150, [2002] O.L.A.A. No. 926

67. The Union asked for a declaration that the *Code* was violated and an Order ordering the Employer to pay the Grievor overtime as opposed to straight time with respect to his travel time.

Employer Argument

68. The Employer had two arguments. The first was that the Grievor was not engaged in work when he was travelling on a commercial flight or during the check in or check out process. The second was that if it was work, the total compensation package that the Grievor received was in excess of what he would have received with a payment of the overtime.
69. Article 24 describes the various benefits that one is to receive for such travel and the Grievor was provided with all of those benefits plus straight time rates for his time on the flights with two hours straight time for each time he checked in and checked out in addition to what he received under Letter of Understanding #6. The Collective Agreement language is clear. It was clearly complied with and the Employer's position is that it complies with and does not violate the *Canada Labour Code*.
70. There is no definition of work in the *Code* and wages is defined in s. 166. It means every form of remuneration for work performed except for tips and gratuities. It is clear that if something is being received for an activity other than work, it is not a wage. Again, the *Code* is making it clear that work must be involved in order for the *Code* to be triggered.

71. The definition of standard hours in s. 166 makes clear that standard hours refers to standard hours of work, eight hours a day and 40 hours a week. Again, it implies one is working.
72. The Employer noted the case of *Airborne Solutions Limited* and *Wilson*, CarswellNat 6974, [2003] C.L.A.D. No. 165, April 23rd, 2003. That case concerned pilots who would fly to a location and spend time waiting at that location for further instructions from the Respondent or the Respondent's customers. The parties called this waiting time, stand by time during which the pilots could read, sleep, socialize and generally do what they wished but they were nevertheless on immediate call. In that case, the Respondent's practice was to enter into contracts of employment with the pilots under which they were paid a basic monthly salary which was supposed to compensate the pilot for one hour of time prior to flying to cover such work as checking out the aircraft at the start and one hour after the flying to cover such work as completing reports that were required by Government regulations. Only actual flying time was then compensated at a regular hourly rate of up to six hours and an overtime rate for hours in excess of six hours per day. Thus, non-flying time or so called stand by time was not considered as work or hours of work for overtime calculations.
73. In the case Adjudicator Melnyk, wrote:
- "As work is not defined it must be given a practical and common sense meaning in the context of particular industries and practices and flexibility to define what is work and what is to be paid should be up to the parties to negotiate and agree on. The parties clearly understood and agreed that the stand by time was not to be treated as work or to be paid for as if it was work. It was held therefore that standby time was not work for purposes of the *Canada Labour Code*."
74. In this case the parties went through several interest arbitrations where the Union argued that overtime should be paid for travel but the interest arbitrators disagreed.
75. The case of *Exact Air Inc.* and *Molina*, 2022 CarswellNat 7688, 2022 CarswellNat 7687, 2022 CCRI 1045, 2022 CCRI 1045, involved a claim by pilot/flight instructors. The Board in that case recognized at paragraph 22 that the *Code* did not provide a definition of work and at paragraph 125 recognized that:

"The caselaw provides that there is flexibility in determining what constitutes work or work hours that must be compensated and it is generally left to the parties to define the concept. It often comes down to whether the employee is obliged to remain onsite at the Employer's disposal to perform tasks as agreed on or assigned by the Employer."

That case noted and appeared to place reliance on the *Airborne* case which considered stand by time as not being working and noted jurisprudence concerning the trucking industry where waiting time was not considered to be time worked for pay purposes.

76. The Employer also relied on *Canadian National Railways Telecommunications Department v. Transportation Communication Division*, Case No. HO92, November 11th, 1975, a decision of Arbitrator Weatherill. The Grievor in that case travelled as a passenger in a company car driven by another employee. The travel was outside his regularly assigned hours. The Employer paid him travel time at the pro rata rate. His claim was for a time and a half rate with respect to his travel time. His claim was denied. He had been assigned to work away from his headquarters and the travel involved getting to the worksite away from his headquarters.
77. The Employer in that case contended that he was entitled to receive pro rata pay because he was not working. Based on the words of the Collective Agreement he was held entitled to be paid a pro rata rate and not the time and one half rate.
78. In the case of *International Brotherhood of Electrical Workers (System Council No. 11) and Canadian National Railway*, September 16th, 2024, Arbitrator Bartel, the issue was whether the employees in question were to be paid for a stand by allowance on those days that they took a personal leave day. The Union's contention was that wages under the *Canada Labour Code* included every form of remuneration excluding tips, gratuities and premium allowances and workers should not receive less than they would have received had they not taken a leave day.
79. The Arbitrator held that the stand by allowance was not a form of remuneration which is paid for work performed but something paid in return for an undertaking to remain available to work in case further work may be needed to be performed. Persons on stand by cannot be said to be performing work but can be said only to be available for work.

80. The Employer argued that likewise in this case travelling on a commercial airline with no work commitments while travelling could not be said to be work and the Grievor could not be said to be working.
81. The Employer placed reliance on the Federal Court of Appeal decision, *Douglas Martin and Her Majesty the Queen*, 1990 CarswellNat 1159, [1990] F. C.J. No. 939 which concerned a Park Warden who occasionally was required to perform back country patrols on horseback in remote areas of Banff National Park, which patrols could involve him being away from home for as many as nine consecutive days. The application taking issue with the Adjudicator's decision was dismissed by the court.
82. The Adjudicator in *Martin* held that once his daily chores were done and he was able to relax and read, walk around, socialize or sleep he was no longer at work, could not be said to be working simply because he not able to go home at the end of the day, simply because he was out of contact with his family, or simply because his surroundings were more spartan and less luxurious than a first class hotel. None of what he experienced was unusual or unexpected and was all part of a normal routine for which he was hired.
83. *LeCours v. Treasury Board – Transport*, 2002 CarswellNat 5722, 2000 CarswellNat 5723, 2002 PSSRBL 28, 2002 CRTFP 28, 68 C.L.A.S. 357 was also relied on by the Employer. It concerned two Marine Surveyors who claimed overtime of 24 hours per day during a period from November 13th – December 4th when they were onboard a particular motor vessel that had run aground. They each had a 24 hour shift of which 18 hours would be work hours and six hours would be hours of rest when they'd be on standby and for which they would receive standby pay. The Grievors in that case claimed payment as if they were working for the full 24 hours a day.
84. The Arbitrator decided that they did not work beyond the 18 hours a day for which they were paid and that captive time cannot constitute actual hours worked. The Arbitrator dismissed the grievance.
85. *Canada v. Lamothe*, 2008 CarswellNat 3137, 2008 CarswellNat 876, 2008 CF 411, 2008 FC 411, 2008 FCJ, No. 548, 169 A.C.W.S. (3d) 1019, 326 FTR 314 (Eng.) Frenette, D. J.,

members of a veterinary medical group bargaining unit were required to attend training sessions offered by their Employer outside of their normal employment area. They sought overtime for the time devoted to training in excess of their normal hours of work and for travel time between their residences and their accommodations and the training site. The Employer refused to pay them for the travel time between their residences and/or their accommodations and the training site. The Employer challenged the Arbitrator's ruling and one of the questions was whether the travel between the accommodations and the training center had to be compensated when the Employer determined the mode of transportation.

86. The outcome of the case was that where the Collective Agreement made specific provisions for travel compensation and what rate it was to be at and what qualified as travel attracting travel compensation this governed.
87. There was a specific Collective Agreement provision prohibiting compensation for travel time which the court held that the Arbitrator ignored resulting in an incorrect interpretation of the Collective Agreement.
88. Also cited was *Ontario Hydro Electric Power Commission v. CUPE, Local 1000*, 1975 CarsWellOnt 1451, 81 L.A.C. (2d) 406, Shime, Wren and Storie. In that case the Grievor was required to travel from Pickering to Deep River for training. He travelled on a Sunday and was paid pursuant to a Collective Agreement provision which dealt with travelling time outside normal work hours. He claimed he should get his normal pay for the Sunday time which would be premium time instead of travel time. The grievance was denied because there had been no Collective Agreement violation. He was paid in accordance with an article that prescribed what one would get paid for travelling outside the normal working hours. This was what the Collective Agreement provided by way an entitlement as opposed to the entitlement he would have had had he been asked to work at a time when he was not scheduled to work, overtime.
89. *OPSEU and Ontario*, 2022 CarswellOnt 5479, 2022 C.L.A.S. 74, Arbitrator Dissanayake, was a case where the Grievor spent time travelling from their assigned headquarters to other Employer sites and the issue was whether they should be paid travel time or work time. The Arbitrator held that the Grievor was not entitled to work time and placed reliance on

the jurisprudence which held that he could only be paid to be working during travel time if during the travel he was carrying out actual job responsibilities. The Arbitrator also argued that the mere fact that he was in possession of some nominal tools of the trade was not sufficient to convert travel into work.

90. Mr. Larkin for the Employer submitted that the case before me was not even as strong as was the case in *OPSEU* since here the Grievor was not only not performing job duties but he was also not carrying any tools or spare parts.
91. The alternative argument made by the Employer here was that even if the Grievor could be said to be working while travelling, there was no *Canada Labour Code* violation because the total amount received by him in respect of the travel was greater than the amount he'd receive if he was paid at the time and one half overtime rate for his hours travelled. In support of its position it cited a number of cases.
92. The first case cited was *Ontario Power Generation and the Society of Energy Professionals*, a decision of Arbitrator Stout dated January 10th, 2018, which held that the *Employment Standards Act* of Ontario does not prohibit parties to a Collective Agreement from providing for varying rates of pay for travel so long as the number of hours working (or deemed to be working under the *Regulations*) equals at least the minimum wage in which case there is not a violation of the Act.
93. The Employer argued that here the same should apply as to whether there was a *Canada Labour Code* violation.
94. Also cited was the case *Greyhound Transportation Corporation and Amalgamated Transit Union, Local 1415*, June 30th, 2010, a decision of Arbitrator Carrier which held that one can't simply look at the prescribed payment for a particular activity or thing in isolation from the entire arrangement entered into by the parties.
95. The case of *United Steelworkers, Local 14193 and Cameco v. Fuel Manufacturing*, 2023 CarswellNat 4892, 2023 C.L.A.S. 1004, a decision of Arbitrator Nymar, stands for the proposition that if the benefit provided is as favourable or more favourable than the statutory benefit the provided benefit prevails.

96. The Employer submitted that under the Collective Agreement in this case there are benefits provided to the employee and if I weighed the time and one half benefit that the Union is saying the Grievor is entitled to against the full basket of benefits he received, the full basket of benefits he received is greater than if he had been paid the time and one half under the *Code*. Under the *Code* he would have received \$2,338.00 whereas what he did receive was \$2,754.52.
97. Here there was not 59 hours of travel. The actual travel time was 51 hours. He was paid as if it was 59 because of the two hours allotted for each check in and for each check out.
98. The Employer distinguished the *Canadian Pacific Railway* case cited by the Union on the basis that it concerned contracting out of the *Code* and here there was no contracting out and holiday pay which was not the case here.
99. It also distinguished the *Ontario Nurses Union* case in that they carried with them files and had custodial duties while they were travelling.
100. In summary, the Employer argued the grievance should be dismissed because there was Collective Agreement compliance and the Collective Agreement complied with *the Code* because it is left up to the parties to define what is work or hours of work and finally, even if it could be said that the Grievor was working when travelling, the benefits he received were more favourable than he'd receive under the *Code*.

Reply Argument of the Union

101. Reliance on the standby cases is not appropriate since standby is a separate type of issue and any cases dealing with standby are not relevant. Here we are dealing with travel across the country.
102. Interpretation of what is work can't be left up to the parties. To say that is untenable. If it was left up to the Employer it would not be a minimum. The *Canada Labour Code* applies not only to bargaining unit employees who have the protection of the Union but also applies in the case of employees who are subject to individual employment contracts with no such protection. It is absurd and untenable to say that the definition of work is left up

to the parties. If it was left up to the parties there would be no point in having minimums and parties to individual employment contracts would be at the mercy of their Employers.

103. Here there was not a greater benefit or right conferred by the Collective Agreement. In engaging in the greater benefit analysis one must compare apples to apples. The comparison must be between similar things and the things which can go into the weigh scale are not as wide as the Employer maintains. Here we have to compare the time for which he was paid straight time to what time and one half would be for that same period. Meals, milage and daily incidentals are different things. Meals is not compensation but recognition that the employee is away from home and has a need to eat. Likewise he needs somewhere to stay. Overtime is intended to compensate for something completely different than such items.
104. The case of *Fresco v. Canadian Imperial Bank of Commerce Ontario*, SCJ Lax J., June 18th, 2009 makes it clear that the purpose of overtime is to compensate for having to work longer hours and to discourage insistence on longer hours.
105. The Union also cited *Santec Tool Services* and *Towner*, October 13th, 2002 as authority for the proposition that it is not a valid objection to paying overtime to say that the person is paid a higher wage because they might be required to work overtime.

CONSIDERATIONS AND REASONS FOR DECISION

106. It is pretty clear, and for the most part not in dispute, as to what the facts are.
107. The Grievor worked from and including Monday, November 27th, 2023 to and including Friday, December 1st, 2023, his regular work week of eight hours each day for a total of 40 hours, at his regular work place in Gander, NL.
108. He was required by his Employer to travel on Saturday, December 2nd, 2023, and Sunday, December 3rd, 2023 to the Employer's work site in Comox, British Columbia and did so.
109. Commencing on Monday, December 4th, 2023 he worked at the Employer's work site in Comox. He worked from Monday to Friday at that site, had the weekend off and again worked from Monday to Friday a second week at Comox. At Comox his hours of work

were eight hours each day and he worked a total of 40 hours during his first work week there and a total of 40 hours during his second week there with his last day of work at the work site in Comox being Friday, December 15th. He then travelled on December 16th and December 17th back to Gander.

110. The travel itinerary set forth in an email from Kim Powell showed that he left Gander on Saturday, December 2nd at 14:30, arrived at Halifax at 15:57, left Halifax at 16:40, and arrived in Toronto at 18:10. He overnighted in Toronto and left Toronto on December 3rd at 6:30, arrived in Calgary at 9:03, left Calgary at 11:30, and arrived at Comox at 12:40.
111. That travel itinerary also shows that on his return, he left Comox on Saturday, December 16th at 6:20, arrived at Vancouver at 7:00, left Vancouver at 9:05, arrived at Montreal at 16:47, left Montreal at 18:25, arrived in Halifax at 21:01, overnighted in Halifax and left Halifax on Sunday, December 17th at 11:20 arriving in Gander at 13:34.
112. The evidence was that he was paid at his straight or regular time rate for 59 hours of travel, including two hours for each check in and check out at the airport for the travel commencing on December 2nd as well as the travel commencing on December 16th. The Employer's position is that he was paid 59 hours at straight time for what was actually 51 hours of travel time.
113. In addition the evidence shows that he received \$24.35 for breakfast and \$24.65 for lunch as well as \$60.45 for supper each day from December 3rd to and including December 16th, and that for December 2nd, he received \$24.35 for lunch and \$60.45 for supper and that on December 17th he received \$24.35 for breakfast and \$24.65 for lunch as well as incidentals each day of \$17.30. The total in respect of meals and incidentals was \$1,943.20.
114. He was also paid \$40.00 per day pursuant to Letter of Understanding #6 for each Saturday, Sunday or statutory holiday he was not actively working but remained deployed including travel on those days.
115. I find that the Grievor was working when he was engaged in the travel to and from Comox, British Columbia.

116. He travelled there at the Employer's request and for the Employer's benefit.
117. Consent Exhibit 14, the position description as contained within the job posting for the position that the Grievor is in, makes it clear that among the key area of responsibility of such a position are "fly as necessary in support of maintenance, ferry, and deployment operations" and "travel and work at other main operating bases, deployments in support of operations at remote sites, mobile repair parties and ferry flights."
118. In the internal job posting for the position, Consent 15, included in key areas of responsibility are "fly as necessary in support of maintenance, ferry and deployment operations" and "travel and work at other main operating bases, deployments in support of operations at remote sites, mobile repair parties and ferry flights."
119. Travel was clearly one of the key responsibilities and duties that someone in the position of the Grievor could be called upon to undertake.
120. In my view he was no less working because he was not using a wrench or tightening a bolt on an engine or piece of equipment or machinery associated with an aircraft.
121. In *Ontario Nurses Association*, the question of whether travel time was work for the calculation of overtime hours was squarely before the Ontario Labour Relations Board. The Board found that time spent travelling was work.
122. After canvassing the jurisprudence on the point the Board said at paragraph 19:
- "What these cases suggest is that there is a qualitative difference between the way that referees view the time it takes to get from one's home to one's place of work and the time one travels on the employer's business. The latter is compensable as time worked while the former is not. It would be inconceivable, in the absence of an agreement otherwise, that an employer may be obliged to pay an employee who chooses to live one hour from her place of work for her travel time to and from work. However it would also be untenable if an employee had to travel in the course of her work, where the travel was for the benefit of the employer, and the employee did not get paid for the time she actually spent getting from place to place."
123. The decision maker in that case went on to write at paragraph 62:

"On the evidence before me I find that the applicants must travel in the course of their work, and as such the time expended, in travel is time worked. I am also satisfied on the evidence before me that the employer and the employee through their bargaining agent had an agreement that travel time would be compensated as time worked."

124. Here the travel was one of the key responsibilities of the position. Also, it is not lost on me that the travel time rate is the same as the work rate for regular hours of work. Despite the fact that the Collective Agreement calls for just the regular work rate even if the hours of travel fall outside the regular work week of 40 hours and the regular work day of eight hours, the fact is that the rate of compensation equates to what one would get for using a wrench or tightening a bolt and it is still a compensation rate that equates to what one gets for what the Employer clearly admits is work.
125. In my view it would be pretence to say that time spent travelling was not time spent working.
126. The Employer argues that in the case of the *Ontario Nurses Association* employees travelled carrying equipment like audio and visual equipment and laptop computers whereas here the Grievor carried no equipment, tools, or parts.
127. I am satisfied that a fair reading of that case would reveal that this is not a pivotal point and that even had they not been carrying equipment their travel activity would still have been held to be work.
128. I am not persuaded otherwise by the authorities filed by the Employer and used in its argument.
129. Let me indicate why.
130. *Airborne Energy Solutions* dealt with standby time and what payment should be for when employees were standing by and available for work as opposed to working or expending any effort for the benefit of the Employer.
131. *Exact Air* placed reliance on *Airborne*.

132. *Canadian National Railways* is a case which in my opinion is of no assistance to the Employer. In that case Arbitrator Weatherill noted the case of *Wiberg v. Treasury Board (Public Service Staff Relations Board, 166-6-228)* which held that travel time spent in travel to a distant work location constituted time worked for purposes of payment. He then went on to say at page 2:

"That question does not arise in the instant case where there was no doubt the Grievor was entitled to be paid in respect of time spent in travel."

He goes on to say that the issue was not whether it was work but what the rate of payment was that the travel attracted. In that case because the Collective Agreement specified the rate of payment, the decision was based on the Collective Agreement. It is noteworthy that that case did not consider an overlying statute which prescribed minimums as does the *Canada Labour Code*.

133. *International Brotherhood of Electrical Workers (System Council No. 11)* dealt with whether persons were entitled to be paid for a stand by allowance on those days that they took personal leave and/or medical leave days.
134. The issues in that case were different. In that case there was no work performed unlike in this case where the employee was required to expend effort, travelling across the country and continent for the Employer's benefit.
135. *Martin v. Treasury Board*, the Park Warden case, in my view would have been more applicable to countering an argument that the employee was working when he had his weekend off in Comox after working a full week during which weekend he was not expending an effort on behalf of the Employer. However that was not the argument that the Employer was making. Its argument was about a time when he was expending effort, the effort of travelling across the country.
136. The same can be said about the LeCour case where the Marine Surveyors remained on ship but were not working or expending an effort for the benefit of the Employer but were rather resting.

137. Likewise, in my view, *Canada v. LaMothe* was different in that it concerned not travel to get to a worksite but travel from accommodations to a worksite. It would have been more suited as a counter argument if the Union had been trying to claim that the Grievor was working when he travelled from his accommodations in Comox to the worksite in Comox, as opposed to a counter argument that the travel across the country was not work.
138. To the extent that the jurisprudence suggests that the parties should and can be left to their own devices in determining what constitutes work and what doesn't, I disagree. I agree with the Union that to leave such a question up to the parties ignores the fact that the *Code* is establishing minimums that must be met. If the parties were free to say something was work and something else was not, what is the point of having a minimum. The Union also makes a good point that the *Code* applies to persons who are subject to individual employment contracts as well as to persons covered by and having the protection of a Union and Collective Agreements. It makes the point that it would be untenable to think that in such circumstances the *Code* leaves the parties to their own devices in determining what is and what is not work.
139. I agree with the position taken by the Union that that cannot be the law and I cannot read the Collective Agreement apart from the *Canada Labour Code*.
140. The Grievor was working beyond his regular 40 hour week and the *Code* is clear he is entitled to be compensated at the overtime rate of pay while doing so.
141. This leaves the issue of the Employer's second argument and the question of whether looking at his compensation package while deployed as a whole, he received as much or more than being paid at the overtime rate would have given him. If so, s. 168(1.1) would result in there not being a violation of the *Code*.
142. *Cameco Fuel Manufacturing Inc.* recognises that when comparing the statutory benefit to the allegedly more favourable benefit, one must consider the purpose of the statutory benefit. It also recognises that a determination must be made whether the allegedly more favourable benefit serves the same purpose as the statutory provision. If it does, and is indeed found to be more favourable or at least as favourable, then it prevails vis a vis its

statutory counterpart. Otherwise the Employer is entitled to claim the minimum standard under the *Code*.

143. The Union argues that one must compare apples to apples. In my view at the very least while the things being compared may not require perfect symmetry they must at least have the same substantive purposes.
144. In my view the compensation for meals and incidentals does not serve the same purpose. Nor does the \$40.00 payment contemplated by Letter of Understanding #6.
145. The meals compensation recognizes that a person is away from home and that he must be fed and incur expenses that he would not incur were he at home.
146. Furthermore, the person would get the meals and incidentals even if they were travelling within their 40 hour regular work week and not outside eight hours of work per day.
147. Forty dollars per day is something the person is entitled to receive for each Saturday, Sunday, or statutory holiday that they were not actively working but remained deployed including travel on those days. It is not compensating for the same thing as expending an effort on behalf of an Employer outside the eight hours per day and 40 hours per week regular work hours.
148. The fact that he is compensated for two hours for check in and check out and that is deemed part of the calculation of his total hours of travel, does not in my view factor into the consideration. It is a reasonable estimate of the time it takes to check in at some airports at least, get through security, and pick up one's baggage upon arrival and get to where one is going having landed.
149. The compensation per kilometre for travel using one's own vehicle to the airport to begin one's travel and the compensation per kilometre for the return home from the airport after one returns is simple recognition of the fact that the employee is incurring an expense and putting wear and tear on his vehicle, something he would not be doing if he was not deployed. Therefore I do not see that as something that can be said to be a form of compensation for the time spent travelling.

150. I agree with the Union that one simply compares the rate per hour of travel received with what the Grievor would be entitled to receive were the rate time and one half.

151. I find, as did Arbitrator Michel Picher, in *Canadian Pacific Railway Company*, 16 July, 2001, that neither the practice or intention of the parties has any bearing on the absolute application of statutory rights and obligations. Likewise I find that any Interest Arbitration Awards that in the past have dealt with the issue are not of relevance.

152. As Arbitrator Picher said at page 3 of his decision:

"To put it simply, it is not open to the parties to contract out of the provision of s. 196 of the *Canada Labour Code*."

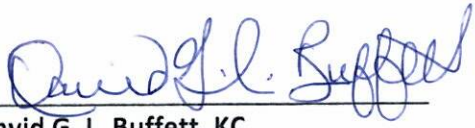
Arbitrator Picher's decision dealt with holiday pay but the rationale set forth in that case is equally applicable to the matter before me.

153. I therefore find that the Employer has violated the provisions of the *Canada Labour Code* by failing to pay to the Grievor the overtime rate of time and one half for his hours of travel including two hours of time for each check in and check out.

154. I further declare that the Grievor is entitled to be paid for each such hour of travel including the two hour check in and check out times and that the wages he is entitled to are at the hourly rate of time and one half as opposed to the straight time rate he would receive if he was not working outside his regular work hours.

155. I reserved jurisdiction to deal with the issue of quantum should the parties be unable to reach agreement for period of 30 days following publication of this Award. The parties are therefore free to refer the matter back to me within the 30 day period if they are unable to reach agreement.

Dated at St. John's, Newfoundland and Labrador, this th 12 day of March, A.D., 2026.



David G. L. Buffett, KC
Sole Arbitrator