

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 ALIDA MCKAY

Transportation to a Medical Centre

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. Alida McKay (the “Grievor”) is a Government employee in Hay River. In August 2005, her daughter was evacuated by air to Edmonton for medical treatment, accompanied by the Grievor. The Grievor’s husband, who was not an employee of the Government, followed by car. The treating physician recommended that both parents be present during the treatment of the Grievor’s daughter. The Employer reimbursed the Grievor for her transportation and accommodation, but rejected the claim for expenses incurred by the Grievor’s husband. The issue in this case is whether the collective agreement allows for expense reimbursement of more than one care giver, the Union’s position, or restricts reimbursement to only one person (the Employer’s position).

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, November 24, 2005 - December 16, 2005.
3. Expense claims for Mr. and Mrs. McKay, and cover letter.
4. Letters from Dr. R. Rabeeh.
5. Internal emails regarding reimbursement.
6. Excerpt from Human Resource Manual, Government of Northwest Territories.

Agreed Statement of Facts

1. Ms. Alida McKay is an employee of the Government of the Northwest Territories. Ms McKay is employed at the Territorial Court House in Hay River, NT.
2. Her daughter was medivac'd to Edmonton, Alberta on August 13, 2005 for medical care and was hospitalized in the Royal Alexandra Hospital.
3. Ms. McKay accompanied her on the plane while her husband drove to Edmonton.
4. Ms. McKay advised the MTA officer on September 1, 2005 that her family was experiencing financial hardship. Ms. MacKay submitted a partial claim for expenses in the amount of \$3,195.34 for both her and her husband. The claim was initially approved.
5. A letter from Ms. McKay's daughter's [treating physician], Dr. Rabeeh was provided which indicated that it was imperative that both parents be in Edmonton to assist in her medical recovery in support of her claim. Further letters from Dr. Rabeeh dated September 13, 2005 were also submitted.
6. When the claim was submitted for approval, an adjustment was made to recover the expenses in the amount of \$1,476.45.
7. The employer declined to process expenses claimed for both escorts in accordance with Article 20.09 of the Collective Agreement.
8. A recovery of monies paid in the amount of \$1476.45 occurred.
9. Ms. McKay filed a grievance pursuant to Article 20.09 of the Collective Agreement on November 22, 2005.

Ms. Debbie Meade, Manager of Benefits at the time of the grievance, testified on behalf of the Employer. She stated that the collective agreement and the Employer's human resource manual provide for accompaniment of an appropriate escort for medical purposes, but allows reimbursement of only one escort. In the current case, even though the treating physician recommended both parents attend their daughter, the Employer was obligated to reimburse only one of the parents. Ms. Meade acknowledged that an error was made by management in authorizing payment of both parents, hence the need to recoup the overpayment.

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, traveling expenses incurred will be reimbursed subject to the following provisions:
 - (c)**
 - (i)** Where a qualified medical practitioner certifies that it is necessary for an employee or his/her dependant to be accompanied by some other person, the Employer shall approve the reimbursement of expenses for this person as set out in Article 20.09(b).
 - (ii)** When someone other than a medical attendant or person designated by Health and Social Services accompanies the employee or his/her dependant, where applicable, he/she shall be the spouse, the parent or another person designated by the employee.
 - (d)** In the case of an employee being the non-medical escort for a member of his/her immediate family, the employee may be granted special leave. Such leave will not be unreasonably denied. Travel time, as defined under Clause 20.10, will not be granted for the non-medical escort duty.

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 Article 20.09(c) was determinative. Under its provisions, a physician certified in writing on two occasions (Exhibit 4) that both parents were required to accompany the Grievor's daughter to Edmonton during her medical treatment. There was nothing in Article 20.09(c), according to the Union, to restrict the paid accompaniment to only one person. The doctor specified two persons in his letter and each person so specified was entitled to reimbursement of expenses. In the Union's submission, if a restriction was intended, such a restriction needed to be set out expressly.

EMPLOYER ARGUMENT

The Employer argued that Article 20.09(c) restricted paid accompaniment to one person through its use of the singular in reference to “this person”. Had the parties contemplated that more than one person could be reimbursed, they could have used language that clearly referred to “this person or persons”. Because they did not do so, the Employer submitted that the provision should be interpreted to mean, in this case, that only one of the parents was eligible for reimbursement.

DECISION

It is my decision to sustain the grievance. There are two ways to read Article 20.09(c)(i), the collective agreement provision at issue. One way to look at the provision is to view the reference to “this person” as an explicit indication that the parties intended reimbursement to be restricted to one person only. The use of the singular, in this approach to interpretation, signifies the deliberate intention of the parties to place a restriction on the number of persons who may be eligible for reimbursement in the case of transportation to a medical centre. This is the interpretation urged by the Employer.

The other way to look at the provision, and the one I prefer, is to link the words “this person” to the first part of Article 20.09(c)(i) which contains the words “some other person”. The first part of the provision triggers eligibility for reimbursement when a medical practitioner certifies that an employee or dependant in need of medical treatment should be accompanied “by some other person”. In that event, the Employer is obligated to reimburse “this person”, namely the “some other person” named by the medical practitioner. Looked at this way, the use

of the singular “this person”, is simply correct grammar linked to the phrase “some other person” and is not necessarily an attempt to limit the clause.

The more relevant question is whether use of the term “some other person” limits reimbursement to only one person. The phrase neither indicates that more than one person might be eligible for reimbursement nor does it restrict eligibility to only one person – it simply says that if some other person is certified to accompany the individual in need of treatment, that person is to be reimbursed. It is my view that Article 20.09(c) ought to be read expansively in the absence of an express limitation. The purpose of the clause is reimburse a person who is certified by a physician as necessary to accompany the patient. It places no limit on the number of persons who may be so designated; the real limit in this provision is necessity as determined by the physician. The clause recognizes the difficulties attendant in living in communities where medical treatment may involve travel out of the community.

Had the parties intended that reimbursement be limited to one person only, they could have placed this express restriction in the contract. The contract provision could easily have included wording to the effect that “reimbursement is limited to only one person under this clause”. They did not do so and I find that the term “some other person” does not preclude a situation in which more than one person is certified to accompany the employee or dependant being treated. In the current case, Dr. Rabeeh wrote that both parents should be in attendance during their daughter’s illness. Each parent, in my opinion, qualifies as “some other person” certified by the doctor and each parent is therefore entitled to reimbursement. The fact that the Employer’s own human resource manual says otherwise cannot be determinative. Where there is a conflict between the collective agreement, a jointly negotiated document, and a human

resources manual unilaterally developed by the Employer, the collective agreement must prevail.

Accordingly, for the above reasons, I find that the Employer violated the collective agreement by declining to reimburse the Grievor's husband for expenses incurred in accompanying his daughter to Edmonton for medical treatment.

AWARD

The grievance is sustained. The Employer is directed to reimburse the Grievor's husband for permitted expenses under the provisions of Article 20.09. I will retain jurisdiction should any questions arise with respect to this award.

Dated in Calgary Alberta on November 2, 2007

Allen Ponak