

Federal Court



Cour fédérale

**Date: 20110302**

**Docket: T-737-10**

**Citation: 2011 FC 251**

**Ottawa, Ontario, March 2, 2011**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**SCOTT BURDEN AND MARTIN CYR**

**Applicants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision, dated April 21, 2010, by Vice-Chair Michele A. Pineau, sitting as an Adjudicator of the Public Service Labour Relations Board (“PSLRB”), in the matter of two grievances referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act*, S.C. 2003, c. 22 (*PSSRA*). These grievances alleged that the employer, Parks Canada Agency (“PCA”), by refusing to reimburse travel expenses incurred while the Applicants were on seasonal layoff, failed to correctly apply the terms of the *Isolated Post Policy* (“IPP”) which is incorporated into the employees’ collective agreement. The Adjudicator determined that the policy benefits in dispute (reimbursement for medical and dental-related travel

expenses) were available to the Applicants only during the period of seasonal employment, with one exception that did not apply to the Applicants.

I. Facts

[2] The facts are not in dispute. The parties submitted an agreed statement of facts, the substance of which is reproduced in the following paragraphs.

[3] The Applicants, Mr. Burden and Mr. Cyr, are indeterminate seasonal employees of the Parks Canada Agency who work in remote areas of Canada during the summer season. They are both members of the Public Service Alliance of Canada (“PSAC” or the “union”), an employee organization certified by the Public Service Staff Relations Board (now the Public Service Labour Relations Board) to represent specified employees of the PCA.

[4] The employer, PCA, is a separate employer listed, at the time the grievance was filed, under Schedule 1, Part II of the *PSSRA* and now, as of April 1, 2005, in Schedule V of the *Financial Administration Act* (R.S., 1985, c. F-11).

[5] The parties are bound by the provisions of the Parks Canada *Isolated Post Policy*. This policy is deemed to be part of the collective agreement between the employer PCA and the union, effective April 1, 2003. Disputes arising from the alleged misinterpretation or misapplication of the IPP are subject to the Parks Canada grievance procedure.

[6] The parties disagree as to the application of s. 2.1 of the IPP, which provides for the reimbursement of travel and transportation expenses for non-elective medical or dental care for employees assigned to isolated posts. The parties agree that both grievors have met the standards set out in section 2.1.2 of the policy – that is, that the treatments in question were non-elective, not available at their headquarters, and required without delay.

[7] Mr. Burden is a seasonal employee at L'Anse Aux Meadows National Historic Site in Newfoundland. This location qualifies as an isolated post under the IPP. In July 2003, his daughter became acutely ill, required hospitalization, and was referred to a specialist in St. John's. The earliest possible appointment with the specialist was October 27, 2003, two weeks after Mr. Burden's seasonal employment had ended for the year. Mr. Burden was therefore on seasonal lay-off at the time of his daughter's medical appointment. He travelled with his daughter to St. John's on October 26, 2003 and again on November 27, 2003 for a re-evaluation by the specialist.

[8] Mr. Burden initially spoke to the site supervisor, who advised him verbally and in writing that he would be entitled to travel benefits under the policy even though he was "off-strength" (on seasonal lay-off) at the time. Subsequently, the site supervisor received an email from the Manager of Administrative Services, who informed her that the benefits were not in fact available for employees on seasonal lay-off status. As a result, Mr. Burden did not receive reimbursement benefits under the policy. He therefore filed a grievance on April 6, 2004, which was denied at both levels of the grievance process and at the level of adjudication.

[9] The other Applicant, Mr. Cyr, is a seasonal employee at the Mingan Archipelago National Park Reserve; this location also qualifies as an isolated post under the policy. In Mr. Cyr's Field Unit, some travel expenses relating to non-elective medical or dental treatment had been reimbursed in the past to employees on seasonal lay-off. However, all employees in his unit, including Mr. Cyr, were informed by Memorandum on June 17, 2002 that they were not entitled to reimbursement of treatment-related travel expenses while on seasonal lay-off.

[10] On November 29, 2002, Mr. Cyr travelled with his child to Sept-Iles, Québec, to attend an orthodontic appointment; his seasonal lay-off had begun some weeks earlier on October 5, 2002. He too has satisfied the requirements of s. 2.1.2 of the IPP by establishing that the treatment was not elective, not available at his headquarters, and required without delay. His travel expenses claim was denied on the basis that his travel occurred while on seasonal lay-off. He submitted a grievance, which was denied at both levels of the grievance process and at the level of adjudication.

## II. The impugned decision

[11] The adjudicator first summarized the facts above mentioned, and then the arguments of each party in some detail. She explained that the union had raised the following arguments:

- The principles of statutory interpretation demand that the IPP should be construed in a manner in keeping with the scheme of the policy and the intention of the parties;
- The purpose of the policy is to facilitate the staffing of rural and isolated positions; offering the disputed benefits to employees year-round is consistent with this purpose;

- The policy contains no wording excluding seasonal employees from this benefit, so they must be deemed to be included;
- Seasonal employees should not be unfairly penalized by the denial of these benefits during the off-season;
- Although, under the policy, seasonal employees receive different vacation benefits than do year-round employees, medical benefits are different in nature than vacation benefits because treatment is required immediately; thus, their payment should not be pro-rated the way that vacation benefits are.
- The Adjudicator then acknowledged the following arguments made by the employer:
  - Indeterminate seasonal employees are a unique kind of employee because they are free of obligations during the off-season and may relocate to wherever they choose. During this time they are “struck off-strength” and do not receive pay or benefits. Their relationship with the employer is suspended and reactivated only when they begin working again;
  - The intent of the policy is to facilitate the delivery of the employer’s programs; seasonal employees are involved in the delivery of services only while working;
  - Employees on leave without pay are not analogous to off-season seasonal employees;
  - The Applicants were off-season for the period for which they are seeking benefits; the fact that off-season employees are not described as disqualified from benefits

throughout the policy does not necessarily mean the whole policy is applicable to them;

- It would not be reasonable for seasonal employees to enjoy the same benefits as full-time employees during the off-season;
- Section 2.7.3 is the only provision granting a benefit to seasonal employees during the off-season;
- If the intention of the policy were to offer benefits to seasonal employees during the off-season, this would have been clearly mentioned; the policy does not apply to seasonal employees unless there is a specific reference to them.

[12] Having acknowledged these arguments, the Adjudicator then found in favour of the employer, and reasoned that the situation of seasonal employees was not comparable to that of employees on leave without pay (to whom the disputed benefits do apply) because discretionary leave is different in nature from seasonal lay-off. She took the view that the benefits in dispute are only available during seasonal employment and not during the off-season, with one exception: when, because of operational requirements, the employer cannot grant an employee's request during his seasonal employment. In such a situation, that employee is permitted to obtain the treatment after the season ends and will be reimbursed for related travel expenses. The Adjudicator found that there was no evidence that the parties' situations fell into this exception. Therefore, she found that despite the unfortunate circumstances, she was obliged to dismiss the grievances, so the benefits were not paid.

III. The Issue

[13] The only issue to be determined in this application for judicial review is whether the Adjudicator committed a reviewable error when she interpreted the policy to deny travel expense reimbursement for non-elective medical or dental treatment to employees on seasonal lay-off.

IV. Analysis

[14] Both parties submit that reasonableness is the appropriate standard of review. As the Applicants point out, the issues raised relate to the interpretation and application of the collective agreement and the Adjudicator's regard for the material before her, which requires that the standard of reasonableness be applied. Indeed, the jurisprudence of this Court indicates that a measure of deference is owed to adjudicators confronting issues of this kind: see, for example, *Public Service Alliance of Canada v Canada (Food Inspection Agency)*, 2005 FCA 366, at para 18; *Currie v Canada (Customs and Revenue Agency)*, 2005 FC 733, at paras 11-15, rev'd on other grounds 2006 FCA 194, at para 20; *Nitschmann v Canada*, 2008 FC 1194, at para 8, var'd on other grounds 2009 FCA 263 at para 8; *Chan v Canada (Attorney General)*, 2010 FC 708, at para 17. On a standard of reasonableness, the task of this Court is to determine whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47.

[15] It is fair to say that the principles of interpretation of statutes also apply to the interpretation of collective agreements and to the policies that form part of collective agreements. The primary

approach to statutory interpretation, which is referred to as the “modern approach”, is described as follows by Professor Ruth Sullivan:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the parties.

*Sullivan and Driedger on the Construction of Statutes*, 4<sup>th</sup> ed. (Markham: Butterworths, 2002), at pp 19-24.

[16] The purpose of the IPP is described under the heading “Purpose and Scope”, as follows:

The purpose of this Policy is to facilitate the recruitment and retention of staff delivering government programs in isolated locations.

[17] The IPP contains five parts. Part I deals with the administration of allowances and specifies the nature of the allowances provided to employees under the policy. Part II specifies the nature and extent of expense reimbursement provided to eligible employees, which includes the reimbursement for travel expenses for non-elective medical and dental treatment that is at issue in this case. Part III deals with relocation of employees to isolated posts. Part IV deals with entitlements upon relocation at the end of an employee’s employment at an isolated post. Part V specifies the locations designated as isolated posts and, where appropriate, specifies the qualifications for specifying a location as an isolated post.

[18] It is clear from the structure of the policy that it confers benefits, in the form of allowances, expenses and entitlements, to eligible employees. By conferring these benefits to eligible employees delivering Parks Canada’s programs in isolated posts, Parks Canada furthers the IPP’s



purpose of recruiting and retaining employees by assuming some of the costs associated with living and working in isolated locations.

[19] In her decision, the Adjudicator came to the conclusion that the benefits in dispute are available to employees only during their actual seasonal employment, except for those cases where, because of operational requirements, the employer cannot grant the employee's request during the seasonal employment, which is an exception inapplicable to this case. This determination appears to be based exclusively on section 2.7.3 of the policy. Indeed, the entirety of the Adjudicator's reasoning on this point is found in the following paragraphs of his Reasons for Decision:

[19] In resolving both grievances, I take the view that the benefits of the [IPP] in dispute are available only during seasonal employment, with one exception: when, because of operational requirements, the employer cannot grant the employee's request during his or her seasonal employment. I find that the situation of seasonal employees is not comparable to those employees on leave without pay, as that is discretionary leave that is not seasonally related. Seasonal employees are recalled every year for a specific period, and there is no evidence that practice is discretionary in nature. While the purpose, the scope and the policy is to facilitate the recruitment and retention of staff delivering government programs in isolated locations, this is not sufficiently persuasive to give another meaning to what is otherwise a clear provision.

[20] There is no evidence in this case that Ms. Anderson's approval of the grievor's request was made because operational reasons prevented him from attending the medical appointment. The parties agree that Mr. Burden was unable to obtain a medical appointment during his seasonable employment because an appointment could not be scheduled with the specialist before October 27, 2003. Mr. Burden did not ask for and was not granted the extension of benefits because of operational requirements.

[21] While I agree that these are most unfortunate circumstances for Mr. Burden, my function is to apply what I consider the agreement of

the parties, and I am powerless to change the agreement to accommodate Mr. Burden's personal situation.

[22] A similar reasoning applies in the case of Mr. Cyr. He attended a medical appointment during the off-season. There is no evidence that he requested that this appointment be held during his seasonable employment and that it was postponed because of operational requirements....

[20] With all due respect to the Adjudicator, I am of the view that she erred in placing too much reliance on this specific provision of ss. 2.7.3, which is not in fact applicable to the medical or dental-related travel expenses at issue. The ten sections of Part II – with the exception of section 2.7 – deal with benefits relating to travel expenses associated with various different kinds of leaves.

Consider the lay-out of the various sections that comprise Part II:

| <b>Part II – Expenses and leave</b>                | <b>Partie II – Frais et congé</b>  |
|--|--|
| <b>Travelling and Transportation Expenses</b>      | <b>Frais de transport et de voyage</b>   |
| 2.1 Non-Elective Medical or Dental Treatment       | 2.1 Recours non facultatif à un traitement médical ou dentaire                     |
| 2.2 Compassionate Travel and Expenses              | 2.2 Raisons familiales : voyage et frais   |
| 2.3 Bereavement Travel Expenses                    | 2.3 Frais de voyage à l'occasion d'un décès  |
| 2.4 Vacation Travel Assistance                     | 2.4 Aide au titre des voyages pour congé annuel                                    |
| 2.5 100% Accountable Vacation Travel Assistance    | 2.5 Aide de 100% au titre des voyages pour congé annuel accordée sur justification |
| 2.6 80% Non-accountable Vacation Travel Assistance | 2.6 Aide de 80% au titre des voyages pour congé annuel accordée sans justification |
| 2.7 Part-time and Seasonal Employment              | 2.7 Emplois à temps partiel et saisonniers   |
| 2.8 Carry-over of Expenses                         | 2.8 Report du remboursement des frais  |
| 2.9 Post-Secondary Educational                     | 2.9 Voyages aux fins des études  |

Travel  
2.10 Adoption of a Child

postsecondaires  
2.10 Adoption d'un enfant

[21] Section 2.7 is reproduced below:

**2.7 Part-time and Seasonal Employment**

**2.7 Emplois à temps partiel et saisonniers**

2.7.1 Subject to the Application section of this Policy, part-time and seasonal employees shall be entitled to the benefits of Appendix I or J, in the same proportion as their total annual hours of work compare to the total annual hours of work of a full-time employee occupying a position at the same occupational group and level (prorating).

2.7.1 Sous réserve de l'article sur le Champ d'application, un fonctionnaire à temps partiel ou saisonnier est admissible aux avantages décrits à l'Appendice I ou J, proportionnellement au nombre total des heures annuelles de travail du dit fonctionnaire, par rapport à celui d'un fonctionnaire à temps plein occupant un poste de même groupe et niveau (calcul au prorata).

2.7.2 Employees will be eligible to be reimbursed the lessor of:

2.7.2 Le fonctionnaire est admissible à un remboursement équivalant au moindre des montants suivants :

- a) the prorated maximum entitlement (Appendix I); or
- b) the actual expenses incurred (Appendix J).

- a) le montant maximal auquel le fonctionnaire a droit calculé au prorata (Appendice I), ou
- b) les dépenses remboursables engagées (Appendice J).

2.7.3 When, because of operational requirements, an indeterminate seasonal employee who resides at the headquarters cannot be granted the benefits of this section during the operational season, the employer shall, at the employee's request, grant the benefits of this section during the off-season.

2.7.3 Quand au fonctionnaire saisonnier nommé pour une période indéterminée résidant au lieu d'affection ne peut pas se prévaloir des prestations accordées en vertu du présent article pendant sa saison de travail, en raison des nécessités du service, l'employeur les lui accorde pendant sa période de congé, s'il en fait la demande.

|   |  |
|---|--|
| 2.7.4 Part-time and seasonal employees may choose the 80% non-accountable Vacation Travel Assistance which will then be prorated. | 2.7.4 Un fonctionnaire à temps partiel ou saisonnier peut choisir de demander de l'aide à 80% au titre des voyages pour congé annuel qui sera alors calculée au prorata. |
|---|--|

[22] As the Respondent contends, section 2.7 does indeed deal with the treatment of two particular groups of employees: part-time and seasonal employees. However, contrary to the Respondent's submissions, section 2.7 does not appear to differentiate between the benefits available to seasonal and full time employees with respect to *all* of the sections of Part II including the section 2.1 benefits at issue here. If section 2.7 were meant to distinguish seasonal employees from full-time employees with regards to all the Part II benefits, it would logically have been inserted at the very beginning of Part II.

[23] Section 2.7 could obviously have been drafted more clearly. However, on the face of it, it is possible to determine that this section is meant to apply to vacation benefits specifically, and not to all of the benefits set out in Part II. This is apparent for several reasons: First, section 2.7 mentions Appendix I (Calculation of Maximum Entitlement) and J (Reimbursable Expenses), both of which clearly relate to vacation travel benefits. Second, the preceding and following sections all deal with vacation benefits: 2.4 (vacation travel assistance), 2.5 (100% accountable vacation travel assistance), 2.6 (80% Non-accountable vacation travel assistance), and 2.8 (carry-over of expenses). Third, one of the subsections within section 2.7 (i.e., ss. 2.7.4) explicitly refers to vacation travel assistance.

[24] Indeed, this understanding of the provision is a logical one, for there is a clear rationale for including subsection 2.7.3 in order to differentiate the vacation travel-related benefits available to year-round employees from those available to seasonal employees (even if seasonal employees are entitled to the other benefits allocated by the IPP). Because seasonal employees do not work the same annual hours as do full-time employees, section 2.7 provides that they will receive vacation benefits on a pro-rated basis. However, because of the nature of seasonal work, which occurs only in the very season that employees are most needed, some individuals may not be able to take allotted vacations during their seasonal employment. Accordingly, subsection 2.7.3 was designed to allow seasonal employees to obtain certain monetary benefits during the off-season in the event that they are not able to complete a vacation during the season.

[25] Therefore, the Applicants are correct in arguing that it was unreasonable of the Adjudicator to rely on a ss. 2.7.3, a section separate and apart from the provisions governing travel expenses for non-elective medical or dental treatment, to conclude that indeterminate seasonal workers were not entitled to those benefits.

[26] This error is compounded by the fact that the Adjudicator failed to consider or mention the “Application” section, which, according to the Applicants, establishes them as employees under the policy who are generally entitled to the benefits that the policy offers. She also failed to explore the question of whether as “employees”, the Applicants were entitled to the ss. 2.1.1 medical and dental-related travel benefits, which the policy states are available to “employees”.

[27] Consider the policy’s definition of “employees” as well as its “Application” section:

| <b>General</b>   | <b>Généralités</b>   |
|--|--|
| [...]  | [...]  |
| <b>Application:</b>  | <b>Champ d’application</b>   |
| This Policy applies to all eligible employees of Parks Canada; the Agency is listed in Part II of Schedule I of the Public Service Staff Relations Act and has elected to follow this Policy.                            | La présente politique s’applique à tous les fonctionnaires éligibles de Parcs Canada; l’Agence est inscrite à la Partie II de l’annexe 1 la Loi sur les relations de travail dans la fonction Publique; l’Agence a choisi de suivre cette politique.                           |
| Persons employed:<br>a) for a specified term of less than three (3) months or<br>b) working less than one-third of the normal working hours of a full time indeterminate employee of the same occupation group and level | Les personnes employées :<br>a) pour une durée déterminée de moins de trois (3) mois ou<br>b) qui travaillent moins d’un tiers des heures normalement exigées d’un fonctionnaire à plein temps nommé pour une période indéterminée à un poste du même groupe et du même niveau |
| are not eligible for any of the benefits provided in Part II (Expenses and Leave) or those provided in Sub-section 3.2.2 or Section 3.6 of Part III (Relocation to an Isolated Post) of this Policy.                     | Ne peuvent se prévaloir des avantages prévus à la Partie II (Frais et congé) ou au paragraphe 3.3.2 ou à l’article 3.6 de la Partie III (Réinstallation dans un poste isolé) de la présente politique.   |
| [...]  | [...]  |
| <b>Definitions</b>   | <b>Définitions</b>   |
| [...]  | [...]  |
| <b>Employee</b> (fonctionnaire) – means, subject to the  | <b>Fonctionnaire</b> (employee) – désigne, sous réserve des  |

|   |  |
|---|--|
| Application section, a person                                       | dispositions du Champ<br>d'application, une personne : |
| a) To whom this policies<br>applies                                 | a) visée par la présente<br>politique,                 |
| b) Whose salary is paid out of<br>the Consolidated Revenue<br>Fund. | b) touchant un traitement tiré à<br>même le Trésor.    |

[28] While the Application section is not a model of clarity, it does appear to make all persons employed by Parks Canada eligible for the benefits provided in Part II, except those who are employed for a specified term of less than three months or those working less than one-third of the normal working hours of a full-time indeterminate employee. As indeterminate employees, it would seem that seasonal employees are “employees” for the purpose of this policy unless they fall within either one of these two exceptions, which the parties agree that they do not.

[29] Relying on the French version of the definition given to the word “employee”, and more particularly on the word “touchant” (translated as “paid out” in the English version), counsel for the Respondent tried to bolster the Adjudicator’s finding by submitting that a person can be considered as an employee only when he or she is “being paid”. According to that construction, when seasonal employees are off-strength, they are not being paid; as such, they are not covered as employees during that time and not entitled to benefits.

[30] This argument, like most textual arguments, could presumably be met by equally convincing counter arguments. When taken in isolation, such arguments are rarely compelling unless they can find support in the overall structure of the Act, in surrounding provisions and in the object of the statutory scheme. In the case at bar, it is worth stressing, the stated objective of the policy is to

recruit and retain people to deliver government services in isolated posts, which, as a counterweight to the Respondent’s textual argument, presumably militates in favour of treating seasonal employees as “employees” year-round.

[31] Be that as it may, the Adjudicator did not rely on this argument regarding the word “touchant”, and it is not the role of this Court in judicial review to create alternative reasons to make the decision reasonable, nor for that matter to substitute its own view as to the proper interpretation of the policy for that of the Adjudicator. On a standard of reasonableness, this Court is only called upon to determine whether the impugned decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. I am of the view that it was unreasonable to ignore entirely the Application section of the IPP when asked to decide whether indeterminate seasonal employees are entitled to specific benefit under that policy. As mentioned above, it was also unreasonable to rely so heavily on ss. 2.7.3, when that provision was not in fact applicable to the Applicants’ situation, dealing as it does with vacation benefits.

[32] The Adjudicator’s failure to discuss the very section (section 2.1) on which the Applicants based their case was also unreasonable. For ease of reference, I reproduce this section here:

**Travelling and  
Transportation Expenses**

**2.1 Non-Elective Medical or  
Dental Treatment**

2.1.1 Employees who are granted leave without pay for the following reasons are also

**Frais de transport et de  
voyage**

**2.1 Recours non facultatif à  
un traitement médical ou  
dentaire**

2.1.1 Les fonctionnaires qui obtiennent un congé non payé pour les raisons suivantes ont



entitled to the benefits of this section: illness, injury-on-duty, or maternity/parental leave.

droit aux prestations mentionnées au présent article : maladie, accident de travail ou congé de maternité/parental.

2.1.2 Subject to this section, when employees or their dependents obtain medical or dental treatment at the nearest location in Canada where adequate medical or dental treatment is available, as determined by the attending medical or dental practitioner, and they satisfy their FUS by means of a certificate of the attending medical or dental practitioner that the treatment

2.1.2 Sous réserve du présent article, lorsque les fonctionnaires ou les personnes à leur charge subissent un traitement médical ou dentaire dans la localité canadienne la plus proche où un traitement approprié peut être obtenu, de l'avis du dentiste ou du médecin, et qu'ils convainquent leur DUG, au moyen d'un certificat délivré par le dentiste ou le médecin, que le traitement :

- a) was not elective,
- b) was not available at their headquarters, and
- c) was required without delay,

- a) n'était pas facultatif
- b) n'était pas offert à leur lieu d'affection et
- c) s'imposait de toute urgence,

the FUS shall authorize reimbursement of the transportation and traveling expenses in respect of that treatment.

Le DUG autorise le remboursement des frais de voyage et de transport engagés à l'égard de ce traitement.

[33] Subsection 2.1.1 states that employees who are granted leave without pay for reasons of illness, injury-on-duty or maternal/parental leave are also entitled to the transportation and travelling expenses benefit. Competing inferences can obviously be drawn from this provision. For example, the Applicants claim that this provision is used to expand the application of the policy (i.e., the “also” means that these categories of people are also entitled to benefits, in addition to regular “employees” such as the Applicants who are entitled to benefits). In any case, since the Applicants were not on leave without pay, they did not need to rely on section 2.1.1 because they claim to be

covered under section 2.1.2: to the extent that section 2.1.2 applies to “employees or their dependents” with no other limitation, they claim entitlement to the transportation expenses for non-elective medical or dental treatment, provided that they met the requirements of that section and that they can be considered as “employees” pursuant to the Application section. Conversely, the Respondent argues that the Applicants are not entitled to the benefits because they were not on leave without pay. In the Respondent’s view, since the benefits found at paragraph 2.1.2 are available to seasonal employees only when they are at strength, unless they fall into a category described in ss.2.1.1 such as “on leave without pay” or fall into the s.2.7.3 exception, the Applicants could not be entitled to those benefits.

[34] The Adjudicator obliquely accepted the Respondent’s argument when she stated that “...the situation of seasonal employees is not comparable to those employees on leave without pay, as that is discretionary leave that is not seasonally related”. With all due respect, this is a *non sequitur* argument, and it begs the question why seasonal employees are not covered when off-season. Obviously, an argument can be made that without s. 2.1.1, employees on leave without pay would not be entitled to the benefits of s. 2.1. This would be consistent with the idea that an “employee” entitled to benefits under the IPP is generally only an employee who is being paid (hence the need to add in the benefits for employees on leave through s. 2.1.1). On the other hand, this argument only makes sense if we accept that seasonal employees are not already encompassed by the definition of “employees”. The point to be made here is not that one interpretation must necessarily prevail over the other, or that there can only be one reasonable determination. Rather, it is that the Adjudicator’s decision cannot be found reasonable if it does not address these provisions, which are

at the very core of the dispute between the parties. As the Supreme Court stated in *Dunsmuir*, above (at para 47), "...reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process". In the absence of any explanation as to why the Application section of the IPP and its section 2.1 must be interpreted to exclude seasonal employees from the benefit of reimbursement of transportation and travelling expenses incurred for non-elective medical or dental treatment, it can hardly be said that the decision of the Adjudicator is reasonable.

[35] For all of the above reasons, I am therefore of the view that the decision of the Adjudicator must be quashed, and that the Applicants' grievances must be referred to another Adjudicator to be decided in accordance with the reasons of this Court.

**JUDGMENT**

**THE COURT'S JUDGMENT IS that:**

1. This application for judicial review is granted, and the matter is remitted to another Adjudicator to be decided in accordance with the above reasons;
2. Costs are awarded to the Applicants.

« Yves de Montigny »

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-737-10

**STYLE OF CAUSE:** Scott Burden et al. v. AGC

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** December 7, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** de MONTIGNY J.

**DATED:** March 2, 2011

**APPEARANCES:**

|                         |                    |
|-------------------------|--------------------|
| Mr. David Yazbeck       | FOR THE APPLICANTS |
| Ms. Anne-Marie Duquette | FOR THE RESPONDENT |
| Mr. Richard Fader       | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

|   |                    |
|---|--------------------|
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