

IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS CODE*

BETWEEN:

CONSTRUCTION LABOUR RELATIONS ASSOCIATION (“CLR”)
ON BEHALF OF
FLUOR CONSTRUCTORS CANADA LTD.

(the “Employer”)

AND:

BARGAINING COUNCIL OF BC BUILDING TRADES UNIONS (“BCBCBTU”)

(the “Union”)

(Travel Compensation Grievance – Hub Cities)

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Mark Colavecchia
for the Employer

Theo Arsenault and
David Aaron
for the Union

HEARING VIA VIDEO CONFERENCE:

February 19, 2021 and
May 17 and 18, 2021 and
October 18 and 19, 2021

WRITTEN SUBMISSIONS:

October 26, 2021

DECISION:

November 19, 2021

This case concerns a grievance brought by the Bargaining Council of BC Building Trades Unions (BCBCBTU) alleging the Employer breached Article 8.01 of the Memorandum of Understanding for the LNG Canada Project (the “MOU”) by not paying employees for travel from their homes to various travel hubs across British Columbia and Alberta.

For reference, Article 8.01 reads as follows.

8.00 Travel and Living Out Allowance

8.01 Initial/terminal and rotational flights will be arranged by commercial or charter services, including pick up and drop-off at the Northwest Regional Airport as applicable. Alternate provisions/requirements will be instituted for Local Residents and others where a flight is not appropriate.

The Union seeks retroactive damages for impacted members.

The Employer’s position is that employee travel from their domicile to a hub is at the employee’s own cost. It asserts the Union was told in bargaining that employees would only receive the Article 8.01 travel provisions for travel between one of the established hubs to the Terrace airport and that accordingly there has been no breach.

The Employer further points to Article 2.01 of the MOU which it asserts stipulates that the only provisions governing travel allowance and living allowance for BCBCBTU members working on the LNG Canada Project are found at Article 8.01. For reference, Article 2.01 of the MOU states:

2.00 Relationship to Local Union Collective Agreements

2.01 The Local Union Collective Agreements shall govern the relationship of the signatory Parties with respect to the LNG Canada project (Project), except as is modified by this Memorandum Of Understanding (MOU) and any

Addendum(s). Wherever and to the extent that there are differences between the Local Union Collective Agreements and this MOU, the terms of this MOU shall prevail.

According to the Employer, Article 8.01 differs from the travel and living out allowance of the Local Union Collective Agreements (the “Standard Agreements”) and, thus, the Standard Agreements do not apply.

The Union denies there was any agreement in bargaining that Article 8.01 restricts the compensation for travel as the Employer alleges. Based on their position that they did not negotiate away their Standard Agreement rights, they argue that Article 2.01 of the MOU entitles them to travel from their home.

During the course of a mediation, followed by the four day hearing into this matter, it became apparent to me that there was no meeting of the minds with respect to the interpretation and application of Articles 2.01 and 8.01 of the MOU.

After hearing a considerable amount of evidence, I held numerous discussions with the parties regarding the issues in dispute and their respective positions. In the course of these discussions, it became apparent that the gap in positions of the parties could not be closed. The parties thereafter agreed to confer onto me jurisdiction to issue a final and binding award settling all outstanding issues arising from the grievance on the basis of a final offer selection process. The parties agreed this would be done through written submissions on each issue.

Accordingly, I make the following Award.

DECISION

1. Travel from Residence

The Employer continued to argue that they negotiated Article 8.01 to override the provisions of the Standard Agreements. In the alternate, they argued that if I find compensation is appropriate it should only apply to employees required to travel extreme distances to the nearest hub.

The Union argued that compensation should be owing to all employees who travel to a hub if that travel is beyond 40 KM. They also argued that an alternate provision should be in place for employees who have to travel a significant distance to a hub.

On this issue I have determined as follows.

The current flight hubs are located in Vancouver, Kelowna, Nanaimo and Prince George.

The initial, terminal and rotational travel compensation for BC Residents traveling to their closest flight hub going forward (the same compensation will apply if the BC Resident's closest hub is in Alberta) shall be:

ZONE	KM	Compensation
Free	Vancouver Island (Greater Victoria to Courtney/Comox)	Nil
Free	0 – 100	Nil
1	101 – 200	\$50 each way
2	201 – 300	\$100 each way
3	301 – 400	\$150 each way
4	401 +	\$200 each way

The distances for the zones described above are to be measured from the flight hub to the employee's residence.

The Vancouver Island free zone encompasses the area from Greater Victoria to the northern city limits of Courtney. Employees who live north of Courtney will be paid for the distance travelled from their home to the northern boundary of Courtenay based on:

- (a) 0 – 100 KM \$50 each way
- (b) 101 – 200 KM \$100 each way

Employees who live between Prince George and Smithers will drive to their choice of Prince George or Smithers and be compensated in accordance with the above table. Transportation by bus for employees between Smithers and Kitimat will remain unchanged.

In the event the bus from Smithers is no longer provided, employees who reside between Prince George and Terrace will drive to the closer of their nearest flight hub or the Northwest Regional Airport and be compensated in accordance with the above table.

Transportation by bus for employees who reside west of Terrace will remain unchanged.

2. SCOPE OF AGREEMENT

Both parties made compelling submissions regarding their respective positions as to whether the Collective Agreement has application to employees who reside outside of British Columbia.

The Employer argued that this issue was addressed in similar circumstances by Mediator Dave Schaub following the 2019 negotiations to renew the Standard Agreements.

The Union argued that travel compensation should apply to all employees regardless of where they live. They point to the hubs in Calgary and Edmonton as well as the shortage of skilled labour to support their argument. Finally, they argue that to create a system that doesn't compensate employees who live outside BC will create an incentive to hire employees from outside BC.

Having carefully considered these submissions, as well as the findings of Mediator Dave Schaub in his November 1, 2019 decision, I find the decision of Mediator Schaub compelling. It is a recent consideration of almost identical facts impacting the relationship between CLR and BCBCBTU, and I find that it supports the Employer's position. While the Employer acknowledges that it may have to implement some form of compensation for employees travelling to the project from outside of BC, given the decision of Mediator Schaub it would be inappropriate to apply the compensation for travelling to a hub provided by this award to employees who reside outside the Province of British Columbia.

3. RETROACTIVITY

In order to award retroactivity, I would have to find that the Employer violated the travel requirements of the MOU when it refused to compensate employees for travel to a hub. I have not done so. The requirement to pay employees for travel to a hub will only become effective on the date of this decision.

Due to the nature and circumstances of the case before me, I decline to award retroactivity.

I remain seized with the requisite jurisdiction over any issues arising from the interpretation and/or implementation of this Award.

It is so ordered.

Dated at the City of Vancouver in the Province of British Columbia this 19th day of November, 2021.



Vincent L. Ready