

COPY

IN THE MATTER OF AN ARBITRATION

BETWEEN: GEORGIAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY

AND: ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE VIOLATION OF ARTICLE 21 - MILEAGE ALLOWANCE

BOARD OF ARBITRATION:

Kevin M. Burkett, Chairman
K. Hallsworth, Employer Nominee
Larry Robins, Union Nominee

APPEARANCES FOR THE EMPLOYER:

R.B. Linton, Q.C., Counsel
Peter Pass, Personnel Manager
W. Leslie, Director of Adult Training & Apprenticeship

APPEARANCES FOR THE UNION:

Lilian Stevens, Grievance Officer
Doug Gaukroger, Steward for Georgian College
Lucy Metcalfe, grievor

A hearing was held in this matter in Barrie on July 2, 1980

A W A R D

1. The grievance in this matter involves the alleged failure of the College to pay mileage allowance under article 21.01 for travelling to assigned duties. The grievor, Mrs. L.M. Metcalfe, was assigned from the Barrie campus to the Midland part of the Orillia campus effective June 5, 1978 and seeks to receive a daily mileage allowance for travelling to and from her assigned duties in Midland. There is no dispute as to the authority of this Board to hear and determine this matter.

2. The facts are relatively straightforward. Georgian College operates campuses centered in Barrie, Orillia and Owen Sound. A part of the Orillia campus is located in Midland. By letter dated February 24, 1978, the grievor was advised that she was being reassigned by the employer from Barrie to Midland (some 35 miles away) to take up similar teaching duties within the same division. The letter notifying the grievor of the transfer reads as follows:

"As you know, the Adult Training Division has had severe cutbacks in training in BTSD and B&C for the 1978-79 year. In an effort to preserve the jobs of most of the full-time faculty in the Division, we are eliminating the positions of several partial load and support staff. Several full-time faculty will have changes in assignments, for us to accomplish our objectives.

Because of your expertise as a teaching master in the stenographic area, we are transferring you to Midland to take charge of the new

Stenographer General program that is being started up in the new year

The transfer will become effective on June 5, 1978. I would appreciate a reply from you, in writing, by March 6, 1978, acknowledging that you understand this assignment and will be able to comply with it. Your signature on a copy of this memo would be sufficient."

Mr. W. Leslie, the director of Adult Training and Apprenticeship, testified that the College was attempting to preserve its full-time teaching jobs because of cutbacks in training and in so doing transferred a number of its full-time staff in 1978 and had no intention of reversing these assignments. He testified that at the time of her assignment to Midland, it was anticipated that the grievor would perform most, if not all, of her duties in Midland. There was no time limit placed on her assignment and indeed, the grievor has been working at the Midland facility on a continuous basis since her transfer there more than two years ago. Mr. Leslie answered in the negative when asked if anyone from the College authorized Mrs. Metcalfe to use her car to get to and from Midland on a daily basis. He admitted, however, that there would be no other practical means for a person to travel between campuses other than by private automobile. Following notification of the transfer, Mrs. Metcalfe asked to be paid mileage allowance in accord with article 21.01 of the collective agreement for her travelling between Barrie and Midland. She was refused and therefore filed the instant grievance.

3. The relevant articles of the collective agreement are:

"Article 7
MANAGEMENT FUNCTIONS

7.01 The Union acknowledges that it is the exclusive function of the Colleges to:

- (a) maintain order, discipline and efficiency;
- (b) hire, discharge, transfer, classify, assign, appoint, promote, demote, lay-off, recall and suspend or otherwise discipline employees subject to the right to lodge a grievance in the manner and to the extent provided in this Agreement;
- (c) generally to manage the College and, without restricting the generality of the foregoing, the right to plan, direct and control operations, facilities, programmes, courses, systems and procedures, direct its personnel, determine complement, organization, methods and the number, location and classification of personnel required from time to time, the number and location of campuses and facilities, services to be performed, the scheduling of assignments and work, the extension, limitation, curtailment or cessation of operations and all other rights and responsibilities not specifically modified elsewhere in this Agreement.

Article 21

MILEAGE ALLOWANCE
(effective October 1, 1978)

21.01 An employee authorized to use his car on approved College business including travelling to assigned duties away from his accustomed work location shall be paid mileage allowance in accordance with the following:

- (a) for the first five thousand miles driven - at the rate of 21¢ per mile for the part thereof in Northern Ontario and 20¢ per mile for the part in Southern Ontario;
- (b) for mileage driven over five thousand miles and up to fifteen thousand miles - at the rate of 17¢ per mile for the part thereof in Northern Ontario and 16¢ per mile for the part thereof in Southern Ontario;

- (c) for mileage driven over fifteen thousand miles -
at the rate of 15¢ per mile for the part thereof in Northern Ontario and at the rate of 14¢ per mile for the part thereof in Southern Ontario;
- (d) The boundary between Northern and Southern Ontario shall be -
Healy Lake (Municipal) Road from Healy Lake easterly to its junction with Highway 612, to Highway 103; Highway 103 easterly to its junction with Highway 69; Highway 69 easterly to its junction with Highway 118; Highway 118 through Bracebridge to its junction with Highway 11; Highway 11 northerly to its junction with Highway 60 at Huntsville; Highway 60 easterly to its junction with Highway 62 at Killaloe Station; Highway 62 to Pembroke; the above named highways to be included in Southern Ontario;
- (e) For the purpose of this article, all mileage outside of Ontario will be at the rate for Southern Ontario."

It is important to note as well that the parties agree that article 8, Seniority, does not in any way restrict the authority of the company to transfer or assign its teaching staff between locations for bona fide reasons. There is no provision in the agreement for a moving or dislocation allowance to be paid upon a transfer between locations.

4. The union argues that in the circumstances of this case, it must be found that the grievor's "accustomed work location" at the time of the transfer was Barrie and that she had duties assigned in Midland which, necessitated her travelling to these assigned duties which were away from her "accustomed work location". The union maintains that

authorization to use one's car to travel to the assigned duties must be implied from the nature of the assignment in this case. The union argues that because article 21.01 is not restricted to temporary assignments it must be read as encompassing both permanent and temporary assignments and refers to the entitlement in article 21.01(a) to claim mileage over 15,000 miles as supportive of this conclusion. The union maintains that the grievor has met the conditions necessary to qualify for mileage allowance under article 21.01 and asks that the Board so award.

5. The union was asked by the Board if it considered an employee's initial place of assignment as the employee's "accustomed work location" for all time. In view of the fact that the grievor has now worked at the Midland location for over 2 years, the Board asked when, if ever, the Midland location could be considered as the grievor's "accustomed work location." The union replied that the "accustomed work location" must be determined by reference to the work location from which the employee has been transferred which, in this case, was Barrie. The union takes the position that only if the grievor is reassigned from Midland does Midland then become her "accustomed work location" for purposes of applying article 21.01 to the subsequent transfer.

6. The College does not dispute that Mrs. Metcalfe had her duties assigned to Midland. The College argues, however, that Mrs. Metcalfe was not authorized to use her

car and furthermore, having been reassigned from Barrie, her "accustomed work location" is no longer Barrie as would entitle her to mileage from Barrie to Midland. The College relies on the dictionary definition of "accustomed" in support of its position and argues that the interpretation urged by the union would result in an absurdity; that is, the grievor would never work at her "accustomed work location."

7. Putting aside the issue of whether the grievor was authorized to use her car, we wish to deal with the meaning of the words "accustomed work location" as they appear in article 21.01. If it is found that the grievor's "accustomed work location" for purposes of the claim before us is Barrie, then the grievor may be entitled to the mileage allowance which she claims. If, however, it is found that her "accustomed work location" for purposes of the claim before us is Midland, then clearly she has no claim to mileage and her grievance must fail.

8. There is nothing in the instant agreement to cause the Board to interpret the words "accustomed work location" as other than an employee's "usual" work location (see Webster's New Collegiate Dictionary, (1975) G & C. Merriam Co. and Black's Law Dictionary, Fourth Edition); usual in the sense that the employee is headquartered in the location and works in or out of that location. Furthermore, the College is entitled to transfer employees between work locations for bona fide reasons and may do so on a temporary

or permanent basis without restriction under the collective agreement. It follows, therefore, and is not in dispute by the union, that an employee's accustomed or usual work location may be changed from time to time. When an employee is transferred to a new work location and is required to work at that location on a regular ongoing basis, it can hardly be found as a factual matter that the employee's former place of work remains his "accustomed work place." In our view the permanent transfer of an employee from one work location to another, results in a change in the employee's "accustomed work location" as of the date of the transfer.

9. Prior to June 5, 1978, the grievor was headquartered and worked in Barrie, so that prior to June 5, 1978 her "accustomed work location" was Barrie. Effective June 5, 1978, however, the grievor was transferred to Midland. She was assigned to teach in Midland and has performed all of her assignments in Midland since. We are satisfied on the evidence that her reassignment was of a permanent nature and made for bona fide reasons with the result that from June 5, 1978 her "accustomed work location" became Midland. Having determined that her "accustomed work location" has been Midland since June 5, 1978, can she claim mileage under article 21.01 for daily travel between Barrie and Midland since June 5, 1978? The answer is No.

10. In the normal course an employee is expected to transport himself to his usual or accustomed place of work without benefit of an allowance but is reimbursed with a mileage allowance for business travel away from his usual place of work. The language of article 21.01 confirms this to be the case under the instant agreement. While it can be argued, as the union does in this case, that an employee's usual place of work at the time of a reassignment is determinative for purposes of mileage allowance, a distinction must be drawn between a temporary assignment and one of a permanent nature. As noted, when the evidence establishes that the reassignment is bona fide and is of a permanent nature the effect is to alter the employee's usual place of work. Having regard to the purpose of mileage allowance a claim for mileage must relate to the employee's "accustomed work location" at the time the claim is made. On the evidence, the employee's "accustomed work location" at the time of the claim before us was at Midland and accordingly, the grievor cannot succeed in a claim for mileage for daily travel to and from her "accustomed place of work."

11. If we were to accept the interpretation urged by the union we would be creating two distinct classes of employees. Employees hired to work at a particular location and not permanently transferred there, would be required to transport themselves to work each day without assistance and would be reimbursed for business travel away from that work location. On the other hand, employees working at the same location (and perhaps for a longer period of time) by virtue of a permanent transfer would be entitled to reimbursement

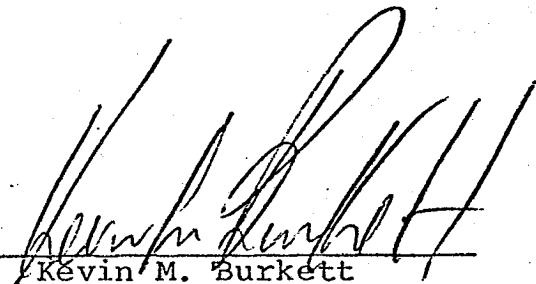
for transporting themselves to work each day but would not be entitled to mileage for legitimate business travel to their previous location. The grievor in this case, who works in Midland by virtue of a permanent transfer, would be entitled to claim approximately \$2,500 per year which a fellow employee hired to work in Midland but also residing in Barrie would not be entitled to claim. The language of article 21.01 does not compel us to adopt the union's interpretation, indeed the opposite is true, and clearly the anomalous result is one which should be avoided. The weakness of the interpretation urged by the union is further borne out by its position that on a subsequent transfer the grievor's "accustomed work location" would no longer be Barrie but would become Midland. If Midland is the "accustomed work location" at the time of a subsequent transfer, why is it not the "accustomed work location" prior to a subsequent transfer? Surely for purposes of mileage allowance an employee's "accustomed work location" is determined by reference to the location where an employee works at the time the claim is made and not by reference to a location where the employee may have worked in the past.

12. The College has the express right to schedule assignments and transfer employees without seniority restrictions. There is no dispute in this case that the assignment to Midland was made for bona fide reasons and it is clear that the assignment was of a permanent nature and was to take effect on June 5, 1978. The grievance before

the Board is in respect of mileage allowance claimed after June 5, 1978. Accordingly, we must find that at all material times the grievor's "accustomed work location" was Midland and that she is not entitled to claim mileage for travel to Midland.

13. Having regard to all of the foregoing, this grievance is hereby dismissed.

DATED at Toronto, Ontario this 1st day of August, 1980.



Kevin M. Burkett
Chairman

(sgd.) K. Hallsworth

Employer Nominee

(sgd.) Larry Robbins (see addendum)

Union Nominee

ADDENDUM OF LARRY ROBBINS, UNION NOMINEE:

1. I have concurred with the decision of the Chairman in this matter. I would point out, however, that the claim of the Grievor is understandable. Under this Collective Agreement the Employer has unusually wide powers to transfer employees from one work location to another. Simcoe County encompasses a great deal of territory, and the various campuses can be up to 75 miles apart (from Barrie to Owen Sound). The Employer's powers to unilaterally transfer employees is not even tempered by the seniority provisions of the Agreement. Moreover, the Employer is not required to pay any kind of moving or dislocation allowance.

2. An employee such as Mrs. Metcalfe who is transferred from Barrie to Midland is therefore faced with vastly increased expenses in travelling to and from her place of work. This is no different than a loss of income to the employee involved. At some point, the employee could, if feasible, decide to move her residence. However, she might be reluctant to do so given the fact that she has no assurance that the Employer will not transfer her to some other location again. This clearly works to the hardship of the teachers involved.

3. These problems must be dealt with through negotiations. There is a clear need to restrict the unilateral right of the Employer to transfer teachers to different job locations. Secondly, the parties should consider the institution of a dislocation allowance to cushion the impact of such re-assignments on teachers such as Mrs. Metcalfe.

4. On the other hand, I must agree with the Chairman that Article 21.01 was not really designed to cover the situation at hand. For that reason I have joined in the Chairman's Award.

5. I would also add that there was no evidence that this particular transfer was arbitrary or carried out in bad faith. The evidence was that it arose because of certain cutbacks at the Barrie campus. Be that as it may, the economic hardship which resulted on the Grievor was very real, and the motive for the transfer does not change the need to address these problems.

DATED at Toronto, Ontario this 1st day of August, 1980.

(sgd.) Larry Robbins
Union Nominee