IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE NORTHWEST TERRITORIES POWER CORPORATION

(The "Employer")

AND:

PUBLIC SERVICE ALLIANCE OF CANADA
on behalf of
UNION OF NORTHERN WORKERS

(The "Union)

(Meal Allowances)

ARBITRATION AWARD

ARBITRATOR:	RICHARD COLEMAN
FOR THE EMPLOYER:	CHRISTOPHER BUCHANAN
FOR THE UNION:	MIKE PENNER
DATES OF HEARING:	JUNE 28, 29, 2021
DATE OF AWARD:	July 12, 2021

This award decides a grievance filed by the Union on behalf of "all affected employees", with respect to meal allowances for employees on travel status and working overtime. The collective agreement provides for a meal allowance for employees on "Duty Travel" status, and for employees who work a certain number of overtime hours connected to their regular shift. For the first, the employee must be on Duty Travel status, which means away from their normal work area. For the latter, it is one meal allowance after three hours of overtime, and additional meals after additional four hour increments. The Employer maintains that it is obligated to pay the travel status meal allowance or the overtime meal allowance(s), but not both. The grievance disagrees, asserting that meal allowances provided for employees on travel status are different in purpose and other respects, from overtime meal allowances, and that an employee on travel status who also finds themselves working overtime of the requisite duration, is entitled to both: the first allowance because of travel status, and the second—and potentially third or more—allowances because of hours worked on overtime.

Entitlement to a meal allowance on travel status is set out in article 24.04:

> 24.04
> If an employee is required to work:
> (a) more than 30 km outside of the boundary of the community where their position is located; or
> (b) outside of the boundary of the community where their position is located for four hours or more; and returns the same day, the employee will be entitled to meal allowances at the Duty Travel rates.

Additional rules listed in a Travel Policy document, incorporated into the collective agreement (Appendix B of the collective agreement), include a requirement that travel must commence more that two hours before the employee's normal work day begins, or end more that two hours after the finish of the employees normal work day.

Entitlement for overtime meal allowances is defined in article 22:13:

> 22.13
> An employee who works three (3) or more hours of overtime immediately before or following his/her scheduled hours of work shall receive a meal or a meal allowance equivalent to the Duty Travel Dinner Meal rate. An employee who works three (3) hours of overtime in excess of eight (8) hours of work on his/her day of rest shall receive a meal or meal allowance equivalent to the Duty Travel Dinner Meal rate. In addition, an employee shall receive an additional dinner meal or dinner meal allowance for every four (4) additional hours of overtime worked. Where possible the Employer shall have these meals transported to the worksite, and shall pay the transportation cost. Reasonable time with pay shall be allowed for the employee to take a meal break at or adjacent to his/her place of work. An employee who receives meals or meal allowances under this Article shall not be entitled to the equivalent meals or meal allowances under the Duty Travel Policy.

The contentious part of art. 22:13 is the last sentence: "an employee who receives meals or meal allowances under this Article shall not be entitled to the equivalent meals or meal allowances under the Duty Travel Policy."

It is common ground that if the Employer supplies a meal in the overtime scenario, no meal allowance is owed.

The Union's letter filing the grievance reads:

> The employer is in violation of article 22.13 by denying overtime meal allowances the employee has qualified for while on duty travel. For example, if an employee works three hours in conjunction with a regularly scheduled shift they are entitled to an OT meal allowance, and if an additional four hours are worked they are entitled to a second OT meal allowance. An employee who works this type of overtime while on duty travel is having its OT meal allowances denied by the employer if the employee claims the per diem meal allowance they are also entitled to.
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> The Union contends that an overtime meal allowance, as outlined in article 22.13 is not a meal equivalent to the meals paid as per diems while on duty travel.

The Employer's reply reads:

> We interpret 22.13 to mean that an employee who receives a meal(s) or a meal allowance(s) under this Article shall not be entitled to meals or meal allowances under the Duty Travel Policy.
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> This means that if an employee claims per diems for duty travel they cannot claim overtime meal allowances. Conversely, if an employee claims overtime meal allowances they cannot claim per diems for duty travel. It is the employees right to choose which benefit they choose to select, but they may only choose one, not both.

Ms. Anne Marie Thistle, Director of Membership Services for the Union, testified that the language in art. 22.13 has existed since around 2001, but in her ten years with the Union she was unaware of the Employer's practice of only paying one meal allowance but not both, until it was brought to the Union's attention by a member in November 2019, at which time it was taken up with the Employer, leading to the current grievance being filed. Referring to the language in art. 22:13, she said that the Union does not see the two categories of meal allowance as "equivalent", in particular since they have different purposes and are triggered by different circumstances, the purpose of one to compensate the person for being away from their home, and the other as an incentive to work overtime.

Ms. Penny Pokiak, currently a Labour Relations Specialist and previously an Accounts Payable and Payroll Specialist with the Employer, testified that art. 22.13 was "introduced" in 1999, and that since that time, the Employer has never paid both a travel status per diem meal allowance and overtime meal allowances to the same employee on the same work day, to the extent that if an employee receives per diem meal allowance under the Duty Travel provision they cannot claim any overtime meal allowances even if they work the requisite amount of overtime. She said that the two categories (my word) are in fact administered quite differently. The travel status meal is recorded as an expense claim and treated as expense recovery, whether a meal was purchased or not. It is not taxable as income, and is administered by Accounts Payable. Overtime meal allowances, on the other hand, are recorded by employees on their time sheets, treated as taxable income and administered by the Payroll Department. But given those differences, employees on travel status who work the requisite hours of overtime, are given the choice of being compensated with an overtime

meal allowance or a travel status meal allowance, and can claim the greater of the two allowances applicable on a given day.

According to clause 1.3 of the Travel Policy, an employee in Duty Travel status cannot claim a meal allowance where an actual meal has been supplied.

Union Submission:

The Union's argument is centred on the word "equivalent", appearing in the last sentence of art. 22.13. They maintain that the two allowances are categorically different in that one is an expense recovery, where the expense comes from having to eat a meal away from home; whereas the the second, the overtime meal allowance, is, they say, an enticement and reward for working beyond regular hours, that difference exemplified by the different treatment afforded to each allowance, one representing a non-taxable expense, the other an addition to taxable income.

Reliance is placed on the conclusions of the arbitrators in U*nited Food and Commercial Workers Canada Union, Local No. 401 v. Richardson Oilseed Ltd.* (Meal Allowances Grievance), [2012] A.G.A.A. No. 20 | 219 L.A.C. (4th) 433 | 111 C.L.A.S. 31, and *Retail Wholesale Canada, CAW Division, Local 462 v. Parmalat Dairy and Bakery Inc.* (Meal Allowance Grievance), [2008] O.L.A.A. No. 402 | 94 C.L.A.S. 116, as supporting a purposive approach to contract interpretation when meal allowances are at stake, the second case, *Parmalat*, standing for the proposition that an overtime meal allowance is an extra meal, not a replacement meal. At para 12:

> …The purpose of the benefit is to allow employees to buy some extra food, or cover the cost of bringing an extra meal from home to sustain them over the added work hours. Unless the language of the collective agreement requires, I should resist an interpretation that provides a benefit to some, but not to others, based solely on when the employer schedules the overtime hours. Otherwise, I risk interpreting the collective agreement in a way that is not purposive by making a distinction that is not rationally related to the reason for the benefit.

And from *Richardson Oilseed Ltd*. the concept that an overtime meal allowance functions as an incentive to accept overtime work. At para 19:

> …A slightly broader version of this purpose, not dependent on the assumption that the employee will actually eat a meal in substitution for the foregone home meal, is stated as "to compensate a person [working unscheduled overtime] because he was not able to take steps himself to make arrangements for his own refreshment": *Chevron Canada Resources (*1989) 13 C.L.A.S. 48 (Alta., Jones). Other cases recognize a purpose broader yet, in that the meal allowance functions as an incentive to accept overtime work, particularly under agreements where overtime is voluntary and the overtime assignment would not attract daily overtime: *Sofina Foods Inc. (2010), [2010] O.L.A.A. No. 444, 103 C.L.A.S. 283*

British Columbia Hydro and Power Authority v. International Brotherhood of Electrical Workers, Local 258 (Albright Grievance), [1984] B.C.C.A.A.A. No. 334, is referenced for the distinction made by the arbitrator in that case, between meals or a meal allowance provided to employees on travel status to compensate them for missed meals at home, and meals or a meal allowance provided to employees working overtime, where the main concern identified in that case was to ensure that employees working overtime be fed, or a penalty paid in lieu.

Employer's Submission:

The Employer maintains that the wording in art. 22.23 is unambiguous and clearly establishes that an employee on Duty Travel status cannot claim a travel meal plus meals pursuant to art. 22:13; and signifies that the parties specifically contemplated this kind of scenario when they included the final sentence of art. 22.13, expressively forbidding pyramiding of meal compensation.

It is further submitted that that interpretation is supported by over twenty years of consistent past practice which in turn is consistent with the proposition that both the travel and overtime meal allowances have the purpose of compensating the employee for not being able to eat a meal at their home. *Sudbury Neutrino Observatory Institute and USW, Local 2020* (Baudoin), [2017] CarswellOnt 4320, 131 C.L.A.S. 22, 275 L.A.C. (4th) 442, and *Selkirk College v. B.C.G.E.U.*, [2002] B.C.C.A.A.A. No. 150, 106 L.A.C. (4th) 289, are referenced as appropriate applications of the principles of contract interpretation and the overriding "fundamental object in construing such terms is to discover the intention of the parties who have agreed to it." (*Selkirk College,* paras 44, 45, 46). From Brown & Beatty. *Canadian Labour Arbitration*, cited in Selkirk College at paras. 44 and 46:

> 44…When faced with the choice between two linguistically permissible interpretations, however, arbitrators have been guided by the reasonableness of each possible interpretation, administrative feasibility, and which interpretation would give rise to anomalies.
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> 46 At page 4-38 Messrs. Brown and Beatty observed that;
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> > In searching for the party's intention with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the collective agreement unless the context reveals that the words were used in some other sense.

And from *News Publishing Co. and C.E.P., Local 226*, [2017] CarswellOnt 4320, 131 C.L.A.S. 22, 275 L.A.C. (4th) 442, at para 10:

> At times, collective bargaining will result in language giving rise to different conclusions. As a general rule, founded on principles of common sense, an arbitrator must strive to interpret the parties bargain in an internally consistent manner that does not invite contradiction, and gives effect to all of its terms. Further, as a general proposition, the more reasonable of two competing interpretations should be accepted…

I take from counsel's reference to those cases, that in the current matter, the Employer's is the more reasonable interpretation, avoids anomalies, and gives the words chosen by the parties their normal and ordinary meanings.

Notwithstanding the above arguments, directed at the assertion that travel status meal per diems and overtime meal allowances are equivalent, the Employer argues in the alternative, that even if I find that that the two meal allowances are not equivalent in concept, to pay both would amount to pyramiding. *Calgary Regional Health Authority v. U.N.A., Local 115*, [2001] CarswellAlta 1939, 100 L.A.C. (4th) 1, 65 C.L.A.S. 352, and *Brink's Canada Ltd. v. Teamsters, Local 213*, [2010] C.L.A.D. No. 253, [2011] B.C.W.L.D. 3129, are relied on as authority for the principle that there is a rebuttable presumption against pyramiding. And from *R.W.D.S.U., Local 440 v. Ault Milk Products Ltd.* 1962 CarswellOnt 257, [1962] O.L.A.A. No. 2, 12 L.A.C. 279, at para. 14:

> If a contract is open to two interpretations and one interpretation involves the pyramiding of overtime and the other interpretation does not involve pyramiding of overtime, the board of arbitration, in the absence of specific wording in the contract should accept the interpretation which does not provide for the additional penalty payments by reason of pyramiding overtime.

Counsel also referred to *Inland Aggregates Ltd. v. I.U.O.E., Local 955*, [2002] A.G.A.A. No. 16, 106 L.A.C. (4th) 62, 68 C.L.A.S. 183 in which lead hand premiums were found to be properly added to basic pay for purposes of overtime calculation, but not shift differentials, given an identified overlapping purpose between overtime and shift differentials, but not with lead hand premiums. In the Employer's submission the circumstances in the current matter more closely resemble the shift premium/overtime rate combination, in that the provision of a meal in the instance of travel or overtime connected to a regular shift, represents an overlapping purpose in compensating for missing a meal at the employee's home.

Analysis and Decision:

In my view, this case can be decided based on a plain reading of the contract language agreed by the parties. On its face, art. 22.13 serves to establish a scheme whereby an employee who works three hours of overtime connected to their regular shift, "shall receive" a meal or meal allowance; with an additional overtime meal allowances coming with each additional four hours of connected overtime. The language is mandatory—"shall receive"—and goes on to provide that an employee who qualifies for an overtime meal allowance will not be entitled to an equivalent meal allowance under the Duty Travel Policy, notwithstanding that they may be on travel status at the time. It pointedly does not say that an employee who qualifies for both types of allowance, will not be entitled to the overtime meal allowance. I will return to that point.

With an eye to the analyses in the case law tabled by the parties, particularly the cases which address pyramiding and issues of equivalence, I agree with the Employer to the extent that I find the first overtime meal allowance paid pursuant to art. 22.13 to be equivalent to the meal allowance paid on the basis of the employee being on Duty Travel status. I base that finding on the contract language and an application of the principles normally applied when pyramiding is an issue, in particular that the provision of a meal in the instance of travel or overtime

connected to a regular shift, represents an overlapping purpose in compensating for missing a meal at the employee's home.

With respect to the contract language, in my view, a straightforward and plain reading of the clause, giving the words their normal and ordinary meaning (*Brown and Beatty*, topic 4:2110 cited in *Selkirk College, supra*, para 46), indicates that the parties contemplated and acknowledged an equivalence between a meal provided as an overtime meal allowance, and a meal or meal allowances provided under the Duty Travel Policy, and agreed that in that instance, only the first would be provided. The precise words are important and bear repeating: "an employee who receives meals or meal allowances under this Article *shall not be entitled to the equivalent meals or meal allowances under the Duty Travel Policy*." The inclusion of the reference to a meal paid under the Duty Travel Policy, establishes an equivalence and an express intent that an employee in that situation would not get both. To decide otherwise would render redundant the reference in the article to an equivalence to meals pursuant to the Duty Travel Policy, a result inconsistent with principles of contract interpretation which seek to avoid redundancy.

With respect to what is required in a pyramiding analysis, it may be, as the Union asserts, and as accepted in *Richardson Oilseed Ltd., supra*, that an overtime meal allowance is at least partially connected to the purpose of incentivizing overtime; but both categories of allowance nonetheless share a major purpose of providing a meal or meal allowance as a result of the employee not being able to enjoy a meal at home. A home meal replacement purpose behind overtime allowances was acknowledged in both *Parmalat, supra*, and in *Richardson Oilseed Ltd.* along side an overtime enticement aspect; *Richardson Oilseed Ltd*., paras 19 and 20:

> 19…that is, to compensate employees for the lost opportunity to eat a meal at home, by either allowing employees to buy extra food or to cover the cost of bringing an extra packed meal from home: *Parmalat Dairy and Bakery Inc.* (2008), 94 C.L.A.S. 116 (Ont., Cummings)…Other cases recognize a purpose broader yet, in that the meal allowance functions as an incentive to accept overtime work, particularly under agreements where overtime is voluntary and the overtime assignment would not attract daily overtime: *Sofina Foods Inc*. (2010), [2010] O.L.A.A. No. 444, 103 C.L.A.S. 283 (Ont., Davie).
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> 20 I consider that all of these purposes apply to the meal allowance provisions of this Agreement. Overtime is for the most part voluntary at this plant. It serves management's purposes to be able to rely upon workers already

> present to stay past normal shift end to perform the necessary work. The meal allowance is a small but perceptible "sweetener" that assists to entice workers to stay more than two hours doing overtime work…

Pyramiding was not an issue in either case, so neither provides assistance in determining what ought to occur when both purposes are acknowledged, in the context of different contract provisions providing for a meal, at the same time. *B.C. Hydro, supra*, however, does address pyramiding, and is closer to the circumstances in the current matter. The fact pattern in that case is somewhat convoluted, but at its core, as with the case before me, the union asserted that the purpose of a meal allowance provided as part of a room and board allowance, had a different purpose than an overtime meal allowance. Without disagreeing with that conclusion Arbitrator Thompson nonetheless denied the grievance, concluding, at para 38:

> Since the purpose of both Article 15(g)(i) and 21(h) is to provide employees with adequate and normal nourishment, then to require Hydro both to provide a meal and a missed meal allowance for the same period would constitute pyramiding…

I find that that is the kind of equivalency and avoidance of pyramiding contemplated in the language of art. 22.13—to avoid duplicate meals. That equivalence is perhaps most strikingly evident if one considers the provisions that allow the Employer to provide a meal instead of a meal allowance. It would be nonsensical for an employee on travel status and working the requisite overtime, to be supplied with two actual meals at the same time.

The jurisprudence is clear and consistent, that pyramiding is to be avoided unless there is clear language permitting what amounts to a double payment, see *Ault Milk Products Ltd., supra.* Or, despite the appearance of pyramiding, there are in fact distinct and demonstrative differences in purpose between the two benefits or premiums such as existed in the fact pattern in *Inland Aggregates Ltd., supra,* such that the provision of both benefits at the same time does not constitute pyramiding. I see no such difference(s) in the case before me, where the main purpose for the first overtime meal and the travel status meal is, as above, providing a meal or meal allowance as a result of the employee not being able to enjoy a meal at home.

Additional overtime meal allowances beyond the first one due at three hours, however, I find are categorically different. Where an employee qualifies for additional overtime meal allowances by working the additional requisite hours, the sentence "an employee who receives meals or meal allowances under this Article shall not be entitled to the equivalent meals or meal allowances under the Duty Travel Policy", is inapplicable on its face since there is no meal or meal allowance under the Duty Travel Policy corresponding to, or equivalent to, additional overtime meal allowances beyond the first one due after three hours. With respect to a pyramiding analysis, those additional overtime meals appear to be associated with providing sustenance on the job rather than compensation for a missed meal at home, the latter covered by the first overtime meal allowance.

In the result, I find that the language requires that an employee on Duty Travel status is entitled to overtime meals or meal allowances, providing that they work the required number of overtime hours, but not an additional Duty Travel meal which would, in effect, replicate the first overtime meal allowance.

How that is addressed I refer back to the parties. The evidence is that the Employer has, for many years, applied a process whereby an employee on Duty Travel status, who otherwise qualifies for an overtime meal allowance or allowances if they work the requisite hours beyond their regular shift, is given the choice of claiming the single travel meal allowance, or however many overtime meal allowances may otherwise accrue on that day. But when choosing the travel status option they have been required to forfeit any overtime meal allowances for the day, even if they work the additional hours of overtime and otherwise qualify for multiple overtime meal allowances. Presumably, the benefit from choosing a travel status meal is its tax free financial advantage when only one taxable overtime meal allowance is the alternative, and there are likely administrative efficiencies for the Employer. But in my respectful view, that choice is contrary to the words of art. 22.13, which by my reading, serves to automatically override a Duty Travel meal allowance with the overtime meal allowance or allowances, not *vica versa*. In any case, only one Duty Travel/overtime meal allowance represents duplication and pyramiding. There is no duplication and pyramiding with the additional meal allowances that come with additional four hour increments of overtime.

Summary:

I find that an employee on Duty Travel status who works the requisite three hours pursuant to art. 22.13, is entitled to one meal, but not two as claimed in the grievance. But an employee on Duty Travel status who continues to work overtime is entitled to an additional meal for every additional four hours of overtime worked.

Dated in Vancouver, B.C., this 12 day of July, 2021.

Richard Coleman, Arbitrator