92-695

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE GOVERNMENT OF THE NORTHWEST TERRITORIES AS REPRESENTED BY THE MINISTER RESPONSIBLE FOR THE *PUBLIC SERVICE ACT*

(hereinafter called the "employer")

AND:

THE UNION OF NORTHERN WORKERS

(hereinafter called the "union")

(SETTLEMENT ALLOWANCE GRIEVANCES)

BOARD OF ARBITRATION

Mervin I. Chertkow - Single Arbitrator

ADVOCATES

Karan Shaner - for the employer
Chris Dann - for the union

DATE AND PLACE OF HEARINGS

November 4th and 5th, 1997 at Yellowknife, N.W.T.

DATE OF AWARD

November 17th, 1997

AWARD

I

In the fall of 1992 and the spring of 1993, the union filed a series of grievances on behalf of union members located in Fort Smith, Hay River, Yellowknife, Rae and Fort Liard, N.W.T. in which it alleged they were not paid settlement allowances as required under the collective agreement then in force between the parties.

Those provisions of ARTICLE 41 - SETTLEMENT ALLOWANCES of the collective agreement then in effect between the parties that are in dispute are 41.01, 41.02 and 41.08 which provide as follows;

> 41.01 Salary rates are based on the economic conditions evident in Yellowknife. Regional differences in cost are offset by the provision of a Settlement Allowance. This allowance will permit the average employee residing in a settlement to maintain equal purchasing power with his/her counterpart in Yellowknife. This allowance is not an incentive to reside in the settlement, but is basically an equalizing type of subsidy.
>
> 41.02 Settlement Allowance will be paid to every employee who is assigned to a position that is located in a community in the schedule printed in Clause 41.08 below to which an amount of Settlement Allowance applies.
>
> 41.08 An increase to all Settlement Allowance rates by the percentage equal to each negotiated economic increase is agreed.
>
> The placement of communities on this grid shall be revised from time to time in accordance with changes to the schedule of Isolated Post Allowances of the Federal Government. The Union shall notify the Employer, in writing, where there is a revision to the

placement of communities on this grid and where a retroactive period is involved:

(i) where a community is moved to a position on the grid with a higher rate the Employer will effect the increase retroactive to the effective date of the revision of the Schedule of the Isolated Post Allowances of the Federal Government; and

(ii) where a community is moved to a position on the grid with a lower rate the Employer will not effect any reclamation of overpayment.

The grid referred to in article 41.08 appears at page 72 of the collective agreement that expired March 21st, 1994. Employees in Group A, which comprised Enterprise, Fort Liard, Fort Smith, Hay River, Tungsten and Yellowknife, were not paid settlement allowances. They constituted, says the employer, the zero base group in the Yellowknife area as provided in article 41.01. There are seven other groups - B through H inclusive. Employees located in the areas identified in each of those groups were entitled to settlement allowances which were calculated as provided in article 41.08.

As a result of revisions to the schedule of Isolated Post Allowances (IPA's) of the Federal Government, as noted in article 41.08, three grievances were filed by the union. The first is dated August 25th, 1992, on behalf of the bargaining unit employees in Fort Smith, Hay River and Yellowknife. They claim they ought to be moved from Group A to B. The second grievance is dated September 21st, 1992 on behalf of the employees located in Rae. Their claim is to move from Group B to C. The third grievance is dated March 29th, 1993, and was filed on behalf of the employees in Fort Liard who claim they are entitled also to move from Group A to B. The response to all three grievances by the employer was the same. It was never its intention to provide Settlement Allowances to employees in Yellowknife or to employees in communities where the cost of living was less than that of Yellowknife.

II

The issue between the parties is straight forward. The union says there is no ambiguity in the language of the articles in dispute. Isolated post allowances (IPA's) of the Federal Government, as provided for in article 41.08, apply to Yellowknife. The Federal Government uses base sites in southern Canada for comparing cost of living in differing areas in the north. For the Western Arctic, Edmonton, Alberta is the base city. Federal Government employees who are located in Yellowknife are entitled to a settlement allowance. Therefore, it urges, all employees of the Government of the Northwest Territories who are in Group A are entitled to a settlement allowance as well.

The employer on its part says the provisions of article 41.01 are clear and unambiguous. Salary rates in the Northwest Territories are based on the economic conditions evident in the Yellowknife area. It is the base upon which all other communities are compared for cost of living purposes. The fact that the parties agreed to adopt the mechanism for isolated post allowances the Federal Government uses for its employees for the purpose of placement of communities on the grid, did not affect the bargain between them as set out in article 41.01 where settlement allowances are zero based for the Yellowknife area. The intent and purport of article 41.01 was to equalize the cost of living in all other settlements in the Northwest Territories when compared to the Yellowknife area.

Both parties argued in the alternative that evidence of bargaining history and past practice supported the positions each took in this dispute. I will comment briefly on that extrinsic evidence later on in this Award. While some of that evidence is useful, if I hold there is ambiguity in the language of article 41, I have concluded for reasons which will become apparent that the recognized principles for contract interpretation will govern my decision in this dispute.

III

The parties agreed to certain stipulated facts. First, it was agreed that in 1992 changes were made in Statistics Canada Cost of Living Differential Indices resulting in changes by the Federal Treasury Board to the classification of certain communities on the Federal IPA grid, including Yellowknife, for the purpose of calculation of IPA's for its employees. Secondly, as required by article 41.08, the union notified the employer in writing of the changes. Finally, on a reading of the whole of article 41, the employer was bound to move certain communities to different placements on its own grid.

However, the employer says that requirement is not applicable to Yellowknife because it takes the position that Yellowknife is the base city for the Government of the Northwest Territories employees for calculation of entitlement to settlement allowances, not Edmonton.

IV

Now follows a synopsis of the history of the development of the settlement allowance provisions for employees of the Government of the Northwest Territories since 1969. That was when a public service separate from that of the Federal Government was created. I have gleaned these historical facts from the exhibits filed in evidence in these proceedings and the testimony of Mr. Darm Crook and Mr. Ben McDonald, who testified on behalf of the union, and Mr. Herb Hunt, who gave evidence on behalf of the employer.

In the forward to an employee handbook titled "Benefits and Conditions of Employment" dated October 15th, 1969, S.M. Hodgson, the then Commissioner, welcomed employees to the public service of the Government of the Northwest Territories

(Exhibit 16). Item 11 on page 26 of that handbook ISOLATED POST ALLOWANCES stated the following;

> 11. ISOLATED POST ALLOWANCES
>
> Yellowknife, Fort Smith, Hay River and Pine Point are not to be considered isolated posts and no isolated post allowance as such will be given to people working there. Allowances will be paid in addition to the basic salary for employees working in areas other than the four aforementioned.

In the collective agreement which ran from April 1st, 1970 to March 31st, 1972, the parties agreed that certain terms and conditions of employment would not change without prior consultation, including "settlement allowances". In the collective agreement of April 1st, 1974 to March 31st, 1976 there appears a Letter of Understanding wherein the parties agreed to have one settlement allowance schedule for all employees in the Northwest Territories public service effective April 1st, 1974. Further, any adjustment to the current agreed upon schedule would only be as a result of joint consultation and no reduction would be made during the life of the agreement to the current agreed upon schedule.

As a result of that Letter of Understanding, the employer issued a policy directive on May 16th, 1975 with respect to settlement allowances (Exhibit 19). The policy of the government is set out on page 1 of that document as follows;

> Policy
>
> Salary rates negotiated by the Government of the N.W.T. and the Employee Bargaining Agents are based on the economic conditions evident in Yellowknife, in particular, and the MacKenzie Highway Settlements in general. Regional differences in cost are offset by the provision of a financial subsidy referred to as a Settlement Allowance.

> This allowance, if utilized judicially, will permit the average employee residing in a settlement to maintain equal purchasing power with his counterparts in Yellowknife. This allowance is not an incentive to reside in the settlement, but is basically an equalizing type of subsidy.

Attached to the policy as Appendix "A" was the settlement allowance schedule which set out the various grids and the settlement allowance applicable to each of them. Grid A which was Yellowknife, Fort Smith, Hay River and Pine Point showed no settlement allowance.

The April 1st, 1976 to March 31st, 1978 collective agreement restated the provision that settlement allowance was one of the terms and conditions of employment that would not be changed without prior consultation with the union.

Then comes negotiations for the collective agreement of April 1st, 1978 to March 31st, 1979. The employer's policy on settlement allowances was re-issued on November 30th, 1978 (Exhibit 22). The policy as stated in the previous directive (Exhibit 19) remained the same.

The employer's policy continued unchanged through several subsequent renewals of the collective agreement up to the negotiations for the collective agreement from April 1st, 1985 to March 31st, 1987. Here, for the first time, settlement allowance provisions appear in the collective agreement (Exhibit 26). We see for the first time articles 41.01 and 41.02 the wording of which remained the same through the 1992-94 collective agreement which governs the issues in dispute in this arbitration. Article 41.08 in that agreement set out the settlement grids from grid A through H. Communities in the Yellowknife area and some other communities in the north were placed on grid A which was zero based with no settlement allowance. A note appears below the grid which stated the following;

> Effective April 1, 1986 these allowances will receive a cost of living increase based on the Federal Consumer Price Index computation for the Northwest Territories produced by Statistics Canada for March 31, 1986 over April 1, 1985.

In negotiations for the collective agreement April 1st, 1987 to March 31st, 1989 the parties agreed on a notation below the grid set out in article 41.08 as follows;

> The placement of communities on this grid shall be revised from time to time in accordance with changes to the schedule of Isolated Post Allowances of the Federal Government.

That change was the result of concerns that the Federal Government made changes from time to time in the placement of communities on various points on the grid but under the existing collective agreement, the parties here were stuck with the placement on the grid of any community for the life of the collective agreement.

During negotiations for the renewal of that collective agreement the employer tabled a settlement allowance proposal (Exhibit 15A) which restated the language in article 41.01 and had the following comments on page 5 with respect to comparisons with the Federal Government allowances;

> <u>Comparisons with Federal Government Allowances</u>
>
> Isolated Post Allowances (IPA) recognize three components: Environmental Allowances; Living Cost Differential; and Fuel and Utilities.
>
> The first two allowances are available at a married or single rate to all employees living in a designated isolated posting. The Fuel and Utilities Allowance is available only to those employees who are not being accommodated in crown housing. The portion of the IPA which is most similar to our Settlement Allowance is the Living Cost Differential (or LCD). *However, the Federal Government recognizes Yellowknife and other communities in the same cost of living*

> *category as requiring an allowance. The Government of the N.W.T. does not.* The Federal Government pays a married or single rate for the allowance. The Government of the N.W.T. pays the same allowance to every employee. However, both Governments have eight categories with comparable allowances and six years ago were grouped identically. (emphasis added)
>
> The LCD schedules are reviewed in August of each year for changes to community group allocations. The dollar amount is reviewed every three years. This schedule was last changed in August, 1986.
>
> In order to compare our allowance with theirs we calculate the average of the married and single LCD for each category and then remove the average paid for Yellowknife.

Attached to that proposal as Table No. 1.1 was a comparison of the G.N.W.T. allowance schedule with the Federal IPA - LCD which again showed category A for Yellowknife as being zero based with no allowance payable.

I have carefully considered the evidence of Messrs. Crook, McDonald and Hunt. The majority of their evidence dealt with the mechanics of the implementation of the employer's policy on settlement allowances over the years and the subsequent incorporation of that policy into the collective agreements between the parties. I have dealt with that aspect of their evidence in the synopsis noted above.

However, it is appropriate to comment briefly on the following aspects of their evidence which bears upon the issue in dispute between the parties.

Mr. Hunt, who is Director of Labour Relations and Compensation for the employer, joined the Territorial Government from the Federal Government in 1970. He has been a member of the employer's bargaining team during the 1980's up to the present time. The rationale for the employer's policy of excluding the Yellowknife area from

settlement allowances goes back to the creation of the public service in 1969, he said. The communities in the Yellowknife area were serviced by highways while the other communities in the Western Arctic were not. The Yellowknife area had the lowest cost of living and comparisons with all other communities were based on that rationale.

Mr. Hunt confirmed the employer's proposal as appears in Exhibit 15A. The problem, he said, was how to move communities relative to Yellowknife. But, he stated, Yellowknife remained the base and there was no discussion at bargaining with the union for that collective agreement, that Yellowknife employees would be entitled to a settlement allowance. The employer wanted to be absolutely clear in its proposal to the union, as appears on page 5 of Exhibit 15A, that while the Federal Government recognized Yellowknife and other communities in the same cost of living category as requiring an allowance, the Government of the Northwest Territories did not. Further, he testified, during bargaining to the best of his recollection, the union never raised the issue that it wanted settlement allowances linked to the southern based city (Edmonton) as the Federal Government did for its employees. The employer and the union were aware, he said, that the Federal Government paid a settlement allowance to its employees in Yellowknife.

Finally, testified the witness, if Yellowknife were to go from A to B on the grid it would have resulted in a cost to the employer of some four million dollars per year. It was not within the mandate of the bargaining committee of the employer to change the principle that all other communities were compared to Yellowknife as the zero base for the purpose of calculating settlement allowances which went back to the inception of the public service in 1969. The only thing the parties were trying to solve at that bargaining session was the relationship of the other communities with Yellowknife. Further, he said to the best of his recollection neither in bargaining for the 1989-92 or the 1992-94 collective agreement, did that issue come up at bargaining.

In cross-examination, Mr. Hunt reiterated that the employer has administered article 41.01 since it first appeared in the collective bargaining relationship between the parties based on its plain meaning. In response to a question from counsel for the union, he said it was not possible that the union did not agree with the employer's view that it did not use the Federal Government base city in the south for the purpose of administering the settlement allowances. Had the union raised that issue at any time in bargaining he would have recalled it because of the four million dollar cost factor.

Mr. Darm Crook was President of the union for 11½ years, his term having expired in May of 1996. He was present at all bargaining sessions as part of the union negotiating team since 1979.

With respect to the 1981-83 collective agreement, he said that there was no discussion that Yellowknife would be immoveable on the grid.

When the parties bargained for the 1987-89 agreement, Mr. Crook said the concept from the union's bargaining team's point of view was that Yellowknife was to be compared to Edmonton in accordance with the Federal Government system. However, he could not recall the union's rationale for any debate in that regard and he has been unable to find any notes of bargaining history which might have been kept by the union.

As to the employer's proposals set out in Exhibit 15A and in particular, the paragraph on page 5, he said that was an explanation of the scale that was attached to the document but it was not the scale that ended up in the collective agreement. The union did not accept the view that Yellowknife was to be removed from the averaging provisions. He said he could not recall if the union made and tabled a specific proposal on that issue during negotiations.

Mr. Ben McDonald is a Research and Public Affairs Officer for the union. He has been a bargaining unit member since 1979 and has held executive position with the union. He has researched the history of settlement allowances.

Mr. McDonald testified as to some of the technical aspects with respect to the administration of the settlement allowances and reiterated the union's view that the relationship for settlement allowances is the same as the Federal Government's use of Edmonton, Alberta as the base city for the Western Arctic.

In cross-examination, the witness conceded that nowhere in any of the collective agreements up to and including 1992-94 does the grid show Yellowknife had a value other than zero. He conceded the union was aware the Federal Government paid isolated post allowances to its employees located in Yellowknife using Edmonton as the base city.

I now turn to my decision in this dispute.

V

My task in this dispute is to interpret the disputed language in article 41 and in doing so there are certain accepted principles for interpretation of contract language which will point to the intent of the parties when that language was first negotiated. Those principles of interpretation are outlined by the authors Brown & Beatty in their text *Canadian Labour Arbitration, 3rd Edition*, 4:2100, at pages 4-30 to 37 inclusive.

First, there is a cardinal presumption that the parties are assumed to have intended what they have said and that the meaning of the collective agreement is to be sought in its express provisions. In the quest of ascertaining the parties' intention with

respect to a particular provision in the agreement, there is a general presumption that the language placed before the adjudicator should be viewed in its normal or ordinary sense. That is so unless such an approach would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless the context reveals that the words were used in some other sense. Further, the context in which words are found is also a primary source of their meaning. Words under review ought to be read in the context of the sentence, section and agreement as a whole.

Another principle of interpretation is that in construing a collective agreement, it should be presumed that all the words used were intended to have some meaning and were not intended to conflict with other provisions of the agreement. In the case of a conflict between an earlier and later clause "that part of the contract which is written first overrides that which is written later, and it is only otherwise when the later clause clearly spells out the overriding effect intended" (*Steelco of Canada Ltd.* (1959), 10 L.A.C. 169 (Anderson) at page 173).

Applying those principles to the dispute at hand, and after a careful reading of the provisions set out in article 41.01, I have concluded the language therein is clear and unambiguous. Having found no ambiguity it is not necessary to seek out extrinsic evidence of bargaining history or past practice to resolve any such dilemma.

In coming to that conclusion, I am persuaded the wording of article 41.01, viewed in its normal or ordinary sense, supports the position of the employer. Clearly, in the first sentence, salary rates are based on the economic conditions in Yellowknife and regional differences in costs are offset by the settlement allowance. Next follows the concept that the allowance would permit the average employee residing in a settlement to maintain equal purchasing power with his or her counterpart in Yellowknife. Those words further support the view that it was the mutual intention of the parties that Yellowknife

was the base community upon which other communities were measured for the purpose of assisting them to maintain equal purchasing power with employees residing in Yellowknife.

Nothing in the language of article 41.01 supports the contention of the union that it is not Yellowknife, but Edmonton, Alberta, that is the base for calculating entitlement to settlement allowances. If that were so, and it was the intention of the parties to adopt holus bolus the Federal Government settlement allowance program with the southern city of Edmonton, Alberta as the base, there would be no need for article 41.01 and all of the concepts contained therein would be meaningless and redundant.

Nor do I view the provisions of article 41.01 as being in conflict with article 41.08, the language for which came into the collective bargaining relationship between the parties subsequent to the adoption of 41.01. Article 41.08, in my view, does not override the provisions of 41.01 and there is nothing in that latter clause which spells out any intention to give it an overriding effect in relation to 41.01.

In the context of all the provisions in article 41 that are relevant to this dispute, and read in context of this section and the collective agreement as a whole, I am persuaded the position of the employer must prevail. Article 41.08 adopts the Federal Government mechanism for settlement allowances tailored to the overriding principle that has been established from the very beginning in 1969 and that is, Yellowknife is the base city and all other communities are measured against it.

Support for that conclusion is also found in the unchallenged implementation and administration by the employer of its policy in that regard since 1969 and the subsequent adoption of that policy into the collective agreement between the parties. From the original employee handbook that was published in October of 1969, which clearly

spelled out that Yellowknife, Fort Smith, Hay River and Pine Point are not to be considered isolated posts and no isolated post allowance would be given to employees working there, right through to the 1992-94 collective agreement there was no challenge from the union. It is conceded by the union that it was well aware that the Federal Government paid an isolation allowance to its employees working in Yellowknife with Edmonton, Alberta as the base city. Notwithstanding that knowledge and in spite of numerous bargaining sessions over the years for revisions to the collective agreement, the union raised no issue in that regard.

What is most telling, from an evidentiary point of view is that during negotiations for the 1987-89 collective agreement the employer tabled a proposal which brought to the attention of the union, without any equivocation whatsoever, that while the Federal Government recognized Yellowknife and other communities in the same cost of living category as requiring an allowance, "*the Government of the N.W.T. does not*".

Therefore, it cannot be said the union was ever under any illusions about how the settlement allowance provisions of the collective agreement were originally implemented as policy and subsequently as part of the collective bargaining relationship with the employer.

The suggestion by the union that because Yellowknife did not move on the Federal Government grid until February, 1992, it had no reason to challenge the interpretation of the employer as to the proper application of article 41, that position has no merit for the reasons stated above. The union knew for many years that the Federal Government paid an allowance for its employees working in Yellowknife and the Government of the Northwest Territories did not. It never challenged that position. Thus, the only logical conclusion that can be drawn is that the union fully understood the nature and purport of article 41.01 and the relationship of article 41.08 with it.

Having come to the above conclusions it is not necessary for the purpose of this Award to deal with the extrinsic evidence of bargaining history. However, had that been necessary, I would have placed little, if any, weight on that evidence because it is only natural that with the passage of time the recollection of witnesses would be vague and unspecific. Further, neither party was able to produce any contemporaneous notes of bargaining which could have assisted their recall of discussions and events. The only exception to that would have been the proposal of the employer at the bargaining for the 1987-89 contract as appears in Exhibit 15A where the union was clearly apprised of the employer's view that article 41.01 did not create a base city of Edmonton for the purpose of entitlement to settlement allowances.

For all of the above reasons the grievances of the union are dismissed and it is so awarded.

DATED at Kamloops, British Columbia, this 17th day of November, A.D., 1997.

MERVIN I. CHERTKOW
Arbitrator