

**FINDINGS AND AWARD
IN A DISPUTE**

BETWEEN:

**UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, LOCAL 579**

(hereinafter called the "Union")

AND:

ALUMA SYSTEMS INC.

(hereinafter called the "Employer")

**GRIEVOR: ARCHIBALD GILLINGHAM
FOR THE UNION: ROBERT DORNAN
FOR THE EMPLOYER: RICHARD LEVANDIER
BEFORE: W. JOHN CLARKE, C.Arb. C.Med. Sole-Arbitrator**

PRELIMINARY MATTERS

This hearing of this matter took place at Paradise on October 24th, 2007 at which time the parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure had been properly followed or requirements had been waived.
4. The Arbitrator would remain seized of the matter in the event the parties could not agree on the interpretation of the award or in the event there was a question of compensation arising from the award.
5. The witnesses were excluded until called upon to testify.
6. The time limits for filing of the award were waived.
7. There was no person potentially affected by the outcome of the proceeding who should have received notice of the hearing.



The following exhibits were entered by consent and identified as follows:

- C#1 Collective Agreement effective May 1, 2003 – April 30, 2001 between the Construction Labour Relations Association of Newfoundland and Labrador Inc. (“CLRA”) and the Union.
- C#2 Letter representing a grievance dated July 18th, 2007 from the union to the employer
- C#3 Letter from the union to the Minister of Human Resources, Labour and Employment dated July 31, 2007
- C#4 Print out from Ultra Dispatch System showing date of call in and various computer entries
- C#5 Letter from the union to Mr. Levandier of the employer dated June 6, 2007
- C#6 Fax to Richard Lavender (sic) from the union dated June 19, 2007
- C#7 Fax from Aluma Systems to Gus Doyle of the union dated June 22, 2007
- C#8 Fax to Richard Levandier (Aluma Systems) from Gus Doyle dated June 27, 2007
- C#9 Fax to Richard Levandier from Gus Doyle with hand written response from Mr. Levandier
- C#10 Series of e-mails between Gus Doyle and Richard Levandier
- C#11 E-mail from Gus Doyle to Richard Levandier dated July 10, 2007
- C#12 Facsimile from Richard Levandier to Gus Doyle showing excerpts from telephone book

The following persons testified under oath and entered exhibits identified as follows:

For the Union

Archibald Gillingham who entered the following exhibit:

- AG#1 Map of the Avalon Peninsula of Newfoundland and Labrador and portion of the east coast of the island

Richard Levandier

Gus Doyle

THE EVIDENCE

This matter is factually simple. The Grievor had lived in Brigus Junction with his wife. Their son lived next door to them. At some point the Grievor and his spouse separated and the Grievor left the matrimonial home. He moved to Brigus, Conception Bay with a new companion. The



telephone book for Brigus Junction still shows a listing for the Grievor. The evidence was that this number had been continued by his wife.

At the relevant time, the Grievor worked with the employer on a job which is located at the Newfoundland & Labrador Hydro Generating Facility in Holyrood, Conception Bay. Evidence was adduced at the hearing by each party as to the distance between Brigus and the facility in Holyrood and between Brigus Junction and the facility in Holyrood. The Grievor's evidence is that the distance between Brigus and Holyrood is more than 50 kilometres which the employer disputes. The employer alleged as well that the Grievor in fact lives in Brigus Junction and not Brigus. I accept the Grievor's evidence on that point.

The significance of the difference in points of view of the distance between the Hydro Facility and Brigus relates to the Parties reading of the wording of Article 7:01 of the relevant collective agreement between the Construction Labour Relations Association of Newfoundland and Labrador Inc. and the union in which is stated the following:

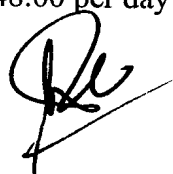
“7:01 When an employee is requested by the employer to use his own vehicle for the convenience of the employer he shall be compensated as follows:

Upon Signing	\$ 0.42 per kilometre
May 1, 2007	\$ 0.44 per kilometre
May 1, 2008	\$ 0.46 per kilometre
May 1, 2009	\$ 0.48 per kilometre
May 1, 2010	\$ 0.50 per kilometre

No employee shall be discriminated against for refusing to use his own vehicle.

When camp accommodations are not provided, an employee who is directed to the job site by the company and referred by the union whose permanent resident is located outside fifty (50) kilometres on Industrial Projects and one-hundred fifty (150) kilometers on Commercial Projects and fifty (50) kilometers on Industrial Projects and one hundred fifty (150) kilometers on Commercial Projects from the permanent office of the employer, shall receive free board and lodging. If free board and lodging is not provided the employee shall receive allowances as herein listed per day worked with a valid receipt where he is accommodated overnight. The daily room and board allowances shall be:

Upon Signing	\$46.00 per day
May 1, 2007	\$47.00 per day
May 1, 2008	\$48.00 per day



May 1, 2009

\$49.00 per day

May 1, 2010

\$51.00 per day

Employees who are obliged to remain out of town for an extended period (from the employer's head office or hiring location) shall have room and board provided by the employer for seven (7) days per week providing that the employee resides in the immediate area of the jobsite of employment during that seven (7) day period."

There have been two main issues raised by the parties in the course of this hearing. These issues are:

1. Does the Grievor live in Brigus or in Brigus Junction?
2. If the Grievor lives in Brigus does he qualify for the allowance set forth in Article 7:01?

A further complication on the distance between the employee's residence and the jobsite is that there are two routes which may be taken from the Grievor's place of residence in Brigus which will take him to the jobsite at Holyrood. The first, and shortest of these routes, follows the Conception Bay Highway from Brigus around Conception Bay and into Holyrood. It is conceded by all that this distance is less than fifty (50) kilometres. The highway is an older highway and goes through many communities on its way to Holyrood. The Grievor's evidence is that this is a less frequently used highway than the route which he takes and is slower in time.

The second route is for the Grievor to go from Brigus to the Roaches Line from there to the Trans Canada Highway and on to the turnoff to Holyrood, a route which is longer in distance and shorter in time and, it is argued by the Grievor, is the more expeditious route to travel and is the most popular route used by residents in the area in travelling to places such as Holyrood or St. John's.

THE POSITIONS OF THE PARTIES

The union is of the view firstly, that the Grievor lives in the nearer distant community of Brigus while the employer takes the opposite view. The union is of the view that the Grievor, living in Brigus qualifies for the allowance set forth in Article 7:01 while the employer takes the opposite view. The employer further argues that even if the Grievor does live in Brigus, he does not qualify for the allowance as there is a shorter route available to him.



FINDINGS AND CONSIDERATIONS

The first issue posed by the facts in this matter is where the Grievor actually lives. From the evidence it is apparent that the Grievor and his spouse have separated and he has taken up a new residence in Brigus. He had lived in Brigus Junction with his wife and I am satisfied on the evidence that he has vacated that home and has established his residence in Brigus.

The second issue is more problematic. Arising from the main issue is the question of whether or not the Grievor is entitled to claim an allowance based on a distance from his residence of more than fifty (50) kilometres when in fact there is a route available to him which is less than fifty (50) kilometres in length. To answer this question an examination of Article 7 of the Collective Agreement is necessary.

Article 7 of the Collective Agreement is set forth above and it deals with several different situations. The first of these situations is where an employee is requested by an employer and uses his own vehicle for the convenience of the employer. The parties have not argued this issue and presumably it is not relevant in the case at hand.

The second situation is by far more complex than the first. A simple reading of this section in my view is not possible. It seems to describe a situation where an employee is directed to the jobsite by the company and referred by the union. The qualifier for the union is "whose permanent resident is located outside fifty (50) kilometres on industrial projects and one hundred and fifty (150) kilometres on commercial projects". It is presumed that the word "resident" actually is a typographical error and should read "residence". It is however, unclear from even this interpretation of that phrase whose permanent residence is referred to. It could well be the permanent residence of the union or the permanent residence of the employee. For the sake of argument, and because it appears to be the situation accepted by both parties, the undersigned will assume that the person whose permanent residence is discussed is that of the employee.

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The paragraph then goes on to say what appears to be a repetition of the “fifty (50) kilometres on Industrial Projects and one hundred fifty (150) kilometres on Commercial Projects”. It is possible however, that the second grouping of distances refers to the distance from the permanent office of the employer, although with that interpretation, it makes even less linguistic sense.

If those interpretations are the ones used, and one assumes that the paragraph was put there by the parties to have some intent and meaning, it would seem that that meaning is that if an employee is directed to the jobsite by the company, and referred by the union, and the employee’s permanent residence is located fifty (50) kilometres for industrial projects and one hundred fifty (150) kilometres for commercial projects from the permanent office of the employer, then that employee shall receive free board and lodging. If that is actually the interpretation of this clause, which is as close to making sense as the undersigned can do, then the evidence submitted by the parties is irrelevant.

The parties have argued that the employee’s residence is more than fifty (50) kilometres from this industrial project and therefore qualifies for the allowance. The Article appears to say that if the employee resides more than fifty (50) kilometres from the permanent office of the employer then he shall receive free board and lodging. No evidence was submitted as to the address of the permanent office of the employer. It is therefore not possible on the facts before me to determine whether the Grievor is entitled to receive this allowance under this Article or not. The arguments and evidence of the parties were directed to the distance the job site was from the Grievor’s residence.

To further complicate the matter, the Article goes on to say that if free board and lodging is not provided, the employee shall receive allowances as herein listed per day worked with a valid receipt where he is accommodated overnight. It would seem that the purpose of the allowance as set forth in the schedule that follows that phrase is that if an employee whose residence is located fifty (50) kilometres from this project and which project is fifty (50) kilometres from the permanent office of the employer and that employee can produce a valid receipt where he is accommodated overnight then the employee shall be entitled to the daily room and board

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allowances.

At the base of this Article it seems that the intent is to reimburse employees who work more than fifty (50) kilometers from the employer's permanent office for the cost of their overnight accommodations while working at the jobsite provided they can prove that they have indeed been accommodated over night.

The final paragraph of Article 7:01 then provides for situations where employees are obliged to remain out of town from the employer's head office or hiring hall for extended periods. In such cases they shall have their room and board provided by the employer for seven days per week provided that the employee resides in the immediate area of the jobsite of employment during that seven day period.

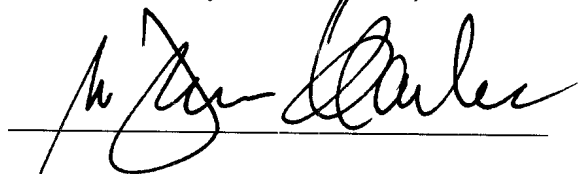
Given that the evidence which is required for a determination in this matter has not been provided, it is the view of the undersigned that the grievance must fail.

In the event that my interpretation of Article 7:01 is incorrect and that there is a way to read Article 7:01 which makes sense, I should state my findings on the facts. It is my view that the Grievor lives in Brigus. On a balance of probabilities, Brigus is further than fifty (50) kilometres from Holyrood taking the Roaches Line/Trans Canada Highway route. Brigus is less than fifty (50) kilometres from the Holyrood jobsite taking the Conception Bay Highway route. If, as the union's interpretation of the Article indicates, the Grievor would be entitled to the daily allowance if he lives beyond fifty (50) kilometres from the jobsite is correct, I find that the Grievor is not entitled to pick a route which is more than fifty (50) kilometres from the jobsite when there is a suitable alternative which is less than that distance from the jobsite. The purpose of the Article, on the union's interpretation, would be to compensate people for having travelled that distance to the jobsite. I do not share that interpretation. It seems that the proper interpretation is that allowances were meant to compensate individuals who use accommodations in the area of a jobsite rather than return home daily.

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As a result of the foregoing the Grievance is denied.

DATED at St. John's, Newfoundland and Labrador this 5th day of November, 2007

A handwritten signature in black ink, appearing to read "W. John Clarke", is written over a horizontal line. The signature is fluid and cursive.

W. JOHN CLARKE – SOLE ARBITRATOR