

New Brunswick v. Trail et al., 2006 NBQB 353

STM/54/06

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

BETWEEN:

COURT OF QUEEN'S BENCH  
CLERK / SAINT JOHN

REC'D  
REC'D  
OCT 20 2006  
FILED  
DEPOSE

COUR DU BANC DE LA REINE  
GREPPIER / SAINT-JEAN

**HER MAJESTY THE QUEEN** in Right of the  
Province of New Brunswick, as represented by  
the Board of Management on behalf of the  
Department of Education and School District 6

Applicant

- and -

**NOREEN TRAIL and CANADIAN UNION OF  
PUBLIC EMPLOYEES, LOCAL 1253**

Respondents

Before:

Mr. Justice H. H. McLellan

At:

Saint John, NB

Date of Hearing:

October 12, 2006

Date of Decision:

October 20, 2006

Counsel:

Annie Robichaud

for the applicant Province as employer

Monique DesRoches

for the respondent, CUPE Local 1253

No one for Noreen Trail

## DECISION

McLellan, J.:

1. The applicant Province of New Brunswick as an employer asks for judicial review of a ruling on jurisdiction and a later decision by an adjudicator. The ruling and decision were purportedly made under a collective agreement between the Province and CUPE Local 1253. The employment relationship is subject to the *Public Service Labour Relations Act*, R.S.N.B. 1973, c. P-25.
2. The ruling and decision were made regarding a grievance filed by Noreen Trail with the support of Local 1253. Ms. Trail has worked as a school Bus Driver "A" in the Hampton area since 1986. In September 2004 she was assigned an additional daily run to take the kindergarten, Grade 1 and Grade 2 children home early. She had not been assigned to fill a vacated "C" position. As a result she felt that she should be paid like "C" drivers for seven hours for each work day while she performed those duties, rather than continuing to be paid for six hours as an "A" driver. The hourly rate for both "A" and "C" drivers is the same, \$15.74. Ms. Trail was able to perform all her duties, including the additional run, in less than six hours each work day.
3. From the point of view of the Province, the key point is that an adjudicator should not be able to order that an employee who works less than six hours each work day shall be paid for seven hours.
4. In his ruling on jurisdiction on October 24, 2005 the adjudicator refers to section 92(1) of the *Public Service Labour Relations Act* and Section 8.01 of the Collective Agreement. He found jurisdiction:  
"... although this matter appears to deal with work classification, the redress or remedy sought is not reclassification but can involve the ordering [of] the payment of compensation....".
5. Section 92(1) of the *Public Service Labour Relations Act* confers a broad jurisdiction on an adjudicator "to hear and determine" a "difference ... relating to the

interpretation, application or administration of this agreement". The adjudicator's ruling on jurisdiction and his subsequent decision profess to have been made within the scope of that statutory adjudication provision. That statutory jurisdiction is much broader than the narrower authority given by sections 8.02 and 8.03. It is not diminished by those sections.

6. In his decision on May 19, 2006 the adjudicator upheld Ms. Trail's grievance. In effect he concluded that she was entitled to an extra hour's pay each classroom day for making the additional run with the children from kindergarten up to Grade 2.

7. The Collective Agreement includes:

23.05(c) The Bus Driver "C" classification covers a driver who performs the same services as those of in the Bus Driver "A" classification and in addition a Bus Driver "C" must be available to perform further driving duties (including transporting kindergarten, Grades 1 and 2 students home early during the classroom day) to a total maximum of seven hours per day.

23.05(h) It is understood that should a present "C" position be vacated, the employer may reassign the early afternoon run for kindergarten, Grade 1 or 2 to a present bus driver "A". Where the addition of these duties do not result in the six (6) hours per day being exceeded, a bus driver "A" shall retain a bus driver "A" classification.

8. Before Ms. Trail was assigned that additional run, "a present "C" position" had not been "vacated", within the meaning of s. 23.05(h). Thus Ms. Trail and Local 1253 say that s. 23.05(h) did not apply. They say Ms. Trail was performing the "further driving duties" given as an example of a Bus Driver "C" classification in s. 23.05(c), "including transporting kindergarten, Grades 1 and 2 students home early

during the classroom day". In effect, Ms. Trail and Local 1253 want her to be paid for those additional duties while she performs them, even if she is not officially reclassified.

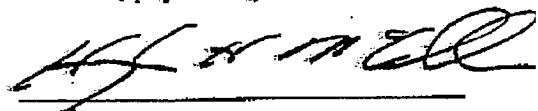
9. As I understand the directions of higher courts, the standard of review applicable in this case is whether the adjudicator's decision was patently unreasonable.

10. The Adjudicator's reasons for his decision are difficult to read. However his conclusion is clear. He adopts and reaffirms the interpretation of the same provisions of the same Collective Agreement that he had made in his decision regarding Judy Nickerson dated March 4, 2003 and gives a comparable remedy.

11. As I see this case the critical words of the Collective Agreement are in s. 23.05(c) "including transporting kindergarten, Grades 1 and 2 students home early during the classroom day" and in s. 23.5(h) "It is understood that should a present "C" position be vacated.". The adjudicator did not ignore those words or take them out of context. He did not accept the employer's argument to allow the number of hours actually worked each day to overrule the effect of those words. He enforced the terms agreed to by the parties as he understood them and as he had previously interpreted them.

12. In view of those phrases in the Collective Agreement and the effect of s. 92(1) of the Act, in my opinion the result of the adjudication is not patently unreasonable. The effect of the adjudicator's decision is that Ms. Trail is entitled to be paid for an additional hour for each work day on which she does that run with the Kindergarten to Grade 2 children in addition to her regular afternoon run.

14. For these reasons this application for judicial review is dismissed. I allow costs to Local 1253 of \$1,000.00, inclusive of disbursements, payable by the Province.



H. H. McLellan  
Judge of the Court of Queen's Bench  
of New Brunswick