

Collective Bargaining Update No. 2

General

The parties were scheduled to meet June 23, 24 and 25, 2008. The following non monetary proposals were discussed. Please note that PAFSO has yet to discuss its monetary proposals. We fully expect to be in a position to discuss our monetary proposals including wages and related issues sometime in the fall of 2008.

Article 7 - Suspension and Discipline

As was reported in the first collective bargaining update, the parties were close to reaching an agreement on this Article. PAFSO fully expected to sign off an amended version of the article which would not go as far as we would like but represented a compromise between our positions. While the parties are closer to an understanding the article remains outstanding.

Article 8 - Grievance Procedure

The current grievance article provides for individual grievances and grievances that concern the NJC Directives (which include, for example, the FSDs). DFAIT has a two step grievance process, while the CIC grievance procedure has three steps. The NJC grievance procedure is a separate process identified in the NJC bylaws at section 15 and referred to in the collective agreement.

Since the last FS collective agreement was signed, the *Public Service Labour Relations Act* was amended to provide for two new types of grievances. They are GROUP and POLICY grievances, both of which can be initiated by the bargaining agent. A POLICY grievance can also be initiated by the employer. The current Article on the Grievance Procedure needs to be amended to provide for these two new types of grievances.

Part of our review of this Article is to make it more user friendly for both employees and managers. This will require some restructuring of the Article. In addition, PAFSO has proposals to amend the existing article, some of which remain outstanding, including the non-delegation by the DM of grievances that concern demotions, suspensions and termination of employment. We strongly believe an employee in these circumstances should be given the opportunity to plead their case directly before the DM, rather than a delegate of the DM. We understand that other employees working in both departments alongside FS officers have this right enshrined in their collective agreements.

We are proposing to meet informally between the formal bargaining sessions to attempt to finalize the proposed changes that hopefully will lead to the Article being signed off at the next negotiations session.

Article 10 Hours of Work

The TBS had two proposals on hours of work:

The first proposal was intended to give more flexibility in scheduling an employee's hours by work to start one hour earlier than the collective agreement now provides (i.e. 6 am versus 7 am) and to end one hour later, (i.e. 7 pm versus 6 pm). It was also proposing to make the same changes for flexible hours which are 'subject to operational requirements'.

The second proposal concerned clause 10.03 Special Hours of Work. Aside from incorporating the changes that it had proposed under the normal work week clause, it was proposing to considerably shorten the amount of notice to be given by the employer before altering an employee's hours of work. Specifically, the TBS proposed to shorten the notice period from the current period of 5 days to only 48 hours (i.e. less than 2 calendar days).

PAFSO was not persuaded that there was any benefit for its membership in either proposal. After considerable discussion, the employer withdrew both proposals.

Article 12 - Overtime

Both sides had proposals on Article 12. However, the PAFSO proposals are monetary and were not discussed.

The employer's proposals were to:

- 12.04 Amend the agreement to provide double time on the second day of rest only when the employee also worked the first day of rest.
- 12.05 Change the word "required" to "scheduled" where the employee reports for duty on a day of rest.
- 12.07 Amend this clause to provide for the pay out of compensating leave based on the employee's hourly rate of pay versus the current language which speaks about "daily" rate of pay.
- 12.08 Introduce a cap on the mileage allowance paid to employees who are required to report for work on a day of rest. The cap being proposed is 50 kilometers each way.

A discussion ensued with respect to the employer's proposals. The following is a brief summary of the discussions.

- 12.04 Was deferred to a discussion on monetary proposals although the employer could not point to any collective agreement in the public service that has such a provision.
- 12.05 Reporting Pay. The employer withdrew its proposal after receiving PAFSO's views.
- 12.07 Compensatory hours
The employer explained that as a result of changes to its accounting systems, the payroll recognizes hourly rates of pay and not daily rates of pay. The intent is not to provide a lesser benefit by converting this pay out clause to "hours". PAFSO asked if there would be any cost savings to the employer if we were to accept the proposal. The employer said it would endeavour to give us costing figures if they were available. The proposal remains outstanding.
- 12.08 Transportation Expenses
The employer explained that it was attempting to limit the cost it would have to pay if it required an employee to report for work on a day of rest. PAFSO indicated it was opposed to this proposal in principle. If the employer requires an employee to report for work on a day of rest and the employee is required to use his own vehicle to report, the employer should pay for his/her mileage and not just a portion of it. We also noted that according to clause 12.08(b) the employee

is not entitled to be paid for the time he/she spends reporting for work. If the employer insists on a cap, then PAFSO's view is that clause 12.08(b), denying over time payment for the time it takes the employee to report for work, should be revisited. The employer's proposal remains outstanding.

Article 13 - Call-Back Pay

PAFSO Proposal

Delete the Exclusion clause which provides for a lesser payment for electronic call-backs i.e. a call-back that does not require an employee to return to his normal place of work.

Employer proposal

The employer's proposal is to amend the article to ensure that electronic call-backs that occur on designated paid holidays, or on an employee's day of rest, or after normal work hours, are captured by the limited Call-Back pay provisions identified at 13.01 Exclusion.

PAFSO pointed out that the FS collective agreement is one of only 2 collective agreements that distinguishes between a call-back that requires an employee to return to their normal place of work and a call-back that can be dealt with over the phone or other data link communication device. The occupational groups that the FS work with, including CO, ES, FI, PM, and IS, do not make this distinction.

An employee in the IS group at DFAIT who is called back on a week-end, for example, and is able to deal with the problem from home under the call-back provisions of the IS collective agreement would be entitled to a minimum 4.5 hours pay, or 6 hours pay, depending on whether the call was received on the first or second day of rest. If the call was received by an FS employee under the same scenario, the FS would be paid only 1 hour's pay because of the exclusion clause under the call-back article in the FS collective agreement.

PAFSO advised the employer that it is not interested in amending the call-back article except to delete the Exclusion clause (article 13.01).

PAFSO also noted that under the Reporting Pay clause in Article 12 (Overtime), there is no distinction made between an employee who is required to report for work by telephone or data line on their day(s) of rest and an employee who is required to physically return to their normal place of work. Employees in these situations may be able to claim Reporting Pay as opposed to Call-Back pay. PAFSO noted the same distinction between Reporting Pay on a designated Paid Holiday and the Call-Back provisions on the same subject. The Reporting Pay provisions under the Designated Paid Holiday Article provides for a minimum of 3 hours pay at overtime rates as the minimum compensation. The lesser payment discussed in the Call- Back article for a call-back on a designated paid holiday is not found in the Reporting Pay provision in the Designated Paid Holiday Article. An employee who is required to report for work on a designated paid holiday or on their days of rest may be able to claim the minimum entitlements under either clause 12.08 or 15.07 of the FS collective agreement and not the Call-Back article. The fact that the employer is proposing to amend this clause suggests that it recognizes that reporting pay is a separate provision which provides for a higher compensation in these circumstances.

Both the PAFSO proposal and the employer's remain outstanding.

Article 14 - Standby

The employer's proposal is to insert the word "readily" before "available" in clauses 14.02 and 14.03.

PAFSO's proposal is to delete clause 14.01 "exclusions" which provides for a lesser minimum payment for electronic call-backs for an employee on standby.

During our discussions it was suggested by PAFSO that, with the exception of the Migration Integrity Officers (MIO) at CBSA, FS officers are not ordinarily required to be available for stand-by duties.

PAFSO's proposal 14.03 is intended to reflect what currently exists in the majority of Public Service Collective agreements. It removes the distinction made for electronic call-backs.

PAFSO's proposal 14.04 is an editorial change to reflect the proposed changes in clause 14.01 and 14.03.

PAFSO's proposals concerning clause 14.02 and 14.05 are monetary and were not discussed during this session.

Both the employer's and PAFSO's proposals remain outstanding.

Article 15 - Designated Paid Holidays

Employer proposal

The employer is proposing to amend the Reporting Pay clause in the Designated Paid Holiday article by cross referencing the payment for reporting pay under clause 15.07 to the Reporting Pay provisions in the overtime article (clauses 12.05, 12.06 and 12.07). It also proposes to change the word "required" in the first sentence of clause 15.07 to "scheduled".

During our discussions on the proposed changes, PAFSO noted the distinction between Reporting Pay on days of rest and designated paid holidays and compensation paid under the Call-Back & Standby provisions in the collective agreement. The collective agreement recognizes these differences under clause 46.05 which prevents pyramiding these forms of compensation. In PAFSO's view, an employee who is required to report for work on a day of rest or designated paid holiday could claim compensation under the reporting pay provisions of the overtime clause 12.05 or clause 15.07 of the reporting pay provision of the Designated Paid Holiday Article. Both of these clauses provide for a minimum compensation of 3 hours of pay at the applicable overtime rate. Neither of these clauses recognize a lesser minimum payment for electronic call-backs.

Both of the employer's proposals remain outstanding.

PAFSO proposals

The PAFSO proposals concerning 15.02 and 15.06 are monetary and were not discussed during this session.

The PAFSO proposal under clause 15.04 is editorial in nature. The current 15.04 provides for what happens when a holiday falls on an employee's day of rest. Our proposal addresses the Christmas and Boxing Day holidays when these holidays fall on both of the employee's days of rest. PAFSO's proposal would ensure that these holidays are moved to the employee's first two normal working days, thereby ensuring that the employee is put in the same position as all other employees.

The employer has agreed in principle to the proposed change

Article 16 - Traveling Time

PAFSO proposals

- 16.01 PAFSO was proposing to amend this clause to incorporate language used in the ES collective agreement to reflect when travel compensation would be paid as opposed to when it would not be paid. Our proposal is also intended to correct an error in the current language with regard to travel compensation as it relates to postings.
- 16.04 The PAFSO proposal is intended to remove the 12-hour cap for a combined period of travel and work on a regular work day or for travel on a day of rest, or for travel on a designated paid holiday.
- 16.05 The PAFSO proposal is intended to remove the 15-hour cap for travel outside Canada or the Continental USA.
- 16.07 The PAFSO proposal is intended to enhance the travel status leave provision, by reducing the requirement for accumulation of this type of leave from forty (40) nights to 20 nights away from the employee's "permanent residence". It is also intended to increase the rate of accumulation after 20 nights from a "day" to "a day and a half". PAFSO is also proposing to change "permanent residence" to "headquarters area" to clarify what the expression would mean for a rotational employee.
- 16.08 **NEW** The PAFSO proposal is intended to provide travel compensation to courses, training sessions, professional conferences and seminars, if the employee's attendance is "**authorized**" by the employer as opposed to "required" by the employer.

Employer proposals

- 16.04 The employer's proposal is intended to limit its liability to pay travel compensation by proposing the 12 hour cap be a consecutive period that could span 2 calendar days as opposed to the "cap" renewing itself at midnight each day of travel.
- 16.05 The employer is proposing to reduce the 15-hour cap for travel outside Canada or the continental USA to 12 hours.
- 16.06 The employer's proposal is directed at giving the managers the flexibility to request an employee

to liquidate the compensatory leave earned under the Article as compensatory leave with pay provided the employee agrees to the request.

PAFSO proposals - rationale

16.01 and new 16.08

- 16.01 As noted earlier our proposal currently is a part of the ES collective agreement as well as other public service collective agreements. We also noted in our discussions that the current clause 16.01 contained an error with respect to travel compensation and postings. The practice at both DFAIT & CIC has always been to pay travel time in connection with postings. The employer acknowledged this practice. However, as the employer explained, where the employee determines their own itinerary in connection with the posting the travel time compensation is limited to what it would cost the Department had the employee proceeded directly to their posting. For example, if an employee was posted to PARIS and decided to visit Rome or Moscow along the way, the department would limit its liability under the travel time article to the travel time it would normally take the employee to travel from Ottawa to Paris. This made sense as the employee was given the flexibility to arrange their own travel using a non-accountable advance provided for this purpose under the FSDs.
- 16.08 Our rationale for this proposal is based on our experience with some managers who suggest to an employee that they can attend a course or seminar but that their attendance is not required by the employer. Air fare, hotel and meals and incidentals are paid but not traveling time. In a number of instances the issue of whether the employee is required to attend is semantics. It appears to be done deliberately to avoid paying travel time, probably because of limited budgets that managers have to pay such items. To avoid this from happening, it is our view that if the employee's travel itinerary is authorized and approved by the employer, the employee should be compensated for the travel time. PAFSO explained that the language it was proposing was taken from the ES collective agreement, though in our version, we are proposing to alter the words "required to attend" for "authorized to attend" for the reason noted.

PAFSO proposals

16.04 & 16.05

As noted above, both the employer and PAFSO have proposals on these two clauses. The PAFSO proposals are intended to remove the 12- and 15-hour caps on travel time compensation, while the employer proposal is to reduce the 15-hour cap in 16.05 to 12 hours, and it is also proposing to amend the collective agreement to provide that the 12-hour cap can extend to 2 calendar days. The parties engaged in a discussion on the extent to which the current caps provided adequate compensation for travel. PAFSO noted that a very early decision of the PSSRB (as it was known then) established that the "cap" was renewed at midnight each calendar day. To our knowledge, this is how the clause is currently being administered. The adequacy of the cap was discussed on the basis that the cap was renewed at midnight on each calendar day, without the employer withdrawing its' proposal. It was also discussed on the basis that we would use the time zone where the travel originated to calculate the total time of travel thus avoiding the confusion caused by crossing time zones or the International Date Line.

Summary of Discussions

Travel within Canada or Continental USA - Clause 16.04

Under the current language an employee is compensated to a maximum of 12 hours pay at the straight time rate of pay for travel in excess of his regular work day or for travel on days of rest and designated paid holidays. The rate of compensation is at the applicable overtime rate of pay.

When an employee travels on a regular work day under this clause, but is not required to work, he or she would only be entitled to their regular pay for the day i.e. 7.5 hours.

For example, travel on a normal working day where the employee is not required to work.

An employee traveling from Ottawa to Vancouver on a regular work day who wasn't required to work on that day would most likely spend the full number of hours in his/her work day to reach his/her destination. The travel time for a direct flight is 5 hours plus the time it took to go to the airport at one end and a hotel at the other, would spend about 7.5 hours making the journey. If the employee was required to travel on a regular work day (and didn't work) to Whitehorse or San Diego and did so without first going into work, he or she would most likely still spend more than 7.5 hours (i.e. the regular work day) to reach the destination time traveling than his regular 7.5 hours. This may also be the case for an employee who takes longer to reach their destination because of frequent or long stop overs for connections for flights to destinations caused by airline flight schedules or "inclement weather". In other words, an employee who traveled on a regular work day may travel in excess of his normal hours of work and not be compensated for the additional travel time.

The 12-hour cap would not apply in these circumstances for this additional travel time because in these examples the employee was not required to work. But he/she was required to travel by their employer and the travel may have taken longer than his/her normal hours of work. In these circumstances PAFSO suggests that employees who travel in excess of their normal hours of work should be compensated for the additional hours of traveling.

For example, when an employee travels on a normal work day on which the employee both travels and works, the employee is compensated his/her regular days pay plus compensation for additional travel to a maximum of 12 hours pay, accumulated at the applicable overtime rate.

An employee who works his/her normal hours of work and travels from Ottawa to Vancouver that same day would be paid his/her salary for the day plus time and a half for travel in excess of their regularly scheduled hours of work and travel to a max of 12 hours pay at straight time rates. If an employee's normal hours of work were 8 am - 4:30 pm and he/she left after work to catch a flight leaving at 6 pm and reached their hotel in Vancouver 7 hours later i.e. 1 am Ottawa time they would be paid as follows:

- Their regular pay for the day - 7.5 hours.
- Travel time commencing 4.30 pm for 12 pm - 7.5 hours at "time and a half" or 11.15 hours pay.
- Because they traveled an additional hour on the next calendar day, they would be entitled to another hour and a half of additional travel time.

The effect of this provision appears to be when the employer requires an employee to travel on a normal working day where the employee has also worked, it has agreed to pay the employee for travel up to an additional day's pay. i.e. 12 hours pay is the equivalent of a day's pay, paid at the overtime rate of time and one half.

As noted in the earlier example depending on a number of factors, this additional compensation for travel in excess of a period of work and or travel during an employee's normal hours of work may not be sufficient to cover the full period of travel, as it was in the above example. The employee's time of departure, inclement weather, airline flight schedules that create long stop overs or short connecting flights, and the employee's final destination are some factors which may add to the employees traveling time beyond their normal hours of work. The 12-hour cap or another days pay at time and one half may not be sufficient to cover these contingencies. However given that a new cap begins at midnight each day travel in excess of a full days work may cover these contingencies.

Looking at situations in North America where an employee is required to travel on a first day of rest or on a designated paid holiday, an employee who travels more than 8 hours on that day will not be compensated for additional travel on that day. However if the travel spills over to the next calendar day a new 12-hour cap is created for travel on that day.

For example, an employee who travels from Ottawa to Whitehorse, Yukon would most likely be paid for travel time up to the Vancouver Airport during a stop over when, by that time the employee would have reached the 12-hour cap i.e. 8 hours of travel at the rate of time and one half. The employee would not be compensated for his /her traveling time for the last leg of the journey, Vancouver to Whitehorse assuming it was made on the same day.

Looking at situations in North America where an employee is required to travel on a second day of rest the 12-hour cap is reached much quicker because the rate of accumulation is at the double time rate as opposed to the time and one half rate of pay. An employee who is required to travel more than 6 hours on the same day would surpass the 12-hour cap. Using the Ottawa to Whitehorse example on a second day of rest, compensation for traveling time would most likely cease somewhere over the Rockies.

It is our view that the 12-hour cap for travel on days of rest or designated paid holidays are inadequate to compensate employees who travel on those days and for this reason the cap should be removed. We also expressed a concern that employees who are required to travel on normal work days who are not required to work on those days may also be inadequately paid for travel in excess of their normal daily hours of work.

Travel Outside Canada or Continental USA - Clause 16.05

Clause 16.05 in the French version mistakenly has a cap of 12 hours under clause 16.05. It should read 15 hours.

Clause 16.05 addresses traveling time compensation for travel outside Canada or the Continental USA. It addresses 3 travel situations as did clause 16.04.

- 1) Travel on a normal work day when the employee is not required to work.
- 2) Travel on a normal work day when the employee is required to travel and work

3) Travel on days of rest or designated paid holidays.

An employee who is required to travel from Ottawa to London on a normal work day who wasn't required to work on that day would most likely travel more than 7.5 hours before reaching their destination and there is no provision to pay him/her for this additional travel time. Compensation for travel would end somewhere over the Atlantic Ocean. The exception would be if the travel extended into the next calendar day which could fall on another work day or the employee's day of rest or a designated holiday.

An employee who works and travels on the same day who is traveling overseas would most likely complete the journey over 2 calendar days. In calculating the total amount of travel time it was agreed that we would use the time zone where the travel originated to avoid the confusion created by different time zones. The 15-hour cap in the above example would most likely cover the traveling time from Ottawa to London. However, the further the destination the less likely the 15-hour cap would be sufficient to cover the entire period of travel.

For example, an employee traveling to Sydney, Australia from Ottawa who begins the trip after normal working hours would most likely travel from Ottawa to Vancouver, or Ottawa to LA then on to Hawaii, then Sydney. The estimated total number of hours the trip would take, from the time the employee leaves home to the time the employee arrives at his/her hotel, is 22 hours, spread over 2 days. The employee's travel time for the first leg of the journey would most likely be captured by the 15-hour cap on the day the journey began i.e. approximately 7.5 hours. On the second day the employee would be compensated for the first 10 hours of travel at the overtime rates i.e. 10 hours at time and one half equals 15 hours at straight time. The last 5 hours of travel would not be compensated. As the employee had reached the 15-hour cap, compensation would end somewhere over the Pacific Ocean.

If we use the same example of an employee traveling from Ottawa to Sydney on a first day of rest or on a designated paid holiday, the maximum compensation for travel time would be 10 hours of travel. For travel on a second day of rest an employee would only be compensated for 7.5 hours of travel i.e. 7.5 hours times twice the hourly rate equals 15 hours. An employee in this scenario would most likely have the shorter leg of the journey Ottawa to Vancouver or LA covered by the first 15-hour cap. However, on the second day of travel which in this scenario would be the employee's second day of rest the employee would only be covered for the first 7.5 hours of a trip that would last 15 hours.

These examples clearly demonstrate that, for travel on a normal work day to destinations overseas on a day where the employee was not required to work, the compensation provided for in the collective agreement would not cover (in a number of cases) the traveling time involved in the overseas journey.

These examples clearly demonstrate that for travel on a work day where the employee both travels and works, or for travel on days of rest, or designated paid holidays, the 15-hour cap is insufficient to compensate for the time spent traveling. Ironically, an employee is compensated less for his/her travel on their second day of rest (7.5 hours of travel) than for travel on their first day of rest (10 hours of travel) or for travel and work on a regular work day (10 hours travel time). When you factor in delays caused by inclement weather, connecting flights, and equipment breakdowns, the normal traveling time could easily be extended by anywhere from a few hours to an overnight stay in a hotel. Clearly, compensation for travel on a normal working day where the employee isn't required to work and travel on a second day of rest provide the least amount of compensation.

PAFSO proposal

16.07 This clause is often referred to as the “captive time clause” because it is intended to address, at least partially, situations which separate employees from their families because of frequent business trips throughout the year. Its roots are found in the family/work life balance concept adopted by the majority of departments.

The current provision provides for a day off with pay if the employee is away from his/her “permanent residence” for 40 days. If the employee is away for 60 nights, the employee would receive another day off. If the employee is away for an additional 20 nights he/she would get another day off. This goes on for an additional 80 nights or 120 nights in total. The total number of days off would be capped at 5 days of compensatory leave with pay. The article also discounts travel to training courses, seminars and conferences as time away from the employee’s permanent residence, even if the employee is required to attend by the employer. The article as written appears in most of the Public Service collective agreements.

PAFSO’s proposal is intended to shorten the time away from home (from 40 nights to 20) that it initially takes to get a day off. It also includes nights away as the result of attendance at training courses, seminars, and conferences, if attendance was authorized by the employer. We are also proposing to amend the clause to provide for a day and a half off after each 20 nights away from the employee’s headquarters area, with no “cap” on the number of days off that may be accumulated in this fashion.

The employer noted that the current language in the FS collective agreement is common to all public service collective agreements and is a fairly new provision. PAFSO was unable to point to an agreement that supported our proposal. However, we are concerned about a potential misapplication because of the reference to the “employee’s permanent residence” in the article. In our view, a rotational FS officer working abroad would have a permanent residence both in his/her headquarters area and at the mission abroad. To avoid any misunderstanding the proper reference should be the employee’s headquarters area. We are also concerned that training, seminars and conferences that are approved by the employer are discounted from the days away from home accumulation that would trigger a day off work with pay. If the employer authorized the trip it should count towards the 40 and 20 days away from home.

Article 17 - Part-time Employees

PAFSO proposal

PAFSO’s proposal was intended to discuss the part-time provisions of the collective agreement as they would apply to FS rotational officers.

During our discussion, we learned there were no part-time FS officers appointed on an indeterminate basis. There were two (2) FS officers working on a part-time basis but this was a temporary solution to accommodate the employee.

The parties agreed to renew the existing provisions.

Next Negotiation Session

The next negotiation session is scheduled for September. When the dates are confirmed they will be posted on the PAFSO website - www.pafso-apase.com.