# Ryland v. Public Service Alliance of Canada, 2022 NWTTC 03

# Date: 2022 03 11

# File: T-1-CV-2021-000006

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**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**EVERT RYLAND**

 **Plaintiff/Respondent**

**-and-**

**PUBLIC SERVICE ALLIANCE OF CANADA**

 **Defendant/Applicant**

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**REASONS FOR JUDGMENT OF THE**

**HONOURABLE CHIEF JUDGE ROBERT GORIN**

Application for Summary Judgment

Application Heard at Yellowknife, NT

Date of Decision: March 11, 2022

Date of Argument: February 9, 2022

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1. **INTRODUCTION**
2. This is an application for summary judgment by the defendant, the Public Service Alliance of Canada (“PSAC”). PSAC applies to have the claim of the plaintiff, Evert Ryland, dismissed on the basis that the claim is ultra vires of the jurisdiction of the court.
3. At all relevant times, the PSAC and Mr. Ryland were in an employer/ employee relationship. That relationship continued at the time of the within application.
4. In his claim Mr. Ryland alleges that in February of 2020 he rented his vehicle to PSAC for a period of 12 hours at a price of $ 20/hour for a total of $240. He says that he rented his truck to PSAC for a PSAC construction project and that the amount was due upon billing. He says that PSAC has refused to pay him. On that basis, he claims that he is owed $ 240.
5. PSAC denies that such an agreement was entered into. In relation to the within application, it takes the position that Mr. Ryland was and is a unionized public sector employee who is claiming against his employer. It states further that this dispute arises from the collective agreement between PSAC and the Canadian Union of Labour Employees (“CULE”), and that it is therefore reposed in the labour arbitrator and not the courts. It therefore asks that the claim be dismissed summarily on the basis that this court lacks jurisdiction over it.
6. For the following reasons I refuse PSAC’s application.
7. **ANALYSIS**
8. In my view, applications for summary judgment may be made in the Civil Claims Court of the Northwest Territories.
9. Rule 9(7)(g) of the *Civil Claims Rules of the Territorial Court* states:

(18) The Rules of the Supreme Court of the Northwest Territories apply, with such modifications as may be necessary, to proceedings commenced under the Territorial Court Act.

1. Rule 129 of the Supreme Court *Rules* states:

129. (1) The Court may, at any stage of a proceeding, order that

(a) any pleading in the action be struck out or amended, on the ground that

(i) it discloses no cause of action or defence, as the case may be,

(ii) it is scandalous, frivolous or vexatious,

(iii) it may prejudice, embarrass or delay the fair trial of the action, or

 (iv) it is otherwise an abuse of the process of the Court; and

(b) the action be stayed or dismissed or judgment be entered accordingly.

(2) No evidence is admissible on an application under subrule (1)(a)(i).

(3) This rule applies with such modifications as the circumstances require to an originating notice and a petition.

1. In relation to summary judgments, the applicable Supreme Court *Rules* state:

175. A defendant may, after delivering a statement of defence, apply with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.

176. (1) In response to the affidavit material or other evidence supporting an application for summary judgment, the respondant may not rest on the mere allegations or denials in his or her pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

(2) Where the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

(3) Where the Court is satisfied that the only genuine issue is the amount to which the applicant is entitled, the Court may order a trial of that issue or grant judgment with a reference or an accounting to determine the amount.

(4) Where the Court is satisfied that the only genuine issue is a question of law, the Court may determine the question and grant judgment accordingly.

1. *In Hyrniak v. Mauldin,* [2014] 1 S.C.R. 87, the Supreme Court held that summary judgments must be granted whenever there is no genuine issue requiring a trial. To some extent the Court’s disposition in *Hyrniuk* hinged on rule 20.04(1) & (1.1) of the Ontario *Rules* which provides:

1.04 (1)  These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

1. The Court also held that among other things the new wording in rule 20.04(2)(a) was important where it stated:

(2) The court shall grant summary judgment if,

(a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence: [ . . . ]

1. The Court in *Hyrniuk* stated:

[43] The Ontario amendments changed the test for summary judgment from asking whether the case presents “a genuine issue for trial” to asking whether there is a “genuine issue requiring a trial”. The new rule, with its enhanced fact finding powers, demonstrates that a trial is not the default procedure. Further, it eliminated the presumption of substantial indemnity costs against a party that brought an unsuccessful motion for summary judgment, in order to avoid deterring the use of the procedure.

1. On the other hand, rule 176(2) of the Supreme Court *Rules* retains the wording:

(2) Where the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

1. Nonetheless, in *Leishman v. Joechsmann*, 2016 NWTSC 27, Shaner J. adopted the approach set out in *Hyrniuk*, stating:

38 The Rules of Court respecting summary judgment, particularly determination of whether there is a genuine issue for trial, have traditionally been applied quite strictly, the standard being that it must be "plain and obvious" there is no genuine issue for trial. Courts required this be demonstrated through an "uncontroverted evidentiary foundation". Nexxtep Resources Ltd. v Talisman Energy Inc., 2008 ABCA 246 (CanLII) at para. 4. The rationale for the rigorous standard is that the summary judgment process excludes a trial on the factual issues. *Diegel v Diegel*, 2008 ABCA 389.

39 Following the Supreme Court of Canada's decision in *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87, 2014 CarswellOnt 640, there has been a movement away from such a strict approach in recognition that a full-blown trial is not always necessary to ensure claims are adjudicated fairly. Indeed, Karakatsanis, J., suggested (at para 24) that in some cases, requiring a trial may actually impede access to justice by burdening litigants with disproportionately high costs, as well as increasing unnecessarily the time required for legal resolution of a claim. Summary judgment rules "must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims." (*Hyrniak,* at para 5).

40  Taking the approach set out in *Hryniak,* the question is not whether there is a genuine issue for trial but rather, whether there is a genuine issue *requiring* trial - and tools such as cross-examination available in the trial process - to allow a court to reach a fair and just result.

41  Guidance on the question of whether an issue is one requiring trial is provided by *Hryniak* as follows:

[49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

42  Although Karakatsanis, J. rendered her judgment in the context of an appeal from a summary judgment order made under Rule 20 of the Ontario *Rules of Civil Procedure*, [RRO 1990, Reg 194](https://advance.lexis.com/document/teaserdocument/?pdmfid=1505209&crid=2c534415-59b2-4e1b-a24f-6a21435ddd10&pddocfullpath=%2Fshared%2Fdocument%2Fcases-ca%2Furn%3AcontentItem%3A5K56-XX71-JS5Y-B2WN-00000-00&pdteaserkey=h1&pdicsfeatureid=1517129&pditab=allpods&pddocfullpath=%2Fshared%2Fdocument%2Fcases-ca%2Furn%3AcontentItem%3A5K56-XX71-JS5Y-B2WN-00000-00&ecomp=xbkyk&earg=sr3&prid=b42e284e-ad38-4f86-91c5-ec234f108177), the rationale she articulated for the modern approach is equally applicable to litigants in the Northwest Territories. *Like Ontario's Rule 20, Rules 175 and 176 of the Rules of the Supreme Court of the Northwest Territories are ultimately intended to allow the Court, in appropriate cases, to assess claims fairly and efficiently based on a record, rather than a formal trial. Thus, the test should be the same. The question for the Court in determining if a summary judgment application is appropriate whether there is a genuine issue which requires a trial for fair and just resolution, rather than whether there is a triable issue.*

[emphasis added]

1. Technically, the doctrine of stare decisis does not apply and I am not “bound” by the decision in *Leishmann* since it was rendered by the Supreme Court as a court of first instance rather than an appellate court. That said, I am in agreement with the reasoning set out in the foregoing paragraphs.
2. In the present case it is not in dispute that:

- PSAC was at all relevant times Mr. Ryland’s employer. Mr. Ryland is a unionized employee and represented by the Canadian Union of Labour Employees (“CULE”). There is a collective agreement between the employer, PSAC and the union, CULE.

- In February of 2020, PSAC organized a snow carving project on the ice in Yellowknife Bay, near the “Snow King Castle”. Mr. Ryland assisted with the project on February 22 and 23 and used his truck to bring various items to the site. He was paid for overtime.

- However, instead of claiming mileage, Mr. Ryland claimed $ 240 (“$20/hour for 12 hours) for Hauling Supplies, Equipt, etc. Re: Snow Carving”) in an invoice he generated and submitted to his employer. Mr. Ryland claims that his employer had entered into a commercial agreement with him for the rental of the truck.

1. Mr. Ryland’s version of events is that PSAC had planned on retaining the services of a specific individual who was going to supply his skills and pickup truck to PSAC for the project. This individual estimated that he would need up to ten hours at a rate of $ 50/hour for his services and the use of his vehicle. The amount of $ 50/hour was agreed to by PSAC. Unfortunately, this individual backed out of the agreement and another individual was found to provide his services. This individual did not have a truck. Mr. Ryland, states that he became a vendor to his employer by supplying his truck. He stated that was so because PSAC had previously budgeted and agreed on an amount of $50/hour for the services and that therefore the person performing the construction work would receive $ 30/hour and Mr. Ryland would receive $20/ hour for the services of his vehicle.
2. In his affidavit, Mr. Ryland states that he entered into an agreement with PSAC that included as a term the rental of his truck for an agreed upon price of $20/hour. The following are excerpts from his affidavit:

“I became a vendor to the PSAC by renting my pick-up truck to the PSAC to support the person doing the construction work. PSAC had budgeted and agreed on an amount of $50/hour for these services. The person performing the construction work would receive $30/hour. I would receive $20/hour for the services of my vehicle.

[ . . . ]

The PSAC refused to pay me for the rental of my vehicle, and the PSAC Manager, Mr. Kinsella, made a very unpleasant experience out of arguing with me that the PSAC would not pay me the amount of consideration that had been budgeted and agreed upon.

[ . . . ]

Mr. Kinsella was informed that the second person contracted would supply his labour for the cost of $30/hour. That left $20/hour remaining of the budgeted amount of $50/hour for the necessary services to cover the costs of renting a pick-up truck.

I informed Mr. Kinsella that if my pick-up truck was to be used in this task, then it would be me charging PSAC for a vehicle; rather than the person doing the construction work.

[ . . . ]

I would not provide my vehicle’s services to the PSAC, unless I could charge PSAC for it. Mr. Kinsella agreed that it would be acceptable for me to charge PSAC for the services of using my vehicle in this endeavor.

With Mr. Kinsella’s assurance that I could charge PSAC for the use of my pick-up truck, I carried out the services of supplying the vehicle to the PSAC for the Phoenix project.

When the work was completed after four days, I personally paid Mr. Simpson $360 by money order from my personal bank account, for 12 hours that he had worked, at a rate of $30/hour; plus $50 for the trailer that he had rented. The Money Order was for $410.

I submitted our billing invoices for payment approval from Mr. Kinsella. These invoices included the $360 for the labour and $240 for the cost of the PSAC renting my vehicle.

These amounts are based on the exact budgeted, defined, and agreed-upon amount of $50/hour, but with an additional 2 hours that were spent completely dismantling the wooden structure and then hauling it off the ice to the shore. This totaled $600.

[ . . . ]

Mr. Kinsella refused to authorize payment to me for the rental costs for my pick-up truck; although he and I had agreed one week earlier that I would be paid for that.”

1. While in *Leishmann* the Supreme Court of the Northwest Territories adopted a more expansive approach to granting summary judgments, it remains the case that its rules do not contain the equivalent of Ontario’s rule 20.04(2.1), which provides:

 (2.1) In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

 1. Weighing the evidence.

 2. Evaluating the credibility of a deponent.

 3. Drawing any reasonable inference from the evidence.

1. There is no equivalent to rule 2.01 of the Ontario *Rules* that applies in the Northwest Territories. As a result I conclude that my ability to weigh evidence remains constrained. My ability to assess or draw inferences based on the evidence is also limited.
2. I find that my ability to question Mr. Ryland’s assertions that he entered into a rental agreement with PSAC at this stage of the proceedings is restricted to the extent that I am unable to reject them. I appreciate that the details of the contract he says he entered into between himself and PSAC appear cloudy. He does not specifically say that Mr. Kinsella told him that he was agreeing to pay him $ 20 dollars/ hour for the use of his vehicle. However, he does say,

“I informed Mr. Kinsella that if my pick-up truck was to be used in this task, then it would be me charging PSAC for a vehicle; rather than the person doing the construction work.

[ . . . ]

 Mr. Kinsella refused to authorize payment to me for the rental costs for my pick-up truck; although he and I had agreed one week earlier that I would be paid for that.”

1. I think it would be unfair if I were to hold Mr. Ryland to the same standard as I would a lawyer in both the form and content of his affidavit. From what is set out in his affidavit it seems reasonably clear that he is saying that there was a meeting of the minds on the rental of his truck to PSAC at the rate he has indicated.
2. In my view there are two legal issues that need to be addressed:
3. Is it possible for unionized employees to enter into a separate (non-employment) contract with their employer?

2) If so, does resolution of alleged breaches of the separate contract require arbitration as opposed to court proceedings?

***Can Unionized Employees enter into Separate Contracts with their Employers?***

1. Certainly in the case of non-unionized employees there is no impediment to separate contracts being entered into with their employer. The only exception would be if the employment contract contained a term to the contrary or an applicable labour code ruled out such a possibility.
2. Similarly, in the case of unionized employees, there would need to be a provision in the collective agreement or applicable labour code prohibiting the separate contract.
3. Counsel for PSAC, Ms. Bougie, in her very capable written and oral submissions has not provided me with any provision the collective agreement or the *Labour Code of Canada* (RSC, 1985, c. L-2) that disallows a rental agreement between an employee and employer. I as well have found no such prohibition in either of those documents.

***Is Arbitration of an Alleged Breach of a Separate Contract with the Employer Required Rather than Court Proceedings Required in the case of a Unionized Employee?***

1. In my view determination of this question once again hinges on the provisions of collective agreement and the applicable legislation and, of course the applicable jurisprudence.
2. In *Weber v. Ontario Hydro,* [1995] 2 S.C.R. 929, the Supreme Court stated:

58 To summarize, the exclusive jurisdiction model gives full credit to the language of s. 45(1) of the Labour Relations Act. It accords with this Court's approach in *St. Anne Nackawic*. It satisfies the concern that the dispute resolution process which the various labour statutes of this country have established should not be duplicated and undermined by concurrent actions. It conforms to a pattern of growing judicial deference for the arbitration and grievance process and correlative restrictions on the rights of parties to proceed with parallel or overlapping litigation in the courts: see *Ontario (Attorney-General) v. Bowie (1993*), 110 D.L.R. (4th) 444 (Ont. Div. Ct.), per O'Brien J

1. Earlier in the judgment at para. 52, the court stated:

52 In considering the dispute, the decision-maker must attempt to define its "essential character", to use the phrase of La Forest J.A. in *Energy & Chemical Workers Union,* *Local 691 v. Irving Oil Ltd.* (1983), 148 D.L.R. (3d) 398 (N.B.C.A.). The fact that the parties are employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement: *Energy & Chemical Workers Union*, supra, per La Forest J.A. Sometimes the time when the claim originated may be important, as in *Wainwright v. Vancouver Shipyards Co.* (1987), 38 D.L.R. (4th) 760 (B.C.C.A.), where it was held that the court had jurisdiction over contracts pre-dating the collective agreement. See also *Johnston v. Dresser Industries Canada Ltd.* (1990), 75 O.R. (2d) 609 (C.A.). In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

1. In the more recent decision of *Allen v. Alberta,* [2003] 1 S.C.R. 128, the Supreme Court held:

12  [. . .] In a nutshell, these cases stand for the principle that, in accordance with the legislative intent evidenced by the labour relations schemes implemented since the Second World War in Canada, such as the Alberta statutes which apply in this appeal, disputes arising out of the interpretation, application or violation of a collective agreement should be dealt with exclusively under the grievance procedure established in accordance with the agreement or the relevant labour legislation*.  As a general rule, provided though that they fall within the ambit of the collective agreement, such disputes should be disposed of by labour arbitrators and regular civil courts do not retain concurrent jurisdiction over them.*

[ . . . ]

 15 Our Court re-affirmed the validity of this analytical approach in *City of Regina*.  It acknowledged that labour arbitrators have been granted broad jurisdiction over labour disputes*.  Nevertheless, only disputes which explicitly or inferentially arise out of a collective agreement are foreclosed to the courts* (*City of Regina*, at para. 22, *per* Bastarache J.).  *In order to ascertain whether the dispute arises out of the collective agreement, the essential nature of the dispute must be identified.  At the same time, it is necessary to consider the ambit of the agreement and whether it covers the facts of the dispute:*

Simply, the decision-maker must determine whether, having examined the factual context of the dispute, its essential character concerns a subject matter that is covered by the collective agreement.  Upon determining the essential character of the dispute, the decision-maker must examine the provisions of the collective agreement to determine whether it contemplates such factual situations.  It is clear that the collective agreement need not provide for the subject matter of the dispute explicitly. If the essential character of the dispute arises either explicitly, or implicitly, from the interpretation, application, administration or violation of the collective agreement, the dispute is within the sole jurisdiction of an arbitrator to decide. (*City of Regina*, at para. 25)

[emphasis added.]

1. As can be seen, if the dispute arises from an interpretation, application, administration or violation of a collective agreement it is within the exclusive jurisdiction of the labour relations system. Such disputes may arise explicitly or inferentially. Ms. Bougie is correct when she states that, “inferentially arising” has been interpreted broadly. In the case of *New Brunswick v. O’Leary,* [1995] 2 SCR 967, the facts were that a third-party rental company charged damages to an employer that occurred as a result of the employee’s negligent driving. The Supreme Court of Canada held at paragraphs 5 – 7:

5 The remaining question is whether the dispute between the parties in this case, viewed in its essential character, arises from the collective agreement.  In my view, it does.

   6 The Province's principal argument is that the collective agreement does not expressly deal with employee negligence to employer property and its consequences.  However, as noted in *Weber*, a dispute will be held to arise out of the collective agreement if it falls under the agreement either expressly or inferentially.  Here the agreement does not expressly refer to employee negligence in the course of work.  However, such negligence impliedly falls under the collective agreement.  Again, it must be underscored that it is the essential character of the difference between the parties, not the legal framework in which the dispute is cast, which will be determinative of the appropriate forum for settlement of the issue.

 7 Article 24.04 of the collective agreement acknowledges the employee's obligations to ensure the safety and dependability of the employer's property and equipment.  By inference it confers correlative rights on the employer to claim for breaches of these obligations.  While Article 24 falls under the general heading "Safety and Health", the rationale behind the obligation does not detract from the existence of that obligation to maintain the employer's property.  The essence of the dispute concerns the preservation of the employer's property and equipment.  Framing the dispute in terms of negligence does nothing to remove it from the contemplation of Article 24.  Article 5.03 requires the employer to exercise its rights consistently with the terms of the collective agreement, by implication invoking the comprehensive arbitration scheme established by the Act and acknowledged by the collective agreement as the exclusive avenue of recourse.  It follows from these provisions that the dispute arises from the collective agreement and that the only means of redress is the statutory arbitration process

1. Ms. Bougie also points out that characterizing disputes that arise expressly or impliedly from the collective agreement as torts – or breaches of separate contracts - cannot clothe the courts with jurisdiction. At paragraph 42 in the case of *MacLellan v. Canada (Attorney General*), 2014 NSSC 280, the court stated:

42 The defendants submit that claims of abuse of authority, false arrest, false imprisonment, fraudulent or negligent investigation, abuse of process, negligent prosecution, and malicious prosecution involve decisions under the Code of Service Discipline, and therefore fall outside the grievance scheme. However, they argue, the remaining allegations are grievable complaints dealing with promotion, pay, rank and harassment. According to the defendants, the pleading of such allegations as breach of contract, defamation, discrimination, tortious interference with contractual rights, deceit, equitable fraud, conspiracy, intentional infliction of emotional and economic harm, constructive dismissal, harassment, retaliation, verbal assault, tortious interference with economic interests, discrimination, "systematic and institutionalized" negligence, breach of fiduciary duty, and various Charter and statutory breaches, is an attempt to "dress up" grievable issues as tort and contract law matters. They say the grievance scheme under the NDA provides "an exclusive and comprehensive scheme" for determining such matters, which is intended to be final, subject only to judicial review by the Federal Court.

43 The court is required to look past the specific legal characterization to the facts giving rise to the dispute: Weber at para. 49; Vaughan at para. 11. In other words, a plaintiff cannot avoid application of a grievance process by creatively framing pleadings so as to remove the substance of the dispute from its coverage: see Weber at para. 49, where the majority warned against allowing "innovative pleaders to evade the legislative prohibition on parallel court actions by raising new and imaginative causes of action...". In this case, I am satisfied that the essential character of the dispute, no matter how it may be particularized in the pleadings, is one arising in the course of his military service and falling squarely within the ambit of s. 29 of the NDA. The events complained of occurred within the context of his military service and related directly to the exercise of his duties; his claims revolve around the exercise (or failure to exercise) by other personnel of their duties

1. The crux of much of PSAC’s submissions is that Mr. Ryland’s claim is an attempt for him obtain redress for being denied a vehicle allowance – something that would clearly be covered under the collective agreement. PSAC has submitted evidence showing that he had persistently asked for such an allowance and been denied. However, in order to find that Mr. Ryland’s claim is in reality based on PSAC denying him a vehicle allowance, I would need to draw an inference that in my view would require a weighing of the evidence that is not allowed under the summary judgment process as it currently exists in the Northwest Territories.
2. However, that finding is not necessarily dispositive of the matter. Certainly, in the present case, the Plaintiff was providing work to his employer. The work was on a project funded by his employer. The plaintiff in fact put in a request for three hours of overtime for the work he had done on the project on February 22 – 23, 2020; (see paragraph 2 – 6 page 3-1, Plaintiff’s affidavit filed February 3, 2022).
3. That said, the collective agreement does not expressly cover a situation where an employee agrees with their employer to rent it their vehicle during the time they are working. PSAC, however submits that the collective agreement impliedly covers the issue where it states at article 25:15:

The PSAC shall reimburse the employee for all reasonable expenses incurred while performing their duties for the PSAC, provided that such expenses are supported by receipts and have received prior authorization.

1. PSAC submits that if it is accepted that the plaintiff was told that he would be reimbursed for the use of his vehicle according to a formula other than mileage, his compensation amounts to an expense claim and not a separate commercial transaction. However, a claim for expenses is a claim for money that has been spent. While the rental agreement alleged by Mr. Ryland was for compensation for the use of his truck, it was not for reimbursement for expenditures.
2. I certainly agree with PSAC that in determining whether or not the matter is arbitrable, I must have regard to 14.01 of the C.U.L.E. collective agreement.

14.01 A grievance is any written complaint made by the Union, an employee or group of employees regarding pay, working conditions, terms of employment or the interpretation, application, administration or alleged violation of this Collective Agreement including any question as to whether a matter is arbitral. The Union’s consent is required on grievances related to the interpretation, application, administration or alleged violation of the S.U.L.

1. As well, s. 60(1)(b)of the *Canada Labour Code* (RSC, 1985, c. L-2), provides:

60 (1) An arbitrator or arbitration board has [ . . . ]

(b) power to determine any question as to whether a matter referred to the arbitrator or arbitration board is arbitrable.

1. As pointed out by Cromwell J. in *N.S.U.P.E., Local 2 v. Halifax Regional School Board,* 1998 NSCA 199:

33. In my view, each of the four factors just discussed supports the conclusion, that where there is doubt about the arbitrability of the dispute, that issue should generally be determined initially at arbitration. This view is mandated by the text of the collective agreement and the Trade Union Act. It also best reflects the central role of arbitration in collective bargaining labour relations, recognizes that arbitration is the forum best suited to conducting the necessary inquiry and helps ensure that no one, absent sounds reasons, will be left with rights but no effective remedy.

[ . . . ]

36. This is not to say that submission to arbitration is invariably a precondition to the court ruling on its own jurisdiction. There may be cases in which, for example, the parties agree that submission to arbitration is pointless. I would not attempt here an exhaustive list of such cases. I would say, however, that absent sound reasons to the contrary, courts should apply the general principle that arbitration, and not the court, is the forum for the initial determination of whether a matter is arbitrable.

37. The Chambers judge refused to decline jurisdiction over the action. In his view, it is essential first to determine whether the dispute is arbitrable. This, in turn, requires full exploration of the circumstances in the discovery and perhaps even the trial process. With respect, these considerations seem to me to support the opposite conclusion for the reasons I have attempted to summarize. Whether or not an arbitrator finds this dispute arbitrable at the end of the day, it is more respectful of the processes adopted by the parties and the Legislature and in the interests of sound decision-making in this key area of labour relations law to have the matter first addressed at arbitration in light of all the facts and circumstances of the particular situation. The arbitration process is better suited to that exercise.

1. This is so even where an employee misses a deadline for filing an agreement. In *Giesbrecht v. McNeilly et al,* 2008 MBCA 22, another case filed by PSAC, the Manitoba Court of Appeal held:

61. [ . . . ] But the court cannot acquire jurisdiction over a claim that properly falls within the ambit of the collective agreement simply because the appellant, for whatever reason, has not promptly prosecuted his claim in the proper forum. I agree with the respondents when they argue that: “it would be an absurd application of Weber if every employee who missed the deadline for filing a grievance could obtain a judicial remedy instead.

1. However, I do not believe that there is a genuine question as to the arbitrability of the present case as it now stands. I have considered at length whether, based on the foregoing jurisprudence, the question of jurisdiction should be referred to arbitration under the collective agreement. Mr. Ryland alleges a contract that was outside of the collective agreement. His allegation is supported by his affidavit material. In my view based on what he is saying, there is not a genuine question about the arbitrability of the dispute.
2. PSAC has taken the position that his claim is a round-about way of obtaining a vehicle allowance under the collective agreement, something that he had previously asked for and been refused. PSAC’s material references discussions that occurred between Mr. Ryland and PSAC in that regard and points out that the additional $ 15,000 that Mr. Ryland had initially claimed against PSAC in the within matter corresponded closely to the vehicle allowance that had been under dispute. While that may be, Mr. Ryland has since abandoned that portion of his claim and I am unable to find that there is any basis to conclude that the remaining $ 240.00 he still claims for breach of contract is really a claim for a vehicle allowance.
3. **CONCLUSION**
4. I dismiss the Defendant’s application. For the foregoing reasons, I agree with the Plaintiff that the essential character of his claim as it now stands appears to clearly fall outside the ambit of the collective agreement. Therefore this court has jurisdiction over it.
5. That said, I certainly make no findings regarding the ultimate merits of the Mr. Ryland’s claim.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Robert Gorin

Chief Judge of the

Territorial Court

Dated at Yellowknife, Northwest Territories, this

11th day of March 2022.

# Ryland v. Public Service Alliance of Canada, 2022 NWTTC 03

  *Date: 2022 03 11*

# File: T-1-CV-2021-000006

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**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**BETWEEN**

**EVERT RYLAND**

 **Plaintiff/Respondent**

* **and -**

**PUBLIC SERVICE ALLIANCE OF CANADA**

 **Defendant/Applicant**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**REASONS FOR JUDGMENT OF THE**

**HONOURABLE CHIEF JUDGE**

 **ROBERT GORIN**