

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**EXPERTECH NETWORK INSTALLATION
(the "Employer")**

-and-

**UNIFOR, LOCAL 30-0
(the "Union")**

Grievances re Travel Time and Expenses

Bram Herlich, Sole Arbitrator

David M. Chondon, Brandon Loehle,
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for the Employer

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Maureen Dawson, Mike Snell,
Gordon Brown and Myles McDonough

for the Union

AWARD

(Hearing held by videoconference on April 16 and May 26, 2021)

1. These grievances concern the quantum of compensation paid to nine grievors (on various repeated occasions) with respect to travel time and expenses flowing from temporary transfers from Toronto to Belleville. The collective agreement contains some 10 pages of provisions dealing with Transfers and Reassignments (Articles 22.01 through 22.13) and the resulting travel allowances and paid expenses (Articles 23.01 through 23.18). For ease of reference, I am attaching these collective agreement provisions as an Appendix to this award. For the most part, however, I will fully set out provisions specifically referred to and considered in the text of this award.
2. Despite the expanse of collective agreement text, only some of which we need traverse, the parties were essentially in agreement as to the central focus of the issues in this case. And, insofar as the facts are concerned, the parties filed a 12-page 37-paragraph Agreed Statement of Facts (and accompanying exhibits). It too has been reproduced as an Appendix to this award. I have incorporated the necessary portions of those facts into my narrative herein.
3. The grievances relate to employees who were temporarily transferred from their Toronto headquarters to a Belleville reporting centre for period(s) of up to 90 days. There is no dispute that these employees were eligible for compensation for travel time and expenses for their return trip to Belleville. Additionally, during the term of their temporary assignments, the employees were entitled to periodic (i.e. weekly) trips back to Toronto and to compensation for the resulting travel time and expenses. We were not provided with all the particulars pertaining to each and every instance of work-related travel, grievor by grievor. The broad outlines, however, were not in dispute. Additionally, there was no suggestion of any meaningful difference in travel related compensation as between the return trip from Toronto to Belleville occasioned by the temporary transfer or the periodic return trips from Belleville to Toronto that would have punctuated the period of the temporary transfer. So, while the parties may have conflated elements of the two (e.g. the outgoing portion of the original trip to Belleville combined with the first half of the first periodic return trip from Belleville) this appears to be a distinction without a meaningful difference, and was not dwelled upon by either party. The dispute centers, not on the

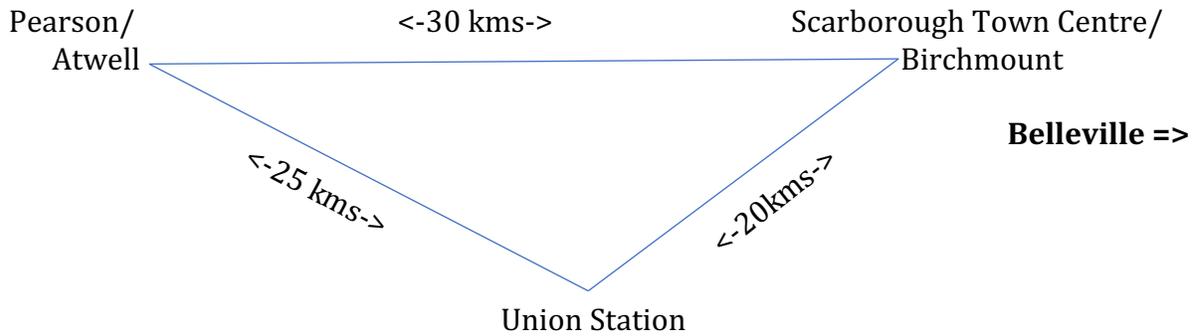
grievors' eligibility for compensation for travel time and expenses, but on the quantum of any such resulting entitlement.

4. The source of the parties' disagreement is rooted in the fact that all of the grievors, rather than travelling by the means of transportation determined by the company (i.e. by common carrier(s)), opted to travel by a different mode of transportation (i.e. by private vehicle).
5. The primary focus of our inquiry is on Article 23.14. At the risk of absolute precision in the interests of clarity, the parties' positions can be described as follows: the employer submits that this article is both the beginning and end of the case. For its part, the union says the article must be read and interpreted in the context of other provisions of the collective agreement and, in particular, the important role the concept of "reporting centre" plays in that agreement.
6. The article provides:

23.14 Although the Company shall normally determine the means of transportation, an employee may elect to travel by a mode of transportation other than the one chosen by the Company. In such case, however, the employee is entitled to the transportation expenses and travel time that would normally have been incurred had he travelled by the mode of transportation determined by the Company but only to the extent of costs that would have been incurred and time that would have been spent between the first and last terminal of an airline company, inter-city bus company, or inter-city railway company.

7. As is evident, this article applies to instances where employees "elect [as did the grievors] to travel by a mode of transportation [i.e. personal vehicles] other than the one chosen by the Company". The grievors were consequently compensated on the same basis as employees who travelled by the mode of transportation chosen by the Company "but only to the extent of costs that would have been incurred and time that would have been spent between the first and last terminal of an airline company, inter-city bus company, or inter-city railway company".

8. The parties disagree as to what was or, rather, ought to have been “the first terminal” in the instant case.
9. A little more factual context is necessary to understand the interpretive dispute more clearly.
10. Attachment B of the collective agreement lists some 200 different “Headquarters” across the country. One of these is Toronto, which was the grievors’ headquarters.
11. Employees are assigned to “reporting centres”. There can be multiple reporting centres within any given headquarters. The grievors’ reporting centre was at 240 Atwell Drive. There were other Toronto reporting centres, including one at 1500 Birchmount Rd.
12. The earlier cited article speaks of “terminal[s] of an airline company, inter-city bus company, or inter-city railway company”. There are (at least) three such terminals within the geographic scope of the Toronto Headquarters:
 - i. Toronto Pearson (bus, train and plane)
 - ii. Union Station (train and bus)
 - iii. Scarborough Town Centre (bus)
13. Again, sacrificing absolute precision in the interest of clarity, the relative locations of these three terminals and the two reporting centres can be seen as describing a triangle. The distance between the Atwell reporting centre and the Pearson terminal is so relatively slight (3 kms) as to be insignificant for our current purposes. Similarly, the distance between the Scarborough Terminal and the Birchmount reporting centre, though more significant (9 kms), can also be treated as a single location for purposes of geographic perspective, which is illuminated as follows (I note that the role of the Pearson terminal is fairly marginal in our facts; it is the upper base of the triangle which is most directly relevant):



14. The employer selected Scarborough Town Centre (STC) as the “first terminal” for the purposes of calculating travel time and expenses for the grievors. STC is located some 30 kms away from the grievors’ regular reporting centre at Atwell. The union asserts that the selection of STC, rather than Pearson (which is virtually adjacent to the Atwell reporting centre) does not comply with the requirements of the collective agreement.
15. But even if the employer was within its rights to select STC as the first terminal, the union argues that some further compensation ought to be forthcoming as a result of the grievors having been required, at least notionally, to have commenced their travel from a point, the first terminal, STC, located some 30 kms away from their reporting centre. The Company has restricted the grievors’ compensation to travel from the first terminal on. It has consequently failed to properly consider the consequences of the grievors having been required, again, at least notionally, to get to STC.
16. Employer counsel described the abundant collective agreement provisions as constituting a rigorous and complete code of rules with respect to the subject matter dealt with therein. There is certainly no want of nooks and crannies to explore or permutations and combinations to be forged in efforts to read and understand the many provisions of the agreement and their relations to one another. For example, travel allowances may vary depending on one’s headquarters, one’s home location, whether the travel is less than 20 kms or 30 kms or more than 20kms or 30 kms or 35kms. These and other variables may be combined in different forms rendering different results.

17. There was also little, if any, dispute between the parties as to the entitlement of employees who did or would have travelled by the Company selected mode. Like the grievors, they would have been compensated for travel time and expenses from the first terminal to the last. Additionally, however, they would or could have received further compensation in respect of travel costs and time involved in getting to the first terminal. As employer counsel put it, if those employees' travel required a taxi from their reporting centre to the first terminal, that expense (presumably including travel time) would have been covered. I note that such a result for those employees is consistent with the provisions of 23.06, which, unlike those of 23.14, explicitly identify the relevant distance as that to/from the employee's reporting centre. But the union seeks, one way or the other, similar treatment for the grievors (even though they would not have been required to "get to the first terminal" whether from their homes or reporting centre).
18. As indicated in the opening words of Article 23.14 "the Company shall normally determine the means of transportation". To that end the company's practice has been to regularly monitor travel times and costs associated with common carrier offerings. The collective agreement is national in scope. Within Ontario, the Toronto-Belleville route is one of over 20 travel routes that the company regularly monitors. Essentially, travel options offered by common carriers are periodically reviewed and the Company selects the most competitive option, having regard to both fares and travel times. The selected travel option is then used as a base for claims made under both Article 23.06 (where employees travel via common carrier) and 23.14 (where employees travel in private vehicles, as did our grievors). The company's thus established travel rates for Toronto-Belleville (return) during the relevant period typically varied between \$55 and \$84 in fare costs; actual travel time was relatively constant at about three and a half hours. Over the relevant period (some 12-15 months) the "first terminal" was typically STC, occasionally Union Station and, in one exceptional instance which lasted approximately one month and generated significantly higher amounts of paid expenses, Pearson.
19. The union certainly expressed some dissatisfaction with various aspects of the manner in which the company establishes these rates. However, except for the specific facts before us, that is not the issue being dealt with in these proceedings. And while the Company's practice of fixing travel rates for established routes may be of considerable vintage, the parties agreed that it was only shortly before the instant grievances were filed that the

grievors or the union first learned that the Company was using STC as the first terminal for Toronto-Belleville travel. Before me, the Company did not (nor did it ask me to) rely on its practice as a guide to the interpretation of the collective agreement.

20. The principal focus of the union's claim before me was the propriety of the Company's selection of STC as the first terminal. I turn to that question now. I set out Article 23.14 once again:

23.14 Although the Company shall normally determine the means of transportation, an employee may elect to travel by a mode of transportation other than the one chosen by the Company. In such case, however, the employee is entitled to the transportation expenses and travel time that would normally have been incurred had he travelled by the mode of transportation determined by the Company but only to the extent of costs that would have been incurred and time that would have been spent between the first and last terminal of an airline company, inter-city bus company, or inter-city railway company.

21. It is clear that the Company determines the means and mode (if there is a difference between the two) of work-related travel transportation, subject to an employee's right to elect to travel by alternate means. However, even in such a case, the employee's claim for time and travel expenses is limited to those associated with the Company's choice. And the resulting travel expenses are measured, not from the employee's home or reporting centre, but from the "first terminal" of travel. The employer asserts that the first terminal in this case, is the one it selected, STC. The union claims the appropriate terminal ought to have been Pearson, on account of its proximity to the grievors' reporting centre.
22. Does Article 23.14 provide the answer to this interpretative battle? In my view, it does not, at least not explicitly or directly without reference to other provisions of the agreement. "Terminal" is not defined, though it is related to an airline, bus or railway company. Unless one accepts the employer submission that selection of the means/mode of transportation necessarily includes the selection of the first terminal, I do not think the answer is to be found solely within the confines of 23.14. The Company may select, as it did, bus as the mode of transportation. There are, however, three terminals offering that mode of transport within the Toronto headquarters region. Does 23.14 tell us that the one preferred by the company for reasons of economy and efficiency is to be selected over Pearson, the

one that would generate more generous travel related compensation for the grievors? It does not.

23. However, I come to the same ultimate conclusion as the Company, through a slightly different route. Apart from emphasizing the importance of “reporting centres” in the general functioning of the agreement (a proposition that drew no quarrel from the employer), the union was unable to point to any specific provision of the agreement to bolster its claim that Pearson ought to have been selected as the first terminal. The union’s argument was an appeal to fairness – “why should employees be treated as commencing their travel from a point 30kms distant from their reporting centres?”. And while there may be some equitable appeal to the union’s urgings, that does not necessarily amount to a proper legal claim under the collective agreement.
24. The parties included Article 8.01, the Management Rights clause, in their agreed facts. It provides:

ARTICLE 8 MANAGEMENT RIGHTS

8.01 The Company has the exclusive right and power to manage its operations in all respects and in accordance with its commitments and responsibilities to

the public, to conduct its business efficiently and to direct the working forces and without limiting the generality of the foregoing, it has the exclusive right and power to hire, promote, transfer, demote or lay-off employees, and to suspend, dismiss or otherwise discipline employees.

8.02 The Company agrees that any exercise of these rights and powers shall not contravene the provisions of this Agreement.

25. While there is little that is remarkable in this clause, in my view it tips the balance in favour of the employer in the interpretive issue before me. The clause reminds us of a number of general propositions widely applicable in collective bargaining contexts. Subject to the collective agreement provisions parties negotiate, employers maintain the right to manage their enterprise. The exercise of management rights cannot conflict with the provisions of

the collective agreement. Where a matter is not regulated by the collective agreement, employers have a wide latitude in the exercise of their management rights.

26. However, even where there is no conflict with a provision of the collective agreement, the exercise of a management right may yet be subject to arbitral review. The scope of such review is limited, ranging in its standards from prohibitions on conduct which might be characterized as arbitrary, discriminatory or in bad faith up to the application of a test of reasonableness. There was no suggestion that the employer's selection of STC was arbitrary, discriminatory or in bad faith. And, even in the face of a reasonableness test, I am satisfied that the employer's selection of STC was not a violation of the collective agreement. In that respect, the scope of my review of the employer choice of STC rather than Pearson, as advocated by the union, is a limited one. It is not my role to determine which is the better or even the fairer choice. Rather, I must consider whether the employer's choice was a reasonable one in the circumstances. With a number of possible terminals available within the Toronto area to be selected as the first terminal, there is no dispute that the employer made its selection on the basis of economy and efficiency. I am not persuaded that was an unreasonable choice. Thus, I am not persuaded that the employer violated the collective agreement, by virtue of selecting STC as the first terminal.
27. Turning to the union's alternative submission, we have seen that employees who do and do not travel by the mode of transportation chosen by the Company are treated equally in one respect: both are compensated for travel time and expenses as established by the Company for travel between "the first terminal" and the ultimate destination. However, they are treated differently in another respect: the first group of employees may be entitled to further compensation in relation to travel from their reporting centre to the first terminal; the grievors received no such compensation or equivalent. The union seeks to undo that disparity.
28. In support of that effort, the union pointed to a number of collective agreement provisions which may be seen to articulate general principles applicable to reimbursement of travel expenses.
29. I note at the outset, however, that that Article 23.06, which applies to employees who travel by the Company selected mode, contemplates the Company payment of "**actual ...**

transportation expenses” [emphasis added]. Article 23.14, which applies to the grievors, does not.

30. Just as revealing is the fact that the provisions pointed to by the union specifically exclude 23.14 from their application:

Transportation Expenses

23.09 Transportation expenses means, subject to section 23.14, expenses incurred for transportation by common carrier or equivalent.

23.10 It is the Company's intention with respect to living and transportation expenses that, except as provided in subsections 23.08 (b) and (c) and section 23.14, an employee be reimbursed on the basis that there will be neither financial loss or gain to the employee for reasonable expenses incurred.

31. The fact of and the rationale for the exclusion of these principles from the application of Article 23.14 is evident. How might one commence to quantify the “actual expenses” incurred by an employee driving their own vehicle for work related travel? The obvious fashion might be to establish an amount payable per kilometer travelled as a proxy for asset depreciation. These parties are familiar with that approach: they have used it in other circumstances (see Article 23.04). But they have not used it here. And if there is no method proffered for quantifying actual expenses, how might one ascertain whether the goal of financial neutrality (articulated in Article 23.10) is to be achieved in any given case? The parties have simply eschewed these options in cases where employees opt to travel by a mode other than the one offered by the company. In these cases, the parties have agreed, in lieu of measuring and reimbursing actual expenses, which would undoubtedly vary from employee to employee, to employ a proxy to be universally applied to affected employees.
32. The union’s submissions suggest that it is as if the grievors have been required, without compensation, to travel from their Atwell reporting centre to STC to commence their travel. One can perhaps appreciate the sentiment expressed, albeit in a metaphorical fashion. But none of the grievors travelled from their homes or their reporting centre to STC. They would all have travelled directly to Belleville without stops at either Atwell or STC. While union counsel is to be congratulated on the creativity of his submissions, the claim that the grievors have incurred additional externally imposed expenses for having to travel from

Atwell to STC is notional, at best. And neither counsel nor the collective agreement articulate any reasonable basis upon which to quantify such a claim. And, in any event, the structure of the collective agreement and Article 23.14 thereof make clear that where employees opt to travel in a fashion other than that determined by the Company, their travel time and expenses are not compensated on the basis of their actual individual travel time and expenses (notional or real) but on the basis of a formula establishing a proxy for those.

33. Are employees who elect to travel by alternate means disadvantaged as a result of that choice? Perhaps some are, but that would depend on an assessment of various personal factors, including the employee's home location and the preferences they might have regarding lengthy (albeit compensated) travel time and the convenience of vehicle access at their destination. Fortunately, the wording of Article 23.14 makes it unnecessary to undertake any such assessment: it establishes a simple universally applicable proxy for travel time and expenses to be paid to employees who make the election the grievors did. And, of course, should the grievors or other employees deem such an election to be disadvantageous, it can be foregone and employees can have the assurance that, to the extent actual travel from the reporting centre to the first terminal is required, compensation will be provided for that portion of the trip.
34. I am not persuaded that the Company's selection of STC as the first terminal is incompatible with the provisions of the collective agreement. Similarly, I am not persuaded that the grievors are entitled to any further compensation (beyond that contemplated by Article 23.14) in respect of their notional travel to STC.
35. Having regard to the foregoing, the grievances are hereby dismissed.

DATED AT TORONTO THIS 14th DAY OF JULY 2021



Bram Herlich
Sole Arbitrator

APPENDIX I - ARTICLES 22 (part) and 23
OF THE COLLECTIVE AGREEMENT

ARTICLE 22
TRANSFERS AND REASSIGNMENTS

Definitions

"Headquarters" means a locality and its contiguous territory in and from which an employee normally works as provided in Attachment B of this Agreement.

"Reassignment" means an employee's assignment to another occupation and/or another work location within the employee's headquarters, or in the case of an employee in Toronto or Montreal, within his headquarters and within a 20 airline km radius from his reporting centre.

"Transfer" means the assignment of an employee on the basis that he will be required by the Company to begin or end his scheduled tour of duty in a headquarters other than his own, or in the case of an employee in Toronto or Montreal, to another headquarters or to a reporting centre other than his assigned reporting centre and more than 20 airline km from his assigned reporting centre. Transfers cannot be used to move employees between classes.

"Upgrade" means the reassignment of an employee to an occupation of a higher classification.

"Demotion" means the reassignment of an employee to an occupation of a lower-rated classification.

"Lateral" means the reassignment of an employee to a different recognized function within the same occupation, or to another occupation of the same classification as the employee's former occupation.

"Reclassification" means a change to the employment status of an employee (e.g., from Temporary to Regular, from Temporary Part-Time to Regular Full-Time).

"Reporting centre" shall mean a specified location provided for the use of the Company, in an employee's headquarters, and may be a work centre, central office, locker location, storeroom, customer's premises, temporary training centre, warehouse or other Company premises or similarly fixed location to which an employee is assigned.

"Job location" shall mean any other location to which an employee is assigned to report, which is not his reporting centre.

"Reporting locality" is defined as being within the limits of a circular area having a radius of 2 airline km from the employee's regular reporting centre.

22.01 Each employee shall be assigned a reporting centre by the Company within a headquarters as listed in Attachment B. An employee is to be notified in writing by the Company of a change in reporting centre.

Transfers

22.02 (a) The transfer of an employee for a continuous period of more than 90 days shall be considered a permanent transfer.

(b) The transfer of an employee for a continuous period of 90 days or less shall be considered a temporary transfer.

(c) To be eligible for a transfer the employee's performance on his existing job must meet job requirements.

22.03 Sections 22.02 through 22.11 inclusive shall not apply to the reassignment of an employee affected under the provisions of Article 11.

22.04 Five days notice shall normally be given to an employee who is, at the request of the Company, transferred for an overnight or longer period. Where such notice is not given and an employee is transferred with less than five days notice, he shall be paid one-half time extra for the basic hours of work for each day of the balance of the five day period during which the employee is so transferred.

Permanent Transfer

22.05 The Company will give the employee 30 days notice of a permanent transfer.

22.06 In the selection of an employee for permanent transfer, the Company will first give consideration to the most senior employee who will volunteer from the occupation at the reporting center from which the transfer is to be made and who has the necessary qualifications.

22.07 In the event there is to be a permanent involuntary transfer, the employee of least seniority in the occupation, at the reporting centre from which the transfer is to be made shall be selected.

22.08 When an employee is permanently transferred from one headquarters to another at the request of the Company, and as a result of such transfer an employee's new report centre is further from his home than was his former report centre prior to the transfer and a change of residence is required, the employee shall be reimbursed for moving expenses as approved by the Company and in accordance with Company practices. The Company agrees with respect to employee expense incidental to a transfer, that it will not diminish, during the term of the Agreement, the level of reimbursement that applied on the date of signing of the Agreement.

Temporary Transfer

22.09 In the selection of an employee for temporary transfer, where the employee is required by the Company to remain away from his home for a period which is expected by the Company to be in excess of two weeks, the Company will give first consideration to the most senior employee who will volunteer from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications.

22.10 In the event that there is no volunteer, as provided in section 22.09, the employee of least seniority from the functional group in the seniority unit, at the reporting centre from which the transfer is to be made, and who has the necessary qualifications, shall be selected.

22.11 It is the Company's intention that on completion of a temporary transfer the employee shall be returned to his former position and reporting centre. It is understood that such re-transfer will not be possible where an emergency situation exists, or where due to unplanned or unforeseen events there is insufficient work and, therefore, his former position at his former reporting centre is not open. However, in order to enable a more senior employee who is on temporary transfer to return to his former reporting centre, the Company agrees to displace an employee with less seniority in the same

functional group at that reporting centre.

Reassignments

- 22.12** (a) In the selection of an employee for:
- a permanent lateral reassignment, or
 - a temporary lateral reassignment for more than 30 days,

to another reporting centre outside his reporting locality, the Company shall first give consideration to the most senior volunteer. In the event that there is no volunteer, the employee of least seniority shall be selected. The reassigned employee shall be from the functional group in the seniority unit within thereporting centre from which the reassignment is to be made.

(b) To be eligible for a reassignment the employee's performance on his existing job must meet job requirements.

ARTICLE 23 TRAVEL ALLOWANCE, LIVING AND TRANSPORTATION EXPENSES PAID

Travel Allowance To and From the Job

23.01 (a) Where the notice referred to in section 22.01 has been given and where an employee is assigned inside his headquarters

(i) to a reporting centre less than 30 airline km from his reporting centre, less than 20 airline km in the case of an employee in Montreal and Toronto, that location shall become his reporting centre 30 days following the first day he reports to that location or, where he elects to invoke the provisions of subsection 23.02 (b), paragraph (i), 30 days following the first day he reports, or the date of election, whichever comes first.

(ii) to a reporting centre 30 or more airline km from his reporting centre, 20 or more airline km in the case of an employee in Montreal and Toronto, and closer to his home than his reporting centre, that location shall become his reporting centre 30 days following the first day he reports to that location.

(iii) to a reporting centre 30 or more airline km from his reporting centre and further away from his home than his reporting centre, that location shall become his reporting centre 120 days following the first day he reports to that location.

(iv) to a reporting centre 35 or more airline km from his

reporting centre, 20 or more airline km in the case of an employee in Montreal and Toronto, and further away from his home than his reporting centre, he may elect the provisions of subsection 23.01 (a) paragraph (iii) or to change his residence in accordance with the provisions of section 22.08 in which case that location shall become his reporting centre immediately.

(b) Where the notice referred to in section 22.01 has been given and where an employee is assigned to a reporting centre outside his headquarters, that new location shall become his reporting centre 120 days following the first day he reports to that location.

(c) Where an employee is assigned to a location other than his assigned reporting centre, he will be eligible for the payment of travel allowance as provided in subsection 23.04 (a) until such time as that location becomes his reporting centre.

23.02 (a) An employee shall start his tour of duty at his reporting centre, at a Plant Training Centre or at a job location, as directed.

(b) Where an employee is directed to start or end his tour of duty at a job location outside of his reporting locality but within 30 airline km of his reporting centre, within 20 airline km in the case of an employee in Montreal and Toronto, and where there is no convenient public transportation to that job location, the employee may either:

(i) report to his reporting centre, provided that he advises his manager in advance, or

(ii) agree to report directly to the job location, as directed, in which case the provisions of section 23.04 apply.

23.03 Where an employee starts and ends his tour of duty within the boundaries of his reporting locality, travel allowance will not be paid.

23.04 (a) Except as otherwise provided in sections 23.05 and 23.06, where an employee who is providing his own transportation to travel daily between his home and the work location, and who so travels on his own time, is required to begin or end his tour of duty at a point beyond the boundaries of his reporting locality, he shall be paid, travel allowance for mileage incurred, in accordance with the following:

By determining the kilometres between his permanent and new work locations; and

For the first 5000 km in a calendar year 41.0 cents per km;
5000 and over km's in the calendar year 35.0 cents per km.

(b) Travel allowance shall only be paid in accordance with subsection 23.04 (a) where the employee reports to a work location, which is further from his home than his reporting centre.

23.05 Employees shall be entitled to living and transportation expenses, in lieu of travel allowance, for tours of duty beginning or ending at points between 30 and 72 airline km inclusive, 20 and 72 airline km inclusive in the case of an employee in Montreal and Toronto, from the employee's reporting centre provided the employee so requests it and his manager reasonably decides that

- (a) the employee commences work very early in the morning, or
- (b) the employee finishes work very late at night, or
- (c) inclement weather results in hazardous driving conditions, or
- (d) the employee does not have access to convenient public transportation.

23.06 Where an employee is required to begin or end his tour of duty at a point more than 72 airline km from his reporting centre, the Company shall pay his actual living and transportation expenses, at or near the location of his temporary assignment, or, if the Company and the employee agree, he may be permitted to return home daily and he shall be paid a daily travel allowance as provided for in section 23.04.

23.07 Five days notice shall normally be given to an employee who is required by the Company to be away from his home for an overnight or longer period. Where such notice is not given, an employee shall be paid one-half time extra for the basic hours of work for as many days as he is away overnight for the balance of the five day period.

Living and Transportation Expenses Paid

Living Expenses

23.08 Where an employee is required to travel on Company business and to remain away from home overnight, he shall receive living expenses as follows:

- (a) Reasonable and actual expenses for satisfactory, single occupancy room where it is available, and
- (b) a per diem allowance of
 - (i) \$50.00 per calendar day,
 - if the employee is away for a full calendar day, or
 - (ii) \$12.00 if away over the breakfast period,
\$17.00 if away over the lunch period, and

\$21.00 if away over the dinner period

if the employee is away for less than a full calendar day.

(c) the per diem allowance referred to in subsection 23.08 (b) shall cover all expenses incurred by an employee who is required to travel on Company business except for local transportation and as otherwise specifically provided in this Article.

Transportation Expenses

23.09 Transportation expenses means, subject to section 23.14, expenses incurred for transportation by common carrier or equivalent.

23.10 It is the Company's intention with respect to living and transportation expenses that, except as provided in subsections 23.08 (b) and (c) and section 23.14, an employee be reimbursed on the basis that there will be neither financial loss or gain to the employee for reasonable expenses incurred.

23.11 Transportation expenses shall be paid by the Company when an employee incurs such expenses on a job assignment except when an employee is being paid a travel allowance.

23.12 Periodic Trips

- (a) An employee, assigned to a headquarters in Ontario or Quebec, who is receiving living expenses, while on a job assignment in Ontario or Quebec, shall be entitled to a trip to and from his home once every week. Such employee shall be paid on a straight time basis for travel time required by commercial transport to the extent that such time is outside the time paid for work on that day. In addition, he shall be paid for transportation expenses.
- (b) An employee, assigned to a headquarters in Ontario or Quebec, on a job assignment to a work location outside of Ontario or Quebec, and any employee from other provinces, who is receiving living expenses shall be entitled to periodic trips to and from his home based on the following:

Distance from home or report center (whichever is closer) to the work location is:

72-1000 airline km's shall be entitled to a trip to and from his home once every week

More than 1000 km's shall be entitled to a trip to and from his home at least 16 times per year based on the periodic calendar.

There shall be at least 16 periodic trips per calendar year designated on specific dates:

One (1) trip in conjunction with Christmas/ New Years period

The remaining trips will be scheduled throughout the year taking into account statutory holidays and the dates for these shall be agreed upon annually by the Company and the Union.

Note: these dates may be adjusted with mutual consent to take into account the employee's annual vacation period.

Such employee shall be paid on a straight time basis for travel time required by commercial transport to the extent that such time is outside the time paid for work on that day. In addition, he shall be paid for transportation expenses.

23.13 The Company will pay for one telephone call of reasonable length to such employee's home per day to a maximum of three per week.

23.14 Although the Company shall normally determine the means of transportation, an employee may elect to travel by a mode of transportation other than the one chosen by the Company. In such case, however, the employee is entitled to the transportation expenses and travel time that would normally have been incurred had he travelled by the mode of transportation determined by the Company but only to the extent of costs that would have been incurred and time that would have been spent between the first and last terminal of an airline company, inter-city bus company, or inter-city railway company.

23.15 An employee, who takes sick or meets with an accident while receiving living expenses from the Company, may be returned to his headquarters or established home within the Company territory at the expense of the Company.

23.16 An employee who, because of sickness, remains at the hotel or boarding house at the Company's request shall be entitled to living expenses.

23.17 An employee, whose living expenses are being paid by the

Company and who is quarantined, shall continue to receive such expenses until released.

23.18 An employee who is being transported in a Company-owned or leased vehicle shall return to his assigned reporting centre daily from all distances up to 72 airline km from that reporting centre. If working more than 72 airline km from his reporting centre, an employee may be asked to return to his reporting centre or remain at the distant location at the option of the Company. If required to remain at the distant location he shall be eligible to living expenses in accordance with section 23.08. An employee will not be asked to remain at the distant location for more than one night except in cases of emergency.

**APPENDIX II – THE PARTIES’
AGREED STATEMENT OF FACTS**
(Exhibits are not reproduced)

IN THE MATTER OF GRIEVANCES

BETWEEN:

EXPERTECH NETWORK INSTALLATION INC.

(“Expertech”)

- and -

UNIFOR, UNION OF CANADA, LOCAL 30-0

(“Unifor Local 30-0”)

AGREED STATEMENT OF FACTS

The Collective Agreement

1. Unifor is the exclusive bargaining agent all unionized employees of Expertech in Canada working in connection with the installation of communications and related equipment.
2. The applicable Collective Agreement between Expertech and Unifor had a term of March 23, 2016 to November 30, 2019 (the “Collective Agreement”), and has since been renewed.
3. The Collective Agreement includes Article 8 – Management Rights clause that provides as follows:

MANAGEMENT RIGHTS

8.01 The Company has the exclusive right and power to manage its operations in all respects and in accordance with its commitments and responsibilities to the public, to conduct its business efficiently and to direct the working forces and without limiting the generality of the foregoing, it has the

exclusive right and power to hire, promote, transfer, demote or lay-off employees, and to suspend, dismiss or otherwise discipline employees.

8.02 The Company agrees that any exercise of these rights and powers shall not contravene the provisions of this Agreement.

4. Article 22 and 23 of the Collective Agreement form the basis of this dispute. The Collective Agreement is appended as **Exhibit 1**.
5. There are nine (9) grievors whose claims are subject to the dispute. Myles McDonough, Justyn Viterbo, Andrew Nielsen, Brandon Geobey, Paolo Ortega, Darren Hann, Grant Hearn, Maxwell Kueper and Gordon Brown (collectively, the "Grievors").
6. All of the Grievors were at all relevant times employees under the Collective Agreement. The Grievors were all hired with a headquarters of Toronto and a reporting centre of 240 Attwell Drive.
7. When employees are temporarily transferred to a reporting centre less than 72 kms from their permanent reporting centre, the employees receive travel allowance by way of mileage reimbursement instead of transportation expenses. For instance, on occasion, the Grievors have been temporarily transferred to 110 Ridgetop Rd Scarborough including for weeklong training sessions. On such occasions, the Grievors have been paid travel allowance for mileage incurred between Attwell and Scarborough reporting centres in accordance with Article 23.04.

Circumstances Giving Rise to the Grievance

8. Each of the Grievors were from time to time assigned to work in Belleville, Ontario. On such occasions, they were expected to commence their work as early as 6 am on Monday morning. They would work four consecutive shifts, then travel back to their homes at the completion of the fourth shift on the Thursday

afternoon/evening. These assignments are “temporary transfers” as contemplated under Article 22.09 of the Collective Agreement.

9. These temporary transfers are typically for 90 day periods. During the temporary transfer periods, employees have a different reporting centre for the duration of the temporary transfer (e.g. 380 College St. Belleville) and are entitled to periodic trips as contemplated by Article 23.12 (a).
10. The closest Terminal to the 240 Attwell Drive reporting centre is Pearson Airport. The closest Terminal to the Belleville reporting centre (380 College St Belleville) is the 10 Acre Truck Stop. The distance from 240 Attwell Dr to Scarborough Town Centre is 31 km.
11. When employees are transferred, the Company selects the most cost-effective routes including terminal(s) when determining travel arrangements under the Collective Agreement. This determination is made based on a consideration of travel time and transportation expenses including those related to taxi expenses to and from the respective terminals.
12. Pursuant to Article 23.14, the Grievors would regularly elect to travel to/from Belleville in their personal vehicle(s). They also would use their personal vehicle to travel to and from the hotel and the Belleville reporting location.
13. In connection with the temporary transfers to Belleville, the Grievors were paid transportation expenses and travel time. The transportation expenses and travel time paid in connection with the Belleville assignments were adjusted by the Company approximately every 90 days and are reflected in the following chart:

April 7 to July 8/19*	\$60	3.5 hours travel
July 8 to October 7/19	\$71	3.5 hours travel
October 7/19 to January 6/20	\$62	3.5 hours travel

January 6 to April 6/20	\$55	3.5 hours travel
April 6 to July 6, 2020**	\$84	3.5 hours travel

*Subject to adjustment for roughly 1 month period described in paragraph 26 below.

** Noting, however, that the Attwell reporting centre was closed by the end of May and the employees were assigned to other reporting centres.

14. The Company calculated its transportation expenses and travel time with referenceto the Data of TRA Calculations and Travel Costs for travel between Toronto and Belleville as enclosed at **Exhibit 2**. The data is collected by a Regional Associate(s) approximately every 90 days and then the expense and time amountsare approved by a Regional Manager, who at the time was Brad Dockstader.
15. Until the circumstances described below, the Company’s use of Scarborough TownCentre Terminal as a terminal for determining travel expenses and travel time wasnot known to the Grievors or Union.
16. On April 16, 2019, Gordon Brown exchanged a series of emails with one of the Company’s Regional Associates in the clerical bargaining unit, Sarah Safie. The entire email chain is enclosed as **Exhibit 3**. Mr. Brown’s initial email is as follows:

Hey there, I am part of the crew working out in Belleville and I was wondering what method of travel you have for the guys going from Attwell to Belleville on Monday and back on Thursday.

The cheapest method of travel I had found was the megabus at \$44 each way, but I am not the wizard at this stuff!

Just curious, thanks!

Gordon Brown
17. Ms. Safie responded, “Yes the cheapest method is the bus and \$44/each way is avery good price.”

18. Mr. Brown further wrote:

I went thru and basically booked a ticket with a total of \$101.70, so I will start taking that out for the next few months then. The fastest travel time according to Mega Bus is 2 hours and 35 minutes each way.

We have been taking less money and travel time then we are owed for the last several months. Is there a way to go about getting it back without grieving? I do not exactly want to rock the boat, but we never should have been taking the amount set aside for guys that work from Scarborough.

I really appreciate your help.

Gordon Brown

19. Ms. Safie responded:

I just found tickets on busbud.com for \$77.75 both ways.

Your trip

Monday, Apr 22
Greyhound
★★★★☆ 58 reviews

9:30 AM **Toronto**
Toronto Coach Terminal

11:55 AM **Belleville**
Ten Acre Truck Stop

Thursday, Apr 25
Greyhound
★★★★☆ 58 reviews

12:30 PM **Belleville**
Ten Acre Truck Stop

2:15 PM **Toronto**
Scarborough Town Centre

Price breakdown	
Mon, Apr 22	
Passengers	
Traveler 1: Adult	\$39.90
Thu, Apr 25	
Passengers	
Traveler 1: Adult	\$28.90
Subtotal	\$68.80
Fees ⓘ	\$0.00
Taxes ⓘ	\$8.95
I have a discount code	
Total ⓘ	\$77.75 CAD ▾
Questions? FAQ Contact us	

20. On May 24, 2019, Mr. Brown copied Debra Lindenblatt, an Expertech's CSC ProjectSupport Associate in the clerical bargaining unit and Robert Pirri, Mr. Brown's Manager on his response:

I am including my manager on this email and our CSC, as there still seemsto be some question as to if I should be taking \$60, or the \$77.75 that youfound.

I am under the impression that I can take out \$77.75 per week since April 16th when you sent your response to me.

21. Ms. Safie responded:

Good morning Gordon,

Please be advised that the TRA amount for Toronto to Belleville that you can claim if you choose to take your **Travel Per Diem is \$60** as shown below. The \$77.75 was the best rate I found for you on the day of travel you requested but it **does not** reflect the Per Diem amount.

Tour Date 01/04/2019 01/07/2019

Type of Travel	Bus
From	Toronto
To	Belleville
Price for both ways	\$60.00
TRA hours to Toronto	1 hr 45 mins
TRA hours to Belleville	1 hr 45 mins
Total TRA hours per week	3 hrs 30

mins I hope this helps.

Thank you,

22. Mr. Brown forwarded this email to the Union's then-Chief Steward, David Wray, asking:

I would have thought based on Sarah's responses I was able to take \$77.75/week, but apparently not. Is there anything that can be done about this? I'm sure some of the boys would jump on board if they know we have a leg to stand on. Its \$17.75 more per week.

Thanks for your help, sorry to bother you on a Friday.

Gord

23. Mr. Wray wrote to Ms. Safie on May 27, 2019:

Hi Sarah. As per our conversation. So you have below a price for \$60 from Toronto to Belleville. Is the bus terminal starting point you're getting that price from close to the Birchmount workcentre? There are some guys here that report to that workcentre.

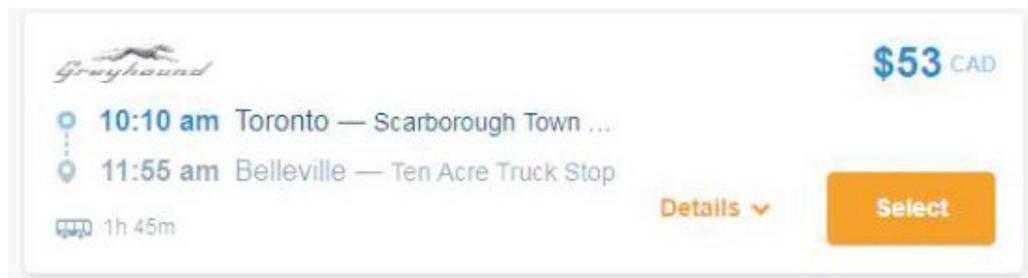
We also have some techs that report out of 240 Attwell workcentre working in Belleville where the closest bus terminal is at the Toronto airport. They should be getting more for the bus fare and also more travel time as it is farther away. Could you please look into it and get back to me with the different rates and time difference for those techs. Thank you for looking into it for me.

24. Ms. Safie forwarded Mr. Wray's email to Brad Dockstader, Expertech's Regional Manager, asking:

Hi Brad,

Dave Wray sent me the below email asking for information about the travel quote from Toronto to Belleville. The way we calculate TRA amount is by choosing the most affordable price. And the below is what I got. Can you please answer his question about the techs working out of Birchmount report center, since I'm not supposed to speak with the union and they have to come to you directly?

25. Ms. Safie included the chart she had sent Mr. Brown on May 24 as well as the following:



26. Based on the information he was provided, Mr. Dockstader agreed that commencing May 27, 2019, the Grievors who were required to travel to Belleville received 5.75 hours' travel time per week, as well as transportation expenses of \$77.50 per week. These payments remained in place until the next 90 day review at the beginning of July, at which time the Company adjusted to \$71 per week in transportation expenses and 3.5 hours' travel time per week.

27. The Union filed grievance Nos. 30-O-19-01EXP through 30-O-19EXP on behalf of the nine Grievors in June and July 2019. Each grievance stated the nature of the grievance as, “[The Grievor] and the Union believes that the employer has violated Article 8 and article 23 of the collective Agreement by not paying proper travel expenses and time allotted for travel.” The Union seeks “Full redress including, all lost time and associated expenses to be paid and the grievor to be made whole to their satisfaction.” The grievances are at **Exhibit 4**.
28. In August 2019, two grievors-- Gordon Brown and Maxwell Kueper—opted to travel to Belleville by bus. This was for three shifts following the long weekend. The Grievors travelled to Ten Acre Truck Stop on Tuesday morning from Pearson Airport and from the Ten Acre Truck Stop and on Thursday afternoon after their shift was completed on 4 pm.
29. The emails pertaining to the scheduling of these Grievors’ bus travel between Toronto and Belleville are at **Exhibit 5**. Their travel was booked as follows:

Your trip

Tuesday, Aug 6

Greyhound

★★★★☆ 32 reviews

6:05 AM **Toronto**
YYZ Airport

6:35 AM TORONTO, ON
Departs 9:30 AM

11:55 AM **Belleville**
Ten Acre Truck Stop

Thursday, Aug 8

Greyhound

★★★★☆ 32 reviews

12:25 PM **Belleville**
Ten Acre Truck Stop

2:50 PM TORONTO, ON
Departs 3:30 PM

4:30 PM **Toronto**
YYZ Airport

30. The total cost of each Grievor's bus travel was \$102.40 (see **Exhibit 6**). The grievors incurred an additional \$93 in taxi expenses to/from the bus terminal, accommodations and reporting centre (see **Exhibit 7**). The actual expenses incurred were paid in accordance with the requirements of Article 23.11.
31. In addition, the Grievors were paid 14.5 hours' travel time for their time incurred during

this travel to and from Belleville.

32. On the week prior to their August 6 departure, Mr. Brown spoke with his manager Mr. Pirri about this travel by bus. Mr. Brown indicated the travel mode and times that were being booked for Mr. Brown and Mr. Kueper. Mr. Brown obtained Mr. Pirri's agreement that he and Mr. Kueper could commence their shift in Belleville at 12:00 pm noon on Tuesday, August 6, 2019. The Company is not in a position to confirm that this discussion occurred but also does not dispute same.
33. Although the Company does not dispute the August travel arrangements outlined above, it is noted that such were booked by a clerical Regional Associate and occurred following the August long weekend.
34. The Company asserts that these travel arrangements were not reviewed with the Regional Manager, Brad Dockstader. The Union has no knowledge of such and is unprepared to agree to this stipulation. Should the Arbitrator feel that proof of this stipulation is material to his resolution of this dispute, the Company would be prepared to call Mr. Dockstader as a witness.
35. Expertech denied the Grievance on September 27, 2019 (**Exhibit 8**):

The Company Grievance Committee has completed a review of the above mentioned grievances and finds no violation of the Collective Agreement.

The Company maintains its position that it has acted in accordance with the craft collective agreement and has appropriately applied the living and transportation expenses provisions as they relate to the grievors' temporary transfer(s) in question.

The grievances are therefore denied.

We trust that the above is satisfactory and look forward to your written acknowledgement

36. The grievance was referred to arbitration on January 27, 2020.

37. It is the Company's position that the data collected by the Company and outlined in paragraph 13 above applies to employees travelling from Toronto to Belleville. It is the Company's position that this would apply to any of its employees working in other reporting centres including, in 2019, the locations of 1500 Birchmount Rd., 240 Attwell Dr. and 16 Norelco Dr. Other Toronto locations in 2018 included Railside Dr. and Belfield Rd. which both closed on December 31, 2018.