

IN THE MATTER OF AN ARBITRATION

BETWEEN

GOVERNMENT OF BRITISH COLUMBIA  
(B.C. PUBLIC SERVICE AGENCY)

AND

THE PROFESSIONAL EMPLOYEES ASSOCIATION

(Grievance of Hayter, Salokannel & Hart)

Arbitrator : Donald R. Munroe, Q.C.

For the employer : Peter A. Gall, Q.C.

For the union : Ernie Gorrie

Date and place of hearing : October 6, 2006  
Vancouver, B.C.

This arbitration proceeding arises from a union grievance dated December 15, 2004. The grievance was filed on behalf of three Practices Foresters, namely, Mark Hayter, Susan Salokannel and Derek Hart, who are employed by BC Timber Sales (BCTS) and headquartered at the BCTS office at Fort St. James.

The issue in this proceeding is whether the grievors are “stationary employees” (as the union contends) or “field status employees” (as the employer contends) as those terms are defined in the parties’ collective agreement. A resolution of that issue effectively resolves the underlying question of whether the grievors are entitled to “travel status”, which is to say, a meal (lunch) allowance when travelling away from their designated headquarters with the approval of the employer. (“Headquarters” is defined in the collective agreement as including the area within a radius of 32 kilometres of where employees ordinarily perform their duties.) Under the collective agreement, only “stationary employees” can claim “travel status”. Such status -- and the meal allowances that go along with it -- cannot be claimed by “field status employees”.

The definitions in the collective agreement of “stationary employees” and “field status employees” are as follows:

**Stationary Employees** are employees who occupy positions that require them to:

- (a) carry out their duties on a day-to-day basis at their headquarters, and/or
- (b) travel from their headquarters for short periods of time, and/or
- (c) travel from their headquarters more or less on a continuous basis, but whose assignments are of sufficiently short duration so that temporary headquarters cannot be practically assigned.

**Field Status Employees** are those who are normally required to work away from their point of assembly and who, on a day-to-day basis, do not work in an office, institution, plant, or other similar fixed location which is their normal point of assembly.

The collective agreement also contains definitions of “travel status” and “headquarters or geographic location”. Those definitions are as follows:

**Travel Status** with respect to an employee means absence of the employee from the employee’s designated headquarters or geographic location on Government business with the approval of the Employer, *but travel status does not apply* to employees temporarily assigned to a position outside of the designated headquarters or *to field status employees*; (Italics Added)

**Headquarters or Geographic Location** is that area within a radius of 32 kilometres of where employees ordinarily perform their duties. When employees are relocated, the headquarters area may be redefined where exceptional circumstances such as unusual road conditions exist.

All the above collective agreement provisions are identically found in the collective agreement between the employer and another union -- the B.C. Government and Service Employees’ Union (the BCGEU); and in context of that collective agreement have been considered in two prior awards. The first in time is the *Dawson* award, August 21, 1984 (Chertkow); the second is the *Bruckner* award, May 20, 2002 (Munroe).

The grievors in *Dawson* were members of a paving crew. There was no question that the grievors were “field status employees” during what the parties called the active paving season. However, the BCGEU sought to persuade the arbitrator that for that part of the year when paving was not regularly occurring, and the grievors were spending most of their time in the office, they should be considered “stationary employee” and therefore entitled to “travel status” (i.e., a

meal allowance) on those days when they were required to work more than 32 kilometres distance from their headquarters.

The employer argued that the proper interpretation of “field status employees”, as contained in the BCGEU collective agreement, requires “...a functional purposive enquiry as to the reality of the nature of [the employees’] duties”. The employer asserted that the “primary focus” of the grievors’ work was field inspection; that the record keeping and reports they were required to prepare and which for the most part were done during the non-active paving season were incidental to the inspection function of the job. Accordingly, said the employer, the grievors did not work on a day to day basis at a headquarters in a job having a primary focus or function of record keeping and reports, which would entitle them to claim “travel status” during the non-paving season if required by the employer to travel more than 32 kilometres from their headquarters (pp. 3-4).

The arbitrator in *Dawson* essentially agreed with the employer’s argument as summarized above, holding that the grievors were correctly designated as “field status employees”. On the evidence before him, the arbitrator concluded at pp. 5-6 that “...the core function of [the grievors’] job [was] that of inspection in the field of the various elements that go to making up a paving job”, going on to say this:

...This includes inspection of the various ingredients that go into the paving mix, both as to quantity and quality, as well as full inspection services during the actual laying of the pavement on the road. They also have additional functions in the field both before and after the actual work is done on any given paving project. This includes preliminary work in advance of a project...above as well as follow up work after the completion of a paving job. Other field work performed by the grievors which is not associated with a specific paving project includes what is known as “crack counts”. This is usually done in early spring and is an inspection and counting of cracks on all paving projects going back to 1972.

There is also no doubt, on the evidence, that considerable paperwork is associated with the inspection function in the area of recording test results, statistics, and other pertinent data which is necessary for the employer to protect its interests by ensuring that any given paving project has been carried out to the contractual specifications which the road contractor is obligated to meet. However, I am satisfied that all of the paperwork associated with the grievors' jobs is but incidental (albeit necessarily incidental) to the field inspection functions described above.

Later in the award, at pp. 10-11, the arbitrator in *Dawson* made these observations:

A close examination of the wording of definition [of field status employees] leads me to the conclusion that the grievors are, indeed, field status employees who are normally required to work away from their point of assembly and they do not, on a day to day basis, work in an office. To give meaning to the word "normally" is to recognize the primary focus of their jobs which is that of field inspection. What is excluded from "field status" employees by the wording in definition 11 are those employees who, on a day to day basis, work in an office, institution, etc. The question, therefore, is not do the grievors work day to day in the field but do they work day to day in an office. The language as contained in definition 11 does not focus on whether an employee works on a day to day basis in the field. It simply requires that such an employee normally be required to work away from his point of assembly. He may or may not be required to do so on a day to day basis, but to be excluded from the definition of field status, an employee would have to work on a day to day basis in an office. To answer that question then the functional purposive approach to an analysis of the job duties of the grievors becomes critical.

The evidence has satisfied me that the core function of the grievors' jobs is to carry out a vast array of inspection, field duties involving paving contracts both before, during and after the completion of a paving project. The record-keeping, data collection, statistics and all other paperwork is but necessarily incidental to the main focus of their jobs. As that focus is on their work as inspectors in the field, it cannot be said that they have a clerical focus to their job which, on a day to day basis, would normally require them to work in an office.

That they work in their headquarters offices more in the off season as compared to working in the field during an active paving season does not answer the question. All that evidence shows is that the incidental paperwork part of the job, as a matter of convenience and practical reality, is done in the main in the non-active paving season when the primary inspection function of the grievors is not required.

In *Bruckner*, the BCGEU sought to have certain employees designated as “stationary employees” (and therefore entitled to travel status/meal allowances when more than 32 kilometres from their headquarters) who had always been designated as “field status employees” (and therefore not so entitled). The employees in question were Forest Resource Technicians working at and from the Ministry of Forests office at 100 Mile House, except for one who was a Forest Health Officer working at and from the same location.

The BCGEU’s argument in *Bruckner* was based partly on the fact that the employees in question (except for one of them) typically spent less than half their time each year in the field, but also and largely on a functional or primary-focus analysis -- saying that the primary focus or functional emphasis of the employees’ jobs was their office work, not their field work (pp. 15-16).

The arbitral commentary on the work of the grievors, as it related to the issue at hand, is found at pp. 6 *et seq.* of the award:

A good example of variations between the same position in different district offices, but with the same focus, is Mr. Wright’s position as an STO 5 Forest Health Officer. Mr. Wright, as I have indicated, works at and from the 100 Mile House district office. Others in the same position work at and from other district offices. The best evidence before me is that for about a 6-week period each summer, Mr. Wright spends 70 percent of his time in the field and 30 percent in the office; that for much of the fall and winter, Mr. Wright is mostly in the office (80 percent vs. 20 percent in the field); and that in the spring and parts of the summer, Mr. Wright is roughly 65-70

percent in the office and 30-35 percent in the field. Averaging those figures for the full year, Mr. Wright's physical presence in the field is substantially less than half-time. One reason why Mr. Wright does not spend more time in the field is that, like some but not all STO 5's having identical responsibilities, Mr. Wright has an STO 3 assigned to him to assist as his field eyes and ears, so to speak. (Mr. Wright's STO 3 assistant is Mr. Hayes.) An example of an STO 5 Forest Health Officer who does not have an STO 3 assistant is the one at Salmon Arm. On the evidence before me, the Salmon Arm STO 5 Forest Health Officer, with essentially the same responsibilities as Mr. Wright, spends much closer to half his time in the field.

...That takes me to Mr. Hayes in particular. He is an STO 3 Forest Resource Technician whose functional job title is Resource Assistant Generalist. As I have already parenthetically noted, Mr. Hayes works as Mr. Wright's assistant. He does field work in the summers (including aerial surveys) for about six weeks; is mainly in the field in fall and winter, gathering information and doing detection and control work in relation to pests and diseases; and does contract administration the rest of his time. The best evidence before me is that in an average year, Mr. Hayes would routinely spend about 60-70 percent of his time in the field. The definitions in MOU #2 of "stationary employee" and "field status employee" are not cast in terms of relative proportions of time spent in the field vs. the office; and neither the union nor the employer argues that the relative proportion is more than a factor to be considered. But on the evidence before me, and drawing (as will be seen) on the *Dawson* award, I think it clear and obvious that the primary focus of Mr. Hayes' position is what's happening in the field; and that in the performance of his core duties, it is normal and expected that Mr. Hayes will work away from his point of assembly – albeit not on a day to day basis. I have no difficulty concluding that Mr. Hayes is a "field status employee", not a "stationary employee".

As I have indicated more than once, Mr. Hayes' immediate supervisor is Mr. Wright, the STO 5 Forest Health Officer at 100 Mile House district office. Mr. Wright testified that he works closely with the other grievors, particularly Mr. Hayes. As a "general overview" of his job, Mr. Wright said that as the Forest Health Officer in the 100 Mile House forest district, he is engaged in the "planning, budgeting and implementation of forest health programs in the district; the control of diseases, etc.". Mr. Wright testified that each summer, he and Mr. Hayes do aerial surveys

lasting some 3-4 weeks (four days per week, up to 5-6 hours per day) for purposes of "...mapping out any problems in the district". Mr. Wright then prepares the necessary plans and contracts, and passes out work to major licencees and contractors. In the winter, "...we do control work for bark beetles". In the spring, "there's lots of reports and finalizing". Presently, Mr. Wright is "...doing an aerial herbicide program for budworms, including contracts". This summer, "It will be back to the aerial survey". I have already spoken of the proportions of time spent by Mr. Wright in the field and in the office.

In cross examination, Mr. Wright agreed that as the Forest Health Officer at 100 Mile House, his responsibilities are entirely "...with respect to the health of the forest in your area". He agreed as well that the centerpiece of his job was "...to figure out how healthy the forest in your area is, and how to improve and maintain the health of the forest". For that purpose, Mr. Wright goes into the field: some parts of the year more than other parts. As best I can gather, Mr. Wright's assertion in this proceeding that he is a "stationary employee" is because, on an annualized basis, he spends more time in the office than in the field; and because he characterizes his field work as being incidental to the planning, budgeting and contract work he does in the office, and not vice versa.

I turn now to Mr. Bruckner. Mr. Bruckner is an STO 3 Forest Resource Technician. At the time of the grievance, his assignment was as a Compliance and Enforcement Officer. The union now concedes that, as such, Mr. Bruckner was a "field status employee", not a "stationary employee". (I note in passing Mr. Bruckner's evidence that as a Compliance and Enforcement Officer, he was in the field "most of the time".)

But the union continues to press the grievance as it relates to Mr. Bruckner in the position occupied by him in the period 1996 onward....

...For a short period in 1995-96, Mr. Bruckner's functional position was as a Post-Award Technician in the small business program, in which his field and office work would have seasonal variation. In the years 1996-2001, Mr. Bruckner's functional position was as a Pre-Award Technician in the small business program, primarily focused on timber sale licences. Mr. Bruckner testified that in that position, "I gathered all information for the small business program,



and put packages together”. Much of the work was in the office “...putting together the paper for small business, the sales....” When Mr. Bruckner was in the field, “I’d check on the boundaries; check on appraisal data; etc.” The best evidence before me is that in the years 1997-2000 (being Mr. Bruckner’s complete years in the pre-award function), Mr. Bruckner was routinely in the field for the performance of his job for some part of his working days as follows (figures rounded): 25 percent of the working days in 1997; 34 percent in 1998; 22 percent in 1999; and 25 percent in 2000.

In 2001, Mr. Bruckner was reassigned within the small business program to “road deactivation and rehabilitation”. Mr. Bruckner’s evidence was that in that functional position, “I go into the field and gather information to do the contracts; I do the prescriptions for the roads and landings, and then generate the contracts for the work to be awarded, putting the contract together completely”. Mr. Bruckner went on to say that, “Right now (the spring) when I’m doing prescriptions I’m spending most of the time out there in the field, but then I have to put all that data onto paper in contract form; then after we award [the contract] I monitor the contract which takes me into the field again”. Referring to this past winter, Mr. Bruckner said that he was “...pretty well stuck in the office for those [winter] months”. Mr. Bruckner summarized by saying that in his present functional position, it has thus far “...var[ied] from virtually all day or all week in the field, to all day or all week in the office”.

As a matter of some interest, Mr. Bruckner volunteered in cross examination that whereas last year (2001) he had someone else “...[going] out into the field gathering information for me, so that I went out only to monitor and check on the layout”, this year “...I’m actually doing the [initial] field layout work as well”.

The best evidence before me is that in 2001, Mr. Bruckner spent some part of 36 percent of his working days in the field.

In the circumstances, the arbitral conclusion was that the primary focus or functional emphasis of the grievors’ jobs was their field work, not their office work; hence, that the grievors were properly designated as “field status employees”. The following appears at pp.16-17 of the award:

...I think again that one consequence of the union's argument, if accepted, would be the drawing of fine distinctions for present purposes between individual resource-side STO 3's, and between individual resource-side STO 5's. Restating what I said above, I strongly doubt such fine distinctions to have been intended by the parties in their negotiation of the material provisions of the collective agreement. But more directly in reply to the union's argument, I think the true focus and functional justification for the jobs occupied by Messrs. Bruckner and Wright (at all material times) is events in the field, and the need to monitor, control and respond to those events. In each instance, the so-called paperwork is an important vehicle by which their program objectives are accomplished. But in the process of characterizing the employees as being *either* "field status" *or* "stationary", the so-called paperwork is not the true or central focus of their jobs. Rather, the true or central focus is events in the field: the need to monitor, control and respond thereto. For that purpose, it is entirely normal and expected that Messrs. Bruckner and Wright will engage in field work: for varying periods and from time to time. In some degree, the amount of time each of them spends in the field is a function of their own independent judgments in that regard. It certainly is not day to day, but it most certainly is a normal and expected occurrence. Looking at the definition of "field status employee", Messrs. Bruckner and Wright are focused on events in the field, and they are "normally required" to engage in field work. On the other hand, and looking now at the definition of "stationary employee", they are not "require[d]...to carry out their duties on a day-to-day basis at their headquarters". The two definitions are perhaps awkwardly formulated in relation to each other. But in the end, one must decide in disputed instances whether an employee is "field status" or "stationary". The better application of the definitions in the present case is to say that Messrs. Bruckner and Wright are "field status employees".

I come back now to the present grievance. As I said at the outset, the grievors in this proceeding are employed by BCTS as Practices Foresters. BCTS is a stand-alone organization within the Ministry of Forests and Range created to develop Crown timber for public auction. BCTS was created in April 2003. It is expected that by next year, BCTS will be responsible for managing some 20 percent of the provincial Crown allowable cut. In sum, BCTS supports the

Ministry's goal of providing British Columbians with sustainable benefits from the commercial use of public forests. The organization does this by planning, developing and auctioning a substantial and representative portion of the province's annual available timber volume.

Much of the work presently done by BCTS was previously done by predecessor organizations within the Ministry. And while the generic title Practices Forester was first adopted upon the creation of BCTS in April 2003, substantially the same work as is now done by the Practices Foresters has long been done by professional foresters within the Ministry under one title or another. For example, Susan Salokannel, one of the grievors, testified without contradiction that prior to the creation of BCTS, her title within the Ministry was Silviculture Practices Forester; that her tasks under that title were the same as her tasks under the present title.

For some years prior to the creation of BCTS, the grievors (or their predecessors), by whatever title they performed the functions they are now performing at BCTS, were designated as "stationary employees" and therefore entitled to "travel status" (a meal allowance) on those occasions that they were required to be absent from their headquarters at a distance of greater than 32 kilometres. At some point subsequent to the creation of BCTS, the employer decided to change the designation to "field status employees", thus disqualifying the grievors (and others in the same position) from eligibility for "travel status". That was not because of any intervening change of duties or function. Rather, it appears to have been as the result of a review of employee designations generally.

The Practices Foresters are all registered professional foresters. While there is some variation of duties as between the Practices Foresters, they all have the same generic job description which describes the "Purpose of Position" as follows:

The practices forester is accountable for performing a wide variety of professional and technical services to support the development and operational stages of pre and post Timber Sales License awards and active harvest operations within a Field Team. Responsibilities include operational planning, cut blocks and forest road layout and development, monitoring and evaluation of harvest operations, and silviculture activities. The Practices Forester is responsible for ensuring all activities associated with these responsibilities are consistent with BCTS business and financial goals and objectives and are technically effective and appropriate.

The Practices Foresters are part of the same team of employees that includes the Forest Technicians who were the subject of the *Bruckner* award. The job description for the Forest Technicians, who are not registered professional foresters, describes the "Purpose of Position" in these terms:

The Forest Technician is part of a multi disciplinary field team of technicians and professionals and performs a wide variety of technical and operational duties to support the planning, engineering, layout, auction, harvest and reforestation activities over a large geographic area.

The job description for Practices Forester lists a number of specific functions. Most are performed in the office; some require a combination of office work and field work.

The greater proportion of field work required for BCTS's purposes is done either by the Forest Technicians or by contractors (including professional foresters). The substance of the evidence given by the union's witnesses was that while the Forest Technicians and contractors are regularly engaged in on-the-ground field work, including the gathering of data and the performance of technical forestry functions, the Practices Foresters spend by far the majority of their time in the office applying their professional knowledge and experience in

the review of the Technicians' or other professionals' work, so as to provide quality assurance both in relation to professional standards generally and the BCTS's standards in particular.

Mark Hayter gave evidence. He is a Practices Forester at Fort St. James, and one of the grievors. He keeps a daily planning diary. His daily planning diary for June, 2005, reveals 2.5 field days that month (June 1, June 22 and a half-day on June 29). Mr. Hayter said that there is usually more field work in the month of June than most other months. He estimated that in a typical year, about 10 percent of his time would be in the field.

Safety records kept by the employer were adduced in evidence by the union for the period December, 2004 to August, 2006. The records show that in that 21-month period, Mr. Hayter was in the field on 31 occasions, which is less than 10 percent.

Mr. Hayter testified that on those occasions that he went to the field, it was most commonly for one of three reasons: (1) quality assurance checks; (2) at the request of someone who needed his professional expertise; and (3) occasionally when someone was absent, to be the second person (who could have been anyone else) on a two-person field crew for safety reasons (i.e., to avoid someone working alone in the field).

Referring to the definition in the collective agreement of "stationary employee", Mr. Hayter said that he did indeed carry out his duties on a day-to-day basis at his headquarters, occasionally traveling from headquarters for short periods of time. And referring to the definition of "field status employee", Mr. Hayter said that he is not someone who is normally required to work away from the office -- i.e., as distinct from working in the office on a day-to-day basis.

Mr. Hayter said in cross examination that he does not actively monitor the work being done in the field. Rather, he reviews reports of the work being done in the field, occasionally going to the field for the reasons noted above.

The other grievor who gave evidence was Ms. Salokannel, who I earlier introduced. Her diary for June, 2006 shows only one field day that month. She said that on average, she would spend less than one day per month in the field. One set of documents adduced in evidence showed 16 field days for Ms. Salokannel, spaced irregularly, during a 17-month period. Another set of documents showed 13 field days for Ms. Salokannel in a 21-month period.

Ms. Salokannel explained that her occasional trips to the field are because:

...I rely a lot on information collected by others in the field. To be comfortable doing so, I have to occasionally do quality assurance. I also go to the field to look at individual blocks [of timber] having unique characteristics.

Ms. Salokannel described the core function of the Practices Foresters as follows:

To meet the legislative and policy requirements; to manage data; to assess plans and data done or collected by other people; and to apply our professional knowledge [as professional foresters] to those plans...I assess information collected by others for reliability, and based on that information and my professional knowledge, I develop plans and strategies to manage the forests; and I occasionally go into the field to satisfy myself of the quality and accuracy of work provided by others, and to address unusual site characteristics in the field.

Ms. Salokannel said in evidence that it is the Forest Technicians who "...manage what is happening in the field"; that she then checks their work for quality.

Ian Hamann gave evidence for the employer. Mr. Hamann is presently the Timber Sales Manager (BCTS) for the Prince George Business Area. For about three years until mid-2004 he occupied that same position for the Stuart-Nechako Business Area (headquartered in Vanderhoof), which includes the Fort St. James office (being the locale of this grievance).

Mr. Hamann was part of the management team that designed and implemented BCTS. As a Timber Sales Manager, he does not directly supervise Practices Foresters. He said that he has a "general understanding" of the roles and responsibilities of the Practices Foresters, but "...not a detailed day-to-day knowledge of what they do specifically".

As one of the persons involved in the creation of BCTS, Mr. Hamann testified that "...the intent is that Practices Foresters are the front-line foresters; the practitioners who oversee what is going on on the ground and give [the senior managers] professional advice in that regard". Mr. Hamann said that the Practices Foresters "...must check and verify information supplied to them by contractors to ensure consistency with legislation and our goals". Mr. Hamann further commented that the Practices Foresters "...were intended to be the practitioner foresters to verify information in the field; to kick the dirt; to know the issues -- both at the pre-award stage of timber sales and at the post-issue stage". Mr. Hamann's testimony continued as follows:

...prior to tender there needs to be intelligence gleaned of what we wish to accomplish in the multi-phase contract – when, what and how it is to be performed; the contract spells out the deliverables.

[While much of the intelligence gathering is done by contractors], the Practices Foresters get involved in formulating the contract for bidding purposes. So, they need to have some level of knowledge of the area in question: for example, how much timber to extract – they would use the inventory information available to help decide where to focus the contractors; they would interact with other staff members about access requirements including any necessary road construction, and about boundaries...and guidance regarding the block area.

So the Practices Foresters help to construct the multi-phase contract...

...The Practices Foresters, I believe, must go into the field to oversee the work of contractors. That is the front line. If they [the Practices Foresters] are not protecting the interests of the Crown on the ground, then nobody is. They are the only professional foresters [employed by the Crown] who go to the field to verify. They are our professional eyes or ears in the field...

...Regarding silviculture – post-harvesting – the Practices Foresters have to verify the accuracy of information of contractors to ensure compliance with legislation and policy. That requires going into the field. We have to at least sample the integrity of the data to ensure it matches conditions in the field.

...From pre-harvest to post-harvest, [the Practices Foresters] are to ensure what takes place on the ground meets the conditions required to be met.

As I have said, Mr. Hamann has not directly supervised Practices Foresters. Much of his evidence about the activities of the Practices Foresters was cast in terms of original intentions or expectations when BCTS was formed. In his testimony, Mr. Hamann in no way controverted the evidence of Mr. Hayter or Ms. Salokannel as to the proportion of their time spent in the field. And to the extent



his evidence reflects an intention by BCTS that the Practices Foresters' functional emphasis would be on field work, that intention does not accord with the working reality. The best evidence of what the Practices Foresters actually do and how they do it was given by Mr. Hayter and Ms. Salokannel. On their evidence, the Practices Foresters' functional emphasis, working in the office, is on the application of their professional knowledge and training to information acquired and provided to them by others. They do occasionally go to the field for quality assurance purposes, and to respond to special circumstances. However, they do not oversee the field work done by others, in the sense of being actively engaged in field supervision; and neither do they actively monitor or control events in the field in any sort of hands-on way.

Mr. Hayter and Ms. Salokannel testified to the minimal proportion of their time spent in the field. As I have said, their evidence in that regard was not controverted by Mr. Hamann (and neither did Mr. Hamann speak to the proportion of time spent in the field by Practices Foresters working in the Prince George Business Area where he is now the Timber Sales Manager). The one other witness for the employer was William Dobbs, the Operations Manager for the BCTS Stewart-Nechako Business Area, headquartered at Vanderhoof. He roughly estimated that the Practices Foresters headquartered at Vanderhoof spent about 20-30 percent of their time in the field. However, Mr. Dobbs does not directly supervise the Practices Foresters, and his estimate aforesaid was clearly off-the-cuff. He agreed in cross examination that he had not examined any documents (which are available) to validate his estimate; and that the estimate was based simply on his recollections or observations of "...people being out of the Vanderhoof office". On the evidence, there can be many reasons, apart from field work, why Practices Foresters would be out of the office for short periods: e.g., meetings at other offices and training sessions. I have to say that Mr. Dobbs'

evidence in no way diminished the impact of Mr. Hayter's and Ms. Salokannels' evidence.

As the *Dawson* and *Bruckner* awards make clear, the determination of whether an employee is "stationary" or "field status" is not based simply on calculating where the employee spends the majority of his or her time -- i.e., in the office or in the field. The language and underlying purpose of the respective definitions of "stationary employee" and "field status employee" call for a much more nuanced functional analysis than merely a mechanical arithmetic calculation. However, when the time spent in the field is as minimal as is apparently the case for Practices Foresters, it is natural for a prima facie presumption of "stationary" status to arise, casting an evidentiary onus on the employer to clearly show that despite the minimal time in the field, the employees in question ought properly to be designated as "field status".

In *Bruckner*, I commented that the definitions in the collective agreement of "stationary employee" and "field status employee" are awkwardly phrased in relation to each other. However, where a dispute arises about the proper designation for certain employees, a decision as between the two designations must be made. In the end, and doing the best one can with the contractual definitions, which is the truer designation in the disputed instance?

In the present case, the employer placed considerable reliance on *Bruckner*. But in my view, *Bruckner* is distinguishable. Here, I think the better finding is that the grievors occupy positions that require them to carry out their duties on a day-to-day basis at their headquarters, traveling occasionally from their headquarters for short periods of time (see the definition of "stationary employees"); that it is considerably less apt to describe the grievors as being

normally required to work away from their point of assembly, not working day-to-day in their office (see the definition of “field status employees”).

The grievance succeeds. I find and declare that the grievors are “stationary employees” within the meaning of the collective agreement, and therefore not disqualified from “travel status”. I will remain seised of the matter to resolve any remedial issues that the parties cannot themselves resolve.

DATED THE 30<sup>th</sup> DAY OF OCTOBER, 2006.

“DONALD R. MUNROE”  
Donald R. Munroe, Q.C.  
Arbitrator