IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE FLIN FLON SCHOOL DIVISION NO. 46,
(hereinafter referred to as the *"Division ")*

-and

THE FLIN FLON DIVISION ASSOCIATION NO. 46
OF THE MANITOBA TEACHERS' SOCIETY,
(hereinafter referred to as the *"Association ")*

Re: Article 14:05 - Travel Allowance Grievance

BOARD OF ARBITRATION:	P.S. Teskey, Chairperson G.D. Parkinson, Nominee of the Division W. Sumerlus, Nominee of the Association
DATES OF ARBITRATION:	March 14th, 2001
LOCATION OF ARBITRATION:	Flin Flon, Manitoba
APPEARANCES:	R.A. Simpson, Counsel to the Division V. Matthews-Lemieux, Counsel to the Association G. Fontaine, Grievor

AWARD

At the commencement of the hearing the parties agreed that the Board was properly constituted although Mr. Simpson raised certain concerns as to jurisdiction which will be discussed at the appropriate time.

This matter involved three grievances which were heard together, all of which basically relate to Article 14:05(a) and (b) of the Collective Agreement (Ex. 1) which read as follows:

> "Travelling Allowance
>
> a) Teachers, whose duties involve instruction while on approved school programs away from their home school(s) shall receive a travel allowance. Teachers shall apply in writing to the Superintendent for approval.
>
> The allowance is not applicable to teachers moving from one school to another at noon.
>
> January 1, 1995: $754
>
> b) The Co-operative Vocational Educational teacher shall receive a separate travel allowance in the amount of:

January 1, 1995: $1,117"

The parties provided us with an Agreed Statement of Facts (Ex. 10) which, for the sake of convenience, is attached as Appendix 1 to this Award.

The first grievance (Ex. 2 - undated but which was filed in 1999) is an individual grievance of Mr. G. Fontaine (Mr. Fontaine did appear at the hearing but did not testify) which reads as follows:

> "GEORGE FONTAINE submits that there is a difference between himself and the FLIN FLON SCHOOL DIVISION NO. 46 (hereinafter referred to as the "School Division") in respect of the meaning and/or application and/or violation of Article 14.05 of the Collective Agreement between the School Division the FLIN FLON TEACHERS' ASSOCIATION N0. 46 of the MANITOBA TEACHERS' SOCIETY relating to travelling allowances to which he is entitled in accordance with Article 14.05 of the Collective Agreement.
>
> GEORGE FONTAINE requests that the School Division:
>
> (a) acknowledge that it has misinterpreted and/or misapplied and/or violated Article14.05 of the Collective Agreement;
>
> (b) pay GEORGE FONTAINE the appropriate travelling allowances in accordance with Article 14.05 of the Collective Agreement; and
>
> (c) grant GEORGE FONTAINE such other remedies as may be just and reasonable."

Exhibit 3 was a policy grievance which essentially mirrored Ex. 2 and need not be reproduced.

The third grievance (Ex. 4) was a further policy grievance filed by the Association on April 26, 1999, and reads as follows:

> "The FLIN FLON TEACHERS' ASSOCIATION N0. 46 of the MANITOBA TEACHERS' SOCIETY (hereinafter referred to as "the Association) submits that there is a difference between it and the FLIN FLON SCHOOL DIVISION N0. 46 (hereinafter referred to as "the Division") with respect to the meaning and/or application and/or violation of the collective agreement between the Division and the Association; the imposition of unreasonable rules on some of its members and the assignment of administrative requirements in an unfair and unreasonable manner contrary to ss. 131.4 of *The Public Schools Act.*
>
> The ASSOCIATION grieves that the DIVISION has misinterpreted and/or misapplied and/or violated the provisions of the collective agreement and in particular Article 14.05 by imposing a record keeping requirement on some of its members which is not required by the collective agreement for the payment of travel allowances. The ASSOCIATION further grieves that the DIVISION has imposed an unreasonable rule on some of its members by requiring a travel log to be kept when the travel allowances are not calculated on a per mile or per kilometre basis and by imposing the new requirement on all teachers receiving a

travel allowance after a grievance was filed for payment of the allowances under Article 14.05. The ASSOCIATION further grieves that in all of the circumstances the DIVISION's assignment imposed by a memorandum from the Superintendent dated March 23, 1999 is unfair and unreasonable and is contrary to ss. 131.4 of *The Public Schools Act.*

The ASSOCIATION requests:

1. A declaration that the Division has misinterpreted and/or misapplied and/or violated the collective agreement, and in particular Article 14.05 thereof;

2. A declaration that the Division imposed an unreasonable rule on its members in relation to maintaining a travel log in light of the collective agreement and past practice;

3. A declaration that the Division acted unfairly and unreasonably in the assignment and administration of travel allowances;

4. An Order that the Division cease and desist violating the collective agreement, imposing unreasonable rules, and acting unfairly and unreasonably in relation to the administration of travel allowances;

5. An Order directing the Division to rescind its directive dated March 23, 1999 regarding the maintenance of travel logs;

6. Such other remedies as may be fair and reasonable in the circumstances."

The Memorandum of March 23, 1999 (plus the attachment - Ex. 6) issued by Mr. D. Reagan (who did testify at the hearing) is attached as Appendix 2 to this Award, again, for the sake of convenience.

We intend to deal with the first two grievances together but we believe the third grievance (Ex. 4) can be dealt with reasonably quickly and wish to deal with that initially.

Memorandum of March 23, 1999, Grievance:

Superintendent Reagan testified as to this Memorandum. He indicated that, as a result of the first two grievances being filed, he felt that it was appropriate to gather information for the next set of negotiations. There was no intent to discipline any teacher who did not respond and the evidence disclosed that the various teachers responded in various ways. Some provided monthly logs, some annualized their reports, and some did not respond at all. Despite that, and despite the fact that Superintendent Reagan testified in cross-examination that he expected people to pay attention and follow his directives, no teacher was ever disciplined or spoken to further if there was a lapse in response.

There is nothing in the Collective Agreement that precludes such a request being made and, in the circumstances, it does not appear to us to have been an unreasonable one, nor does it appear to have been unreasonably applied.

Exhibit 6 was not a "rule" involving any potential disciplinary response by the Employer. If it had been, our view might be different. However, on the circumstances before us, we do not find that the grievance can be sustained, nor has the Union met its onus in terms of providing a foundation for same.

We do note that Superintendent Reagan indicated that he would have shared the information with the Association if he had been asked to at any time prior or after the grievance being filed (and the Association now has that information as a result of this hearing) and we would trust that he will continue to provide such data as does come from the voluntary responses of the teachers with the Association for whatever future purposes the parties may find appropriate. We found the Superintendent to be frank and open in his testimony and trust that, despite these proceedings, he will maintain that attitude, as it is commendable. Nor was there any indication that the practice would change prior to this issue being discussed in the next set of negotiations and that would also appear to be appropriate in our respectful view.

Given the concern that was expressed through the grievances, we do not find it unreasonable that the Superintendent requested a review of the appropriate information for the purpose of discussing same at what would likely be a topic of conversation at the next set of negotiations. We leave it to the parties to allow those conversations to take place as they see fit. While Mr. Simpson raised the issue of arbitrability with respect to this grievance, we do not find it necessary to discuss that further as, even upon the merits (as we have discussed), we do not find the grievance to be sustainable.

The third grievance is hereby denied.

The Grievance of Mr. Gem,e Fontaine and the Association Policy Grievance:

These matters are somewhat more complicated and require some further discussion.

Clearly, from the Statement of Agreed Facts, there has been a method of application used by the Division for some ten years which was not challenged until these grievances arose. Equally clearly, there have been changes throughout that time in terms of staffing complement, programs, and the various combinations required by both over those years.

The method of application chosen by the Division has been consistent although, in fairness, the provisions of Article 14 have not been what one would describe as a miracle of clarity in terms of keeping up with those changes.

What the Association now seeks is that a teacher who works both in the CVE Program (at present there is only a part-time person although there have been a number hired at various times) as well as who is required to maintain a vehicle and use it for the purposes of Article 14:05(a) receive both allowances rather than the pro-rated basis upon which the Division has paid. The Association relies upon a strict interpretation of the wording of the Agreement but the Division takes the position that applying a strict reading of the clause would lead to absurd and unintended results. The Division also relies upon the presumption against pyramiding of benefits and we were provided with a number of cases concerning same which we will discuss, only as is necessary, later.

The basic reality is that this a test case in which the individual grievor, Mr. Fontaine, and the Association wish to determine how far the Agreement and the present wording will go. This Board's view is that it will not go as far as they would like and we arrive at that conclusion for a number of reasons.

The basic practice of the Division has been to apply the provisions of Article 14 in the manner that is most beneficial to the individual teacher short of allowing the payment of both lump sums. We believe that to be a fair application although we also believe that the parties would be well advised to clarify the wording to meet the types of changing circumstances that have been shown to arise. That could be dealt with in a number of ways within what might be considered as the parameters of fairness or reasonableness and we believe that the parties are in the best position to determine that through

negotiations. It is not within our jurisdiction to rewrite the Collective Agreement, nor is this a case in which some concept of "unfairness" would compel us to exercise our jurisdiction under s. 80 of *The Labour Relations Act.*

Clearly, the Article is susceptible of various interpretations and applications and it does not address various specific situations. We do not fault the Association for testing the limits in any way but this is something that ought properly to be dealt with through collective bargaining if the parties so desire. We agree with Mr. Simpson that the interpretation urged upon us by the Association would lead to absurd or unreasonable results and the practice of the parties does not appear to show an intention upon the part of either to be unreasonable.

We have reviewed all of the authorities that were furnished to us but do not find it necessary in this instance to analyze same in detail. None, in our respectful view, are directly on point with the facts before us and, although it may be trite to say this once again, decisions are driven by the facts of each situation and our decision here should be considered in light of the specific circumstances before us.

Accordingly, the first two grievances are also dismissed.

The Board wishes to commend both Ms. Matthews-Lemieux and Mr. Simpson for their usual able and helpful presentations. The parties shall share equally in the expense of the Chairperson and each shall bear the expense of their Nominee.

DATED this l0th day of April 2001.

P. S. Teskey, Chairperson

I do concur and am not providing separate reasons.
G. D. Parkinson, Nominee of the Division

I do not concur and am providing separate reasons.
W. Sumerlus, Nominee of the Association

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OF THE MANITOBA TEACHER'S SOCIETY,
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Re: Article 14:05 - Travel Allowance Grievance

PARTIAL DISSENT

I have read the decision of the majority and with respect, must dissent in part. The Collective Agreement between the parties is clear. There is nothing in the wording of the Agreement to indicate that the payments pursuant to Article 14.05 (a) and (b) are mutually exclusive. Nor is there any wording, which gives the Division the authority to unilaterally determine which allowance is paid to a teacher who, on the wording of the Agreement, qualifies for both.

The task of this tribunal is to interpret the Collective Agreement as it applies to the fact situation presented to us. In so doing, we must have regard to the plain meaning of the words used by the parties. Article 14.05 (a) and (b) reads in part:

> *"a. Teachers, whose duties involve instruction while on approved school programs away from their home school(s) shall receive a travel allowance ...*
>
> *b. The Co-operative Vocational Education teacher shall receive a separate travel allowance in the amount of: (emphasis added) "*

The use of the word "separate" by the parties indicates that an additional payment was recognized and contemplated for the Co-operative Vocational Education teacher. In my opinion this clear and unambiguous wording of the Agreement should have been recognized by the majority. I would allow the individual and association grievances in that regard.

DATED this 11th day of April, 2001.

W. M. Sumerlus
Nominee of the Flin Flon Division Association #46
of the Manitoba Teacher's Society