

Minimum Standards Monitor

OLRB Considers Employer's Obligation to Pay for Commuting Time of Employee Using Company Vehicle

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When employees are provided with company vehicles to take home at the end of the work day, does the employer have to

pay for their commuting time directly to and from a job site? In *Tradium Mechanical Inc. v Abdellatif Jaidane*, the Ontario Labour Relations Board (OLRB) said "no".

The decision questions the Ministry of Labour's policy which requires payment for commuting time where the employee takes a work vehicle home "for the convenience of the employer" and uses it to travel between home and the employer's work sites.

The Ministry's policy regarding travel time is as follows:

- With the exception of commuting time, any time a person spends travelling (irrespective of the mode of transportation) for the purpose of getting to or from somewhere where work will be performed, must be counted as hours of work.
- Commuting time means the time required for an employee to travel to work from home and vice versa. However, there are a number of exceptions to the rule.
- *If the employee takes a work vehicle home in the evening for the convenience of the employer, the hours of work begin when the employee leaves home in the morning and end when he or she arrives home in the evening.* [emphasis added]
- If the employee is required to transport other staff or supplies to or from the workplace or worksite, time spent must be counted as hours of work.

In this case, the employer was an HVAC and refrigeration company with technicians providing maintenance and service to customers. The technicians could visit several different customers during a work day. The company had a shop but a majority of the work was performed at the customers' facilities. The technicians were provided with a vehicle which they were permitted (not required) to use to travel from home to work and from work to home. At the start of each work day, the technicians were not required to report to the shop and would often go directly from their homes to their first job site.

At the time of hire, the company advised technicians that it did not consider the commuting time from home to the first job site, or to home from the last job site, to be work time. The only exceptions to this rule were if the employee was required to pick up supplies on the way to the job site, or pick up another employee – in which case, the technician would be paid from the time of the first stop.

A former employee of the company filed a claim with the Ministry of Labour seeking payment for all time spent commuting to and from the job sites in the company vehicle. The Employment Standards Officer found in favour of the employee based on the Ministry Policy. The company appealed the decision to the OLRB.

In deciding the case, Vice Chair Beresford considered the third bullet of the Ministry Policy and if "the convenience of the employer" should be the deciding factor on whether commuting time in a company vehicle should be paid or not. He noted that the Ministry Policy is not binding law and that the *Employment Standards Act, 2000* does not specifically address how travel time is to be paid. Vice Chair Beresford stated:

17 The fundamental obligation of any employee ... is to get from home to his place of work however the employee chooses to do so. This can be done in a number of ways, including using public transportation, a personal vehicle or a company-owned vehicle and that travel time is “commuting” to work, not deemed work. The workplace can be the first job site of the day, a supplier, a shop or any other type of place that the employee is required to go by the employer. Similarly, any travelling done after the recognized work time to any location not required by the employer is also “commuting” from work and not deemed work. The fact that the employee is using a company vehicle and who is or is not inconvenienced by that is immaterial. The rather indefinite concept of “convenience” (what it means, how much, to whose benefit, to what degree, etc.) is not part of the applicable legislation and has not been used in arriving at the Board’s decision in this case.

Based on the facts of the case before the OLRB, Vice Chair Beresford concluded that the time spent by the technicians travelling from home to their first job site and from the last job site to home was commuting time and not “work” for which the technician was required to be paid.

The *Tradium* case is a helpful decision for employers with mobile workforces who travel regularly as part of their job duties. The Ministry Policy of requiring employers to pay employees for commuting time simply because the employer allows employees to take a company vehicle home with them so they can travel directly to the job site the next day can be onerous for employers.

All cases are decided on their own facts and in this case an important fact was that employees were given the option of taking their company vehicles home or keeping them at the company’s shop. If employees were required to keep their company vehicles at home, the outcome of the case may have been different.