

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CAHO

and

PAIRO

**(AND IN THE MATTER OF A POLICY GRIEVANCE BROUGHT BY PAIRO
CONCERNING ENTITLEMENT
OF POOL C RESIDENTS TO CALL STIPENDS
AND THE OTHER REMUNERATION PROVISIONS
OF THE PAIRO/CAHO COLLECTIVE AGREEMENT)**

Before: William Kaplan
Sole Arbitrator

Appearances

For CAHO: Bob Bass
Bass Associates

For PAIRO: Steven Barrett
Sack Goldblatt Mitchell
Barristers & Solicitors

Heidi Rubin
Sack Goldblatt Mitchell
Barristers & Solicitors

This case proceeded to a mediation in Toronto on June 7 & 12 and a hearing in Toronto on June 13, 2007.

AWARD

This grievance involves the question of whether residents funded by foreign sponsors (usually but not always foreign governments), who are undertaking residency training in Ontario as visa trainees, are being paid the amounts required under the collective agreement, particularly in respect of salary, benefits, and the recently negotiated call stipend. Indeed, it is the acknowledged failure of payment of the call stipends to any Pool C residents which was the trigger for this grievance. (These visa trainees are referred to by the parties as Pool C residents, which I understand reflects a government designation of their source of funding).

Disputes over the application of the collective agreement to residents with a source of funding other than the Ontario Government, first arose in the 1980s: see Attachment 4 to the current PAIRO/CAHO collective agreement. However, with respect to Pool C residents in particular, in 2002, the question of whether the collective agreement applies specifically to foreign funded residents came before a board of arbitration chaired by Owen Shime, who issued a decision, in March, 2003, now incorporated into Schedule A of the collective agreement. The Shime award, and the collective agreement itself which now incorporates the Shime award, explicitly provide that, with some agreed modifications, the terms and conditions of the collective agreement apply equally to foreign funded Pool C residents, as to all other residents.

This issue now arises before me again, with particular focus on the payment of the recently negotiated call stipends to Pool C residents, but also with respect to whether all Pool C residents generally are receiving salary, benefits, and the Chief and Senior Resident administrative bonus (where applicable) in accordance with the terms of the collective agreement.

Having reviewed the material submitted by the parties, and the provisions of the collective agreement, it seems clear that Pool C residents have a legitimate claim to

receive the call stipend. This is both consistent with the principles underlying Mr. Shime's award, and with the provisions now expressly reflected in Schedule A to the collective agreement. It is also clear from the material before me that, while some foreign sponsors may pay salaries in excess of those provided for under the collective agreement, others pay less than what is required. As to benefits, I do not at the present time have enough information before me to make a determination.

In general terms, however, the principle of equal entitlement to the same terms and conditions of the collective agreement has been recognized by Mr. Shime, and agreed to by the parties. Indeed, as Mr. Shime noted in his award "the 5 Ontario Postgraduate Deans in association with PAIRO share the common intent of ensuring equity in salary and benefits among Canadian graduate trainees funded by the Ontario Ministry of Health and international medical trainees funded by foreign sponsors....All residents, Canadian graduates and international medical trainees must receive full salary compensation in accordance with the schedule of salaries and other remuneration...established on an annual basis between PAIRO and the teaching hospitals."

Of course, Mr. Shime's decision was issued before the call stipend came into effect on July 1, 2006. However, Article 1(c) of the collective agreement is very clear in this regard concerning the specific entitlement of Pool C residents to receive the call stipend, in addition to their separate entitlement to salary, the Chief and Senior Resident administrative bonus (where applicable), comparable insured benefits, and, prior to the implementation of the call stipend, meal amounts and the practice stipend. Thus, while the general entitlement to the call stipend is set out in Article 24, Article 1(c) explicitly provides that Pool C residents are not, as of July 1, 2006 (when the call stipend came into effect), any longer entitled to meal amounts or the practice stipends, but that "in return, it is agreed that Pool C residents will be entitled to receive the call stipend on the same terms and conditions as all the residents covered by this Collective Agreement."

As a result, I do not believe there can be much doubt as to the entitlement of Pool C residents to receive the call stipend, no matter what other kind or amount of remuneration

(in the form of salary, allowances or other payments including but not limited to tuition) they otherwise receive from their foreign sponsor. In this respect, while it appears that some foreign sponsors may have chosen to pay salary or other allowances in excess of the amount specified in the collective agreement, that does not derogate from the separate and independent entitlement to the call stipend, particularly given the language of the collective agreement (unless it can be established by the foreign sponsor that its remuneration was changed to specifically account for the increased remuneration arising from the call stipend in a manner consistent with this award).

However, given the nature of the relationship between the hospitals, the universities and the foreign sponsors, it seems to me that the most appropriate remedy would not be to order the hospitals to pay the amounts owing. I say this by virtue of the contractual relationship between the universities and the foreign sponsors, and the reasonable expectation of the hospitals, and of the universities, that the call stipend, together with all other remuneration required under the collective agreement, will be paid by the foreign sponsors.

It is clear from the materials that this is an appropriate result. For example, one of the agreements between a university and one of the foreign sponsors, which was introduced into evidence, states that the foreign sponsor “affirms that.... it will pay its trainees all necessary expenses for its trainees including air fare, travel, malpractice insurance, clothing, books, meal allowance, chief and senior [administrative] resident bonus, as applicable, on-call stipends as determined by the... PAIRO-CAHO agreement....”, and in another provision, that the foreign sponsor “is responsible for remitting to each trainee a salary that is an amount equal to that paid to Canadian medical residents under the current approved PAIRO/CAHO Agreement....”

In addition, I was provided with various pieces of correspondence from the responsible university officials recognizing the entitlement of Pool C residents to the call stipend, and the obligation of foreign sponsors to ensure that these amounts are paid to and received

by Pool C residents. This includes correspondence from the University of Toronto to foreign sponsors advising the sponsors that:

- a) effective July 1, 2006, residents are entitled to the call stipend of \$100 (effective July 1, 2007, \$103, and April 1, 2008, \$105) for each in-hospital call, and \$50 (effective July 1, 2007, 51.50, and April 1, 2008, \$53) for each home call,
- b) that prior to July 1, 2006, hospitals used to pay a meal stipend (\$7.75 a meal) for “On-call” physicians, and
- c) that “responsibility for the payment of these meal stipends for visa trainees was that of their sponsoring parties”, and that sponsoring governments “are required to assume the FULL financial responsibility for the training of their residents, including “On-call” stipends and senior resident bonus” (emphasis in original).

In my view, the primary responsibility for remunerating Pool C residents should fall on the foreign sponsors. The question in this case is how to effectively achieve that result. The universities have a direct relationship with the foreign sponsors which the hospitals do not. Accordingly, the most appropriate remedy is to ensure that no Pool C residents are employed as residents in Ontario’s hospitals -- unless they are provided with the remuneration required under the collective agreement, including the call stipend, something which the universities are in a better position to facilitate than the hospitals.

Accordingly, I direct as follows:

1. Pool C residents must be paid by the funding sponsor no less than the salary amounts, for their appropriate post graduate year (PGY) level, set out in Article 22 and 23 of the collective agreement. Based on the material before me, it appears that at least in the case of some countries, including Libya and the UAE, this is not occurring.

2. In addition to salary or any other payments received by Pool C residents, Pool C residents must be paid, by the funding sponsor, the call stipend amount, when they perform in hospital or home call or qualifying shifts. However, nothing in the collective agreement or this award precludes the funding sponsor from paying an amount for the call stipend equal to the maximum amount of in hospital call possible pursuant to the agreement, on a quarterly basis. In this respect, Article 24.5 provides that no resident will be paid a call stipend for call worked in excess of the maximum permitted under the collective agreement, so that the maximum up to July 1, 2007 would be \$8,300; the maximum for the nine months July 1, 2007 to April 1, 2008 would be \$8,549 on an annualized basis (or three quarters of that amount, i.e. \$6,412, over that nine month period), and from April 1, 2008 on an annualized basis, \$8,715, subject to further adjustment in the collective bargaining process from July 1, 2008 forward.

3. Funding sponsors must also remit the premiums necessary to obtain coverage for insured benefits (set out in Article 20 of the collective agreement) for Pool C residents, consistent with paragraph 5 of Schedule A to the collective agreement, (with the exception of LTD, as provided for by the Shime award, and life insurance at \$115,000, as specified in Article 1(c)). However, as also specified in paragraph 5, these premiums need not be remitted where it is demonstrated that a Pool C trainee is receiving or will receive as good or better insured benefits from or through the funding sponsor. As noted above, PAIRO has raised a concern over compliance with this provision for some Pool C residents, but at this stage I do not have enough information to make a determination. As set out below, I remain seized should there be a dispute over compliance with this requirement.

4. Where entitled under Article 18 of the collective agreement, funding sponsors must ensure that Pool C residents receive the Chief and Senior Resident administrative bonus.

5. Dues must be remitted to PAIRO on both the salaries and call stipends paid to Pool C residents, in accordance with paragraph 3 of Schedule A, and Articles 4.3 and 24.8, of the Collective Agreement.

6. With respect to period from July 1, 2006 to June 30, 2007, I direct that Pool C residents who have not received their entitlement to salary for that period make a claim for the difference between the salary they have received, and the salary required by the collective agreement, on or before September 1, 2007. This claim will be submitted by PAIRO to CAHO and the applicable university. If the salary amount owing to the resident is not paid by the funding sponsor by December 1, 2007, no hospital will employ that Pool C resident effective from January 1, 2008.

7. With respect to Pool C residents who have not received the call stipend from July 1, 2006 to June 30, 2007, the hospitals will ensure that information about each resident's frequency of call and qualifying shifts will be provided to the university to allow the university to provide the information to the funding sponsor. If the amount of call stipend owing to the resident is not paid by the funding sponsor to the resident by December 1, 2007, no hospital will employ that Pool C resident effective from January 1, 2008. For Aramco sponsored residents, for the purposes of this award and the collective agreement, I recognize that for the period July 1, 2006 to June 30, 2007, the physician work in training allowance, where it has actually been received by the resident, should be deemed to be a call stipend meeting the requirement of paragraph 2 above, it being understood that from July 1, 2007 forward, Aramco will be obligated to specifically pay a call stipend as required by the collective agreement and this award.

8. For the period after July 1, 2007, I direct that as of January 1, 2008, no hospital will employ a Pool C resident absent proof satisfactory to PAIRO and CAHO of compliance with the collective agreement and this award in respect of that

resident, such proof to be provided in accordance with the reporting mechanism referenced in paragraph 9 below.

9. Reporting Mechanism: As a condition of the hospitals continuing to employ Pool C residents from a foreign sponsor:

a) each funding sponsor shall provide to CAHO and PAIRO confirmation of the salary being paid to each Pool C resident, as well as their commitment to paying the call stipend; and

b) on a quarterly basis, each funding sponsor shall provide to CAHO and PAIRO proof of payments to individual residents, as required under the provisions of the collective agreement and this award.

c) failure to comply with this mechanism will result in the hospitals ceasing to employ any Pool C resident in respect of whom there is non-compliance

Obviously, it would be helpful if the universities would play a coordinating role in this regard, including to the extent reasonably possible providing CAHO and PAIRO with an annual reconciliation of moneys received by an individual resident versus monies owed.

I am hopeful that the terms I am awarding will prove effective in ensuring fair and equal treatment for Pool C residents, in accordance with the terms of the collective agreement, in what is admittedly a complex relationship between PAIRO, CAHO, the individual teaching hospitals, Pool C residents, the universities and the funding sponsors. However,

should there be any difficulties or disputes arising in the implementation of this award, I will remain seized on an ongoing basis.

DATED at Toronto this 15^h day of June 2007.

“William Kaplan”

William Kaplan, Sole Arbitrator