Date: 20060519

File: 166-2-35990

Citation: 2006 PSLRB 60

Public Service Staff Relations Act

Before an adjudicator

BETWEEN

LESLIE HICKS

Grievor

and

TREASURY BOARD
(Department of Human Resources and Skills Development)

Employer

Indexed as
Hicks v. Treasury Board (Department of Human Resources and Skills Development)

In the matter of a grievance referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act*

REASONS FOR DECISION

Before: Léo-Paul Guindon, adjudicator

For the Grievor: Yves Rochon, Professional Institute of the Public Service of Canada

For the Employer: Simon Kamel, counsel

Heard at Ottawa, Ontario,
September 7 and November 16, 2005.

Grievance referred to adjudication

[1] Leslie Hicks (the grievor) filed a grievance on February 10, 2004, against his employer, Human Resources and Development Canada (HRDC). The grievance reads as follows (Exhibit G-10):

. . .

> *I dispute the employer's decision not to waive the 2-year deadline for the completion of my relocation, as per Section 3.1.2 of the National Joint Council Relocation Directive. This decision was unreasonable and violated the Purpose and Scope of the Reloaction [sic] Directive in that it is not in a fashion "having a minimum detrimental effect on the transferred employee and family". It was also made arbitrarily by the Acting Manager of Accounting Services and not by the Deputy Head or the NJC Departmental Liason [sic] Officer, as required by the Directive.*
>
> *CORRECTIVE ACTION EQUESTED*
>
> *Waiver of the 2-year deadline for completing my relocation. Reply within the 10-day limit required by the NJC Grievance Procedure.*

[2] The Professional Institute of the Public Service of Canada (PIPSC) referred the grievance to adjudication on April 21, 2005.

[3] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

[4] At the outset of the hearing, the grievor's representative requested permission to amend the corrective action of the grievance as follows:

> *Waiver of the 2-year deadline for completing my relocation and to be made whole.*
>
> (The underlined part is to be added to the corrective action requested.)

[5] Counsel for the employer raised an objection to the modification requested on the basis of the principle established in *Burchill v. Attorney General of Canada,* [1981] 1 F.C. 109. The grievor did not mention to the employer at any level of the grievance

procedure that "he wants to be made whole". Consequently, counsel for the employer submitted that the amendment should be denied.

[6] Counsel for the employer also presented a preliminary objection on the basis of the mootness of the grievance and of the academic nature of the grievance. This objection is based on the fact that the grievor had sold his house before he filed his grievance and he bought accommodation in Ottawa after his dependants moved at the end of August 2004. Consequently, the waiver requested cannot have any impact on the situation.

[7] In response to the objection, the grievor's representative argued that the employer did not raise those concerns at the hearing held before the National Joint Council (NJC) in January 2005. Furthermore, an amendment was accepted in *Re Halton Board of Education v. Ontario Secondary School Teachers' Federation, District 9* (1978), 17 L.A.C. (2d), 279, to allow the Board of adjudication in that case to make a declaration.

[8] The request to amend the grievance and the preliminary objection were taken under reserve and those matters will be dealt with in the present decision.

[9] A joint statement of facts was filed as evidence and reads as follows (Exhibit G-1):

> 1. *The grievance filed by Mr. Leslie Hicks relates to an interpretation of the Relocation Directive of the National Joint Council (NJC) (**Appendix 1**). This grievance arose as a result of a workforce adjustment and subsequent employer requested relocation of Mr. Leslie Hicks from Sydney, Nova Scotia to the NHQ area, specifically as follows:*
>
> *PSLRB file: # 166-02-35990 (NJC-HQ-2004-0007), filed on February 10, 2004, refers to the denial of a request to waive the 2-year deadline for completing a relocation, as per section 3.1.2 of the Relocation Directive (**Appendix 2**).*
>
> *In accordance with article 36 of the collective agreement between Treasury Board and the Professional Institute of the Public service [sic] of Canada representing the Applied Science and Engineering Groups, of which Mr. Hicks is a member, the Relocation Directive, approved by the Treasury Board of Canada, forms part of the AP Collective Agreement.*

2. *Mr. Hicks is a Professional Mining Engineer who spent 20 years of his career in the federally-regulated underground coal mining industry in Cape Breton, Nova Scotia.*

   He currently occupies a position as an Industrial Safety Engineer in the Labour Operations Branch of Human Resources and Skills Development Canada in Gatineau (Hull).

   During the period of 1995 to March 2002, he occupied a position within Human Resources Development Canada as a Principal Advisor to the Coal Mining Safety Commission (CMSC), located in Cape Breton, Nova Scotia.

3. *In 1999, the federal government announced a review of coal mining operations in Cape Breton. At that time, management advised Mr. Hicks that there would be a job for him in Ottawa if his position was impacted by the outcome of the review.*

4. *On April 17, 2001, or one month before the May 16 official announcement of the mine closure, Mr. Hicks sold his home, based on the anticipation that the coal mine closures would negatively affect property values; and he was now a renter.*

5. *After May 16th 2001, Mr. Hicks was again informed by management that a position would be created for him in NHQ and that the Workforce Adjustment Directive would apply to his situation. Other options to relocating to NHQ were then also examined (early retirement, finding a different position locally).*

6. *The mine officially closed in December 2001 and Mr. Hicks was offered a deployment to Gatineau (Hull) on January 14, 2002. Mr. Hicks signed the letter of offer on February 6, 2002, adding the condition that he could work from Sydney and that this situation be re-evaluated in September 2002 (**Appendix 3**).*

7. *The ADM, Labour (Warren Edmondson), wrote to Mr. Hicks on February 18, 2002, informing him that he was prepared to amend the offer of employment as follows (**Appendix 4**):*

   1. *The effective date of appointment will be March 4, 2002;*
   2. *Mr. Hicks could work from the Sydney office until August 30, 2002 in order to take care of his administrative arrangements related to his relocation;*
   3. *Mr. Hicks will then relocate to the Ottawa/Hull area by September 3, 2002.*

8. *On February 21, 2002, Mr. Hicks accepted by e-mail the conditions presented by the ADM* ***(Appendix 5)****.*

9. *On February 27, 2002, the Manager of the Human Resources for the Labour Branch (Micheline Bélanger-Brûlé) confirmed his deployment into a position in NHQ (****Appendix 6****) and Mr. Hicks worked from the Sydney office until his relocation to NHQ (Gatineau).*

10. *On September 26 and 27, 2002, Mr. Hicks exchanged e-mails with the Travel & Relocation Advisor (Andrée Rollin). One of the issues discussed was whether his relocation could be completed in "2 stages". Ms. Rollin stated that the family could move in 1 or 2 years but the file should be closed by September 2, 2004 (****Appendix 7****).*

11. *On October 17, 2002, Mr. Hicks relocated to NHQ but his family continued to reside in Sydney due to his mother-in-law's health problems.*

12. *On September 17, 2003, Mr. Hicks e-mailed the Travel & Relocation Advisor, Andrée Rollin, asking clarification about the two year deadline (in reference to his email of September 27, 2002). The employee was again informed that the two year period begins from the date specified in the letter of appointment (September 3, 2002). Mr. Hicks appealed to the National Joint Relocation Coordinator (acting manager, NHQ Accounting Services, Marcel Blais), who agreed to change the closing date of the relocation file to October 2004 instead of September 3, 2004. (****Appendix 8****).*

13. *On September 26, 2003, dissatisfied with management's interpretation of clause 3.1.2 of the Relocation Directive, Mr. Hicks filed a grievance NJC-HQ-2003-0076 (****Appendix 9****). The grievance was denied by the National Joint Council Committee on March 21, 2005 (****Appendix 10****).*

14. *On January 26, 2004, a week after Mr. Hicks had found out that his grievance (NJC-NQ-2003-0076) had been denied at the second level of the Departmental grievance procedure, Mr. Hicks appealed to National Relocation Coordinator (acting manager, NHQ Accounting Services, Marcel Blais), requesting that the deadline for completing the relocation of his family be waived, in accordance with clause 3.1.2 of the Purpose and Scope of the Relocation Directive, so as to take into account the stress that the relocation would impose on his family, especially on his wife and his ill mother-in-law who is living in a nursing home (****Appendix 11****).*

> *15. Mr. Hicks was advised by the National Relocation Coordinator (acting manager, NHQ Accounting Services, Marcel Blais), on February 9, 2004, that he did not qualify for the period to be waived because "such extensions to the two-year period will be based on the demonstrated inability of the employee to sell the home because of reason's outside the employee's control" (**Appendix 11**).*
>
> *16. On February 10, 2004, after having found out that his request for a waiver was denied, Mr. Hicks filed grievance # NJC-HQ-2004-0007 (PSLRB file # 166-02-35990).*
>
> *17. Mr. Hicks' dependants moved to Ottawa at the end of August 2004.*
>
> *18. The grievance NJC-HQ-2004-0007 was heard on January 13th, 2005, before the NJC, and subsequently denied on March 21, 2005 (**Appendix 12**).*
>
> *19. The grievance was subsequently referred to the PSLRB.*
>
> [*Sic* throughout]

Summary of the evidence

[10] The grievor testified that his mother-in-law had been diagnosed with Alzheimer's disease in October 2003. At that time, she was placed in a nursing home. Previously, she was living on her own in a senior persons' apartment home and the grievor's wife provided her with some support. The employer was aware of the situation and the issue of considering the grievor's mother-in-law as a dependant was discussed by e-mails in September 2002 (Exhibit G-8). On September 17, 2003, the grievor submitted e-mails to Ms. Rollin explaining that the departure of his dependents had been delayed for several reasons, including illness in the family (Exhibit G-9).

[11] The grievor's understanding of the Relocation Guide (Treasury Board of Canada Secretariat) was that the two-year period could be waived in exceptional circumstances (subclause 3.1.2 of the Relocation Guide, Exhibit G-3). For the grievor, the poor housing market was just one of the examples to justify a waiver of the delay. His mother-in-law's illness could be considered as another exceptional circumstance to waive the delay. Furthermore, the Relocation Directive of the NJC (Exhibit G-6) clearly states that relocation of an employee shall be performed in the most efficient fashion and with having a minimum detrimental effect on the transferred employee and his/her family (Exhibit G-6). Imposing a move on his mother-in-law would have

increased her disability, as the grievor was told by her doctor. The situation was difficult for the family and the employer offered no assistance. The rest of the family moved in August 2004, and as of then, his wife returned to Sydney on an average of one trip every two to three weeks. The grievor is claiming eight or nine trips, for an amount of $1,500 per trip.

[12] Counsel for the employer objected to the grievor's testimony concerning the Relocation Directive and Relocation Guide on the basis that he is not an expert in the interpretation of these matters. I ruled that the grievor could testify as to his personal understanding of those policies and not as an expert.

[13] Marcel Blais, the Acting Manager of Accounting Services, was involved as the "national coordinator for the Relocation Directive" in 2003. The grievor requested that he review the findings of Ms. Rollin (the Relocation Advisor), who stated that no extension would be granted (January 23, 2004, Exhibit G-14). Mr. Blais' answer on February 9, 2004, reads as follows (Exhibit G-14):

. . .

> *The IRP Policy is pretty clear. The two year period that can be waived according to section 3.1.2 relates to expense for the disposal and acquisition of accommodation; this is not your case.*
>
> *Also, the IPR Policy states that such extensions to the two year period will be based on the demonstrated inability of the employee to sell the home because of reasons outside the employee's control. Again, this is not the case as you were relocated as a renter. It is evident that you do not qualify for the extension as stipulated in the IPR Policy.*
>
> *You have/had two years to buy something at your new place of duties which closing date (October 2004) has been confirmed in my e-mail of September 18, 2003. Unfortunately, personal reasons cannot be taken in consideration to waive to the Policy. I would like to remind you that the Policy has been written in conjunction with union representatives, Treasury Board-Staff Relations, National Joint Council, etc.*
>
> . . .
>
> [*Sic* throughout]

[14] Mr. Blais testified that clause 3.1 of the Relocation Directive only relates to expenses for disposal or acquisition of a residential accommodation and the grievor was not entitled because he was renting his home. Mr. Blais could not make a recommendation to the Deputy Head for the waiving of the two-year period because he has no basis to do so. The Relocation Directive stipulates that the extension to the two-year period should be based on the demonstrated inability of the employee to sell his/her home. In the case at hand, the grievor's house was already sold and he, therefore, did not meet the criteria for the extension of the period. Circumstances related to the family are not taken into account in subclause 3.1.2 of the Relocation Directive, which is mandatory as provided under the title "Purpose and Scope" (Exhibit G-6):

. . .

> *The relocation provisions and any limitations thereto are published as directives, not permissive guidelines. Managerial and departmental discretion shall be confined to those provisions where discretion is specifically authorized.*

. . .

[15] Mr. Blais processed the claims for relocation up to July 1, 2004. He was not involved in the decision to reimburse the real estate and legal fees to the grievor for the sale or purchase of a residence on December 12, 2004, and July 7, 2005, as shown in Exhibit E-1. In cross-examination, upon being asked if the grievor had claimed something that he was not entitled to, Mr. Blais answered that he did not audit that claim.

<u>On the merits of the grievance</u>

[16] Subclause 3.1.2 of the Relocation Directive, and more specifically Part III, reads as follows:

> ***Part III – Residential accommodation***
>
> ***3.1 General***
>
> *3.1.1 It is the intention of the employer to enhance an employee's mobility by assisting in the disposal of the principal residence, whether rented or owned, at the old place of duty and the acquisition of a residence at the new place of duty, as quickly as possible.*

> *3.1.2 Expenses related to disposal and acquisition of accommodation must be incurred prior to or within a two-year period from the date the employee or dependants, or both, departed from the old place of duty (see 6.1.1). This limitation may be waived with the approval of the deputy head or a delegated officer. Extensions to the two-year period should be based on the demonstrated inability of the employee to sell the home because of reasons outside the employee's control, for example, a limited housing market, or a market which has experienced a significant slow-down.*
>
> *3.1.3 Only one type of assistance is payable at each end of the relocation; for example, at the new location, the employee may be reimbursed rent in advance of the move or the expenses incurred to purchase a principal residence, but not both.*
>
> *3.1.4 In exceptional circumstances, employees who were reimbursed rent in advance of the move, and who subsequently purchased a home, may be reimbursed the difference between what had been paid to secure the rental accommodation and the actual cost of expenses incurred in the purchase of accommodation as outlined in section 3.7. This may only be authorized when:*
>
> . . .

[17] The following general provisions and definitions in the Relocation Directive were also submitted by the parties in support of their arguments:

> . . .
>
> ***Purpose and scope***
>
> *It is the policy of the government that in any relocation, the aim shall be to relocate the employee in the most efficient fashion, that is, at the most reasonable cost to the public yet having a minimum detrimental effect on the transferred employee and family.*
>
> . . .
>
> *The relocation provisions and any limitations thereto are published as directives, not permissive guidelines. Managerial and departmental discretion shall be confined to those provisions where discretion is specifically authorized.*
>
> . . .

> ***Definitions***
>
> . . .
>
> ***Dependant*** *(personne à charge) – means any person who lives with the employee or appointee and is either the employee's spouse, a person for whom the employee can claim a personal exemption under the* Income Tax Act*, or an employee's (or a spouse's) unmarried child, step-child, adopted child or legal ward who cannot be claimed as an income tax deduction but is in full-time attendance at school. A family member who is permanently residing with the employee, but who is precluded from qualifying as a dependant under the* Income Tax Act *because the family member receives a pension, shall also be considered as a dependant under this directive;*
>
> . . .

Summary of the arguments

For the grievor

[18] In response to counsel for the employer's allegation that the grievance is moot, the grievor's representative submitted that the employer's decision to deny the extension of the two-year period was detrimental to the grievor's family. The evidence shows that pursuant to the "Purpose and Scope" of the Relocation Directive, the relocation shall have a minimum detrimental effect on the transferred employee and his family.

[19] The wording that was added to the remedy sought ("and to be made whole"), did not modify the nature of the initial request. It is not a new basis for the grievance as was the case in *Burchill*. The request to extend the two-year period within which the grievor can ask for reimbursement of some expenses also applies to expenses that were made inside the extension.

[20] Both parties acknowledged that the relocation costs are covered by the Relocation Directive. The expenses incurred to sell his house or to buy a new one were grieved in another forum and the grievor was reimbursed. Consequently, subclause 3.1.2 applies to the grievor.

[21] The Relocation Guide provides that the two-year limitation may be waived in exceptional circumstances. A very poor housing market is stated as an example and other circumstances can also be considered. The main reason for the grievor to ask for

an extension of the period to relocate his family was related to his mother-in-law's illness. The decision of the employer to refuse to consider these circumstances to waive the two-year limitation was unreasonable and contrary to the Relocation Guide and the scope of the Relocation Directive.

[22] The principle that the adjudicator has the duty to apply the concept of reasonableness was stated in *Re Zehrs v. United Food and Commercial Workers' Union*, Local 1977 (1996), 61 L.A.C. (4th) 25, and in *Comeau v. Treasury Board (Fisheries and Oceans),* 2001 PSSRB 112. These decisions stated that there must be a "*bona fide* doubt" or ambiguity in the adjudicator's understanding of the provisions at issues to waive them.

[23] In determining the intention of the parties, the cardinal presumption is that the parties are assumed to intend what they say, that the language used in the collective agreement should be interpreted in its normal or ordinary sense (*Canadian Labour Arbitration*, Third Edition, by Messrs. Brown and Beatty: 4:2100 and 4:2326). Subclause 3.1.2 of the Relocation Directive states that the two-year period "may" be waived and it gives some flexibility to the Deputy Head to allow such extensions. Section 11 of the *Interpretation Act*, R.S. 1985, c. 1-21, gives a permission to the word meaning "may".

[24] In subclause 3.1.2 of the Relocation Guide, the word "may" is also used to give more flexibility to the circumstances that can give rise to an extension. The family situation of the grievor can be one of those exceptional circumstances to be considered. The employer has an obligation to conform to the "Purpose and Scope" of the Relocation Directive and also has an obligation to minimize the detrimental effect of the relocation on the grievor and his family.

[25] The adjudicator's remedial authority includes the power to provide redress to the collective agreement beyond mere declaratory relief (see *Canadian Labour Arbitration* (*supra*), at 2:1401). Some remedy was awarded for a denial of equitable distribution of overtime and the adjudicator granted the grievor overtime pay for missed hours in *Boujikian v. Treasury Board* (*Citizenship and Immigration Canada*), PSSRB File No. 166-2-27738 (1998) (QL). The adjudicator determined that the grievor was entitled to a monetary award in light of a breach of the collective agreement when the employer failed to offer an overtime assignment in *Mungham v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 106. In *Lo v. Treasury Board* (*Treasury Board Secretariat*), PSSRB File No. 166-2-27825 (1998) (QL), the adjudicator strongly

recommended that the employer grant a significant amount to the grievor as compensation.

[26] In the present circumstances, the grievor and his family should be compensated for the detrimental effect arising from the employer's decision not to waive the prescribed two-year period. The grievor had to maintain two residences and incurred expenses for return transportation to Sydney. These expenses should be reimbursed to the grievor.

For the employer

[27] Counsel for the employer restated his preliminary objection that the amendment requested by the grievor changed the initial grievance. The deadline was no longer the issue and the focus was now directed on expenses for transportation to Sydney to visit his mother-in-law. Those expenses were not covered by the Relocation Directive.

[28] If the grievor's request was to be compensated for damages, the adjudicator has first to determine if the action of the employer constituted a breach of the collective agreement. The burden of proof rests with the grievor's and it was not met. The issue is to determine whether other circumstances can be taken into consideration to allow an extension of the two-year period apart from the difficulties in selling a house. Subclause 3.1.2 of the Relocation Directive provides that an extension to the period should be based on the demonstrated inability of the employee to sell his/her house. In the present file, the employee's house was sold prior to the receipt of the relocation letter of offer. Therefore, the extension cannot be granted.

[29] The evidence shows that the grievor sold his house on April 17, 2001, prior to his relocation to the Ottawa/Hull area on September 3, 2002. The two-year period provided in subclauses 3.1.1 and 3.1.2 of the Relocation Directive is related to the disposal and to the acquisition of a residence and not to transportation fees to visit a mother-in-law. Personal circumstances cannot be taken into consideration to waive the period prescribed under subclause 3.1.2 of the Relocation Directive.

[30] The Relocation Guide cannot amend the provisions and limitations provided in the Relocation Directive. The circumstances in which the two-year period can be waived are limited to difficulties encountered in selling a residence, as provided in the Relocation Directive.

[31] Mr. Blais testified that the grievor cannot base his claim on subclause 3.1.2 of the Relocation Directive because he was renting a place. Also, his mother-in-law cannot be considered a dependant as she was not permanently residing with the grievor at the time of the relocation, as provided in the definition of "dependent" in the Relocation Directive.

[32] The Relocation Directive is a comprehensive document with very specific categories of expenses that can be reimbursed and it is not open to an adjudicator to expand the categories and include additional expenses. That statement in *Outingdyke v. Treasury Board (Solicitor General Canada – Correctional Service)*, 2003 PSSRB 51, should receive application in the present case.

[33] In *Comeau*, the grievance was dismissed because the articles of the collective agreement were not ambiguous and the adjudicator could not find a "*bona fide* doubt" about their proper meaning. In the present grievance, the same conclusion should be drawn by the adjudicator because the stipulations of subclause 3.1.2 of the Relocation Directive are clear.

[34] In the present grievance, the issue of reimbursement of expenses for the grievor visiting his mother-in-law in Sydney is not included in the Relocation Directive. The only way to get compensation for those expenses is by considering them as damages. Because no stipulations of the Relocation Directive are related to these expenses, they should only be compensated only by way of punitive damages. In *Canada (Attorney General) v. Lussier*, [1993] F.C.J. No. 64, the Federal Court of Appeal determined that the adjudicator exceeded his jurisdiction in awarding punitive damages. That decision should receive application in the present grievance.

[35] Counsel for the employer submitted the decision *Re Selkirk v. St. Andrews Regional Library and Canadian Union of Public Employees*, Local 336 (2003), 119 L.A.C. (4th), 141, in support of his argument that the clear language of the collective agreement ascertained the common intention of the parties.

Rebuttal

[36] The grievor's representative submitted that provisions found under the "Purpose and Scope" section of the Relocation Directive create ambiguity in the interpretation of the collective agreement. Consequently, in case of ambiguity, the Relocation Guide can be used to clarify the issue.

Reasons

Amendment to corrective action requested

[37] In his initial grievance filed against his employer on February 10, 2004, the grievor requested a waiver of the two-year period prescribed in subclause 3.1.2 of the Relocation Directive. At the outset of the hearing, the grievor wanted to add "and to be made whole". The evidence shows that the grievor wants to be reimbursed for travel expenses to and from Sydney for him and his wife to visit his mother-in-law who was in a nursing home.

[38] Logically, I understand that the grievor wanted the two-year period to be waived to give him the possibility to claim expenses incurred beyond that period. However, a request to waive or to extend a period is obviously of a different nature than a reimbursement of expenses. No evidence was submitted showing that a request for reimbursement was discussed with the employer at any stage of the grievance procedure in relation with grievance NJC-HQ-2004-007.

[39] Consequently, the principle stated in *Burchill* should receive application in the present case. In the view of the Court, it was not open to the applicant, after being unsuccessful at the final level of the grievance procedure, to refer a new or different grievance and the request for amendments is hereby rejected.

On the mootness and academic nature of the grievance

[40] To waive or extend the two-year period stated in subclause 3.1.2 of the Relocation Directive is not, in my view, an academic issue and has not become moot simply because the hearing was held after the aforementioned period. If I were to find a violation of subclause 3.1.2, I could uphold the grievance and waive or extend the period and, in so doing, it would give more time to the grievor to submit expenses incurred after the two-year period, which would no longer be a limitation.

Consequently, the grievance is neither academic nor moot and my decision on the grievance can vary the rights and obligations of the parties. The preliminary objection raised by the employer's counsel is therefore rejected.

[41] The parties acknowledged that the Relocation Directive is deemed to be part of the collective agreement between the parties and applies to the relocation of the grievor from Sydney, Nova Scotia, to Gatineau, Québec, in the Ottawa/Hull area, following his deployment on January 14, 2002.

[42] The wording of the general provisions is not ambiguous and states clearly that the provisions are mandatory and not permissive. Managerial and departmental discretion shall be specifically stipulated and shall be restricted to those provisions where discretion is specifically authorized.

[43] The grievance is related to residential accommodations provided in Part III of the Relocation Directive. More specifically, the grievance refers to subclause 3.1.2 of the Relocation Directive, which provides for expenses incurred to dispose of or acquire accommodation. Clause 3.1 allows expenses for accommodation, such as the ones incurred to purchase or sell a residence and those to rent an accommodation as provided for in subclauses 3.1.3 and 3.1.4 of the Relocation Directive.

[44] Those expenses must be incurred prior to or within a two-year period of the relocation. In this instance, the two-year period ended in October 2004. Subclause 3.1.2 of the Relocation Directive provides that the limitation may be waived or extended, but the Relocation Directive does not set out the particular meaning of these words. Thus, I should give them their common and general understanding. The word "waiver" is the abandonment or relinquishment of a right (here the two-year period or limitation) and the word "extension" is an extra period of time for which the expenses can be incurred. Those words are not used in opposition to each other in subclause 3.1.2 of the Relocation Directive; rather, they are complementary. I understand that the two-year period may be waived without giving a new timeframe or may be extended for a specific period of time.

[45] In both cases, the Deputy Head or Delegated Officer has the discretion to allow a waiver or an extension of the two-year period if the employee is unable to sell his/her house due to reasons beyond the employee's control. This particular circumstance is the only express reservation that allows the exercise of the discretion

to waive or extend the two-year period. The wording of subclause 3.1.2 of the Relocation Directive does not provide other circumstances in which this discretion can be exercised. The restrictive rule of interpretation stated above does not allow another conclusion. The general objective that the relocation has a minimum detrimental effect on the transferred employee and his/her family does not set aside the restrictive rule of interpretation to which the parties have agreed.

[46] Consequently, the employer's discretion to waive or extend the two-year period within which expenses related to residential accommodation can be incurred is strictly limited to the demonstrated inability of the employee to sell the house due to reasons beyond the employee's control. The grievor's submission that his family situation, specifically his mother-in-law's health problems, can be considered as a circumstance that allows the employer to apply discretion to waive or extend the limitation cannot be accepted.

[47] After analyzing subclause 3.1.2 in the context of the Relocation Directive as a whole, I am of the view that the circumstances contemplated by the parties in that subclause must relate to external factors unrelated to the employee's personal situation, such as those discussed above. Waiver or extension of the two-year period should be based on the demonstrated <u>inability</u> of the employee to sell his home or purchase a new one, as the case may be (my underlining). The circumstances invoked by the grievor in support of his grievance – namely, his mother-in-law's illness and the care and attendance provided to her by his wife – understandably made it difficult for the grievor and his dependants to move from Sydney to Gatineau. However, those circumstances do not demonstrate the grievor's inability to sell or purchase a new home, within the meaning of subclause 3.1.2 of the Travel Directive. The facts show that he sold his home in Sydney on April 17, 2001 and relocated to Gatineau on September 3, 2002, followed by his family in August 2004. In these circumstances, the employer's refusal to waive the two-year limitation on "expenses related to disposal and acquisition of accommodation" is in conformity with subclause 3.1.2 of the Travel Directive. Consequently, the grievance is denied.

[48] I should also mention that there is no need to use the Relocation Guide to clarify the unambiguous provisions of subclause 3.1.2. The Relocation Guide is extrinsic evidence that is not part of the collective agreement. The Relocation Guide is an employer document that is not included in the collective agreement, as is the

Relocation Directive. As stated in *Canadian Labour Arbitration* (*supra*), at 3:4400 (Extrinsic Evidence):

> *. . . Although there are numerous exceptions, the general rule at common lay is that extrinsic evidence is not admissible to contradict, vary, add to or subtract from the terms of an agreement reduced to writing. If the written agreement is ambiguous, however, such evidence is admissible as an aid to the interpretation of the agreement to explain the ambiguity but not to vary the terms of the agreement. . . .*

[49] For all of the above reasons, I make the following order:

(The Order appears on the next page.)

Order

[50] The grievance is denied.

May 19, 2006.

Léo-Paul Guindon,
adjudicator