

Date: 20080929

File: 566-02-714

Citation: 2008 PSLRB 75



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

NANCY J. YORK

Grievor

and

**TREASURY BOARD
(Department of Human Resources and Social Development)**

Employer

Indexed as
York v. Treasury Board (Service Canada)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Roger Beaulieu, adjudicator

For the Grievor: Daniel Fisher, Public Service Alliance of Canada

For the Employer: Karen L. Clifford, counsel

Heard at London, Ontario,
August 12, 2008.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

A. Background

[1] The issue in dispute originates from an employee grievance claiming the denial of relocation costs associated with a move from Windsor, Ontario, to London, Ontario. The corrective action sought is that Nancy J. York's ("the grievor") relocation costs be approved.

[2] The dispute originated under the 2005-2007 collective agreement between the Treasury Board and the Public Service Alliance of Canada (expiry date June 20, 2007) ("the collective agreement").

[3] The provisions relied upon by the grievor are clauses 7.01 to 7.04 ("National Joint Council Agreements") and article 18 ("Grievance Procedure") of the collective agreement.

[4] The grievor also relied on the *NJC Integrated Relocation Directive* at clause 13.4 ("Employee-Requested Relocation") and, specifically, the introductory paragraph at clause 13.4.3. Finally, the grievor's alternative position, that the Treasury Board ("the employer") failed to exercise its discretion appropriately, relies on clause 13.4.3(b), and concludes, in addition to the above remedy sought, that the employer should reimburse her three weeks of annual leave that she used to prepare for her relocation from Windsor to London, Ontario.

[5] The grievor has been a PM-02 insurance officer since September 2003 (while in Windsor) and has more than 18 years of service in the federal public service.

[6] The grievor is recognized as a good and efficient employee by both her employer in Windsor and her current employer in London.

[7] The grievor's reasons for requesting a transfer to London were twofold. First, her husband had lost his full-time employment in Windsor in 2001 and was unable to secure full-time work in Windsor for some four years. Second, the grievor had two daughters who were entering university and who are still, as of the date of this hearing, attending university.

[8] In brief, the grievor's family needed two full-time salaries, and the London relocation request was and proved to be the right decision for the grievor after four stressful years in Windsor.

[9] The grievor's request for relocation to London was the result of a carefully planned decision.

[10] The grievance filed reads as follows:

...

I Grieve the denial of relocation costs associated with my move to London Ontario.

*Article 7.01 to
7.04*

Article 18

CORRECTIVE ACTION REQUESTED:

That my relocation costs be approved.

...

[11] The first-level response from the employer, dated and signed on July 7, 2005, reads as follows:

...

Management has reviewed your grievance dated June 24, 2005.

*In accordance with the provisions of Section 13.4.3 of the National Joint Council (NJC) Integrated Relocation Directive, relocation assistance is **not** authorized. The vacant position, **Agent II, 43578** filled as a result of your employee-requested transfer, would have been filled through normal staffing procedures without relocation expenses being incurred.*

Your grievance is therefore denied.

...

[Emphasis in the original]

[12] The second-level response from Marie-Michèle Robichaud, Departmental Liaison Officer, dated and signed on September 13, 2005, reads as follows:

...

This is in response to your grievance of June 24, 2005, regarding management's denial of relocation assistance pursuant to the National Joint Council's Integrated Relocation Directive. Your grievance as well as representation from your Canada Employment and Immigration Union representative has [sic] been carefully reviewed.

As stated in the first level grievance reply, pursuant to Section 13.4.3 (a) and (b) of the National Joint Council's Integrated Relocation Directive, reimbursement of relocation expenses, in cases of employee-requested transfers, are at the employer's discretion in situations where the vacant position would have been filled through normal staffing procedures without relocation expenses being incurred.

In the present case, the Agent II (43578) position would have been filled through normal staffing procedures and as such, the decision to not grant relocation assistance is within management's discretion as outlined in the directive.

Upon review of the circumstances regarding this matter, I have found that management appropriately exercised its discretion. Consequently, I must deny your grievance.

...

[13] The final-level response from Daniel Richer, Department Liaison Officer, People and Culture Branch, dated and signed on October 17, 2006, reads as follows:

...

The NJC Executive Committee met on September 7, 2006, and considered the above-cited grievance in regard to the Relocation Directive.

The Executive Committee considered and agreed with the report of the Relocation Committee which concluded that the grievor had been treated within the intent of subsection 13.4.3 a) of the Relocation Directive in that the Department had certified the position could have been filled locally.

Therefore the grievance was denied.

...

II. Summary of the evidence

A. For the grievor

[14] The grievor's case rests on the evidence and testimony of one witness, the grievor, Ms. York.

[15] The grievor based her case on article 7 of the collective agreement, and, specifically, clause 7.03(a):

ARTICLE 7
NATIONAL JOINT COUNCIL AGREEMENTS

7.01 Agreements concluded by the National Joint Council (NJC) of the Public Service on items which may be included in a collective agreement, and which the parties to this Agreement have endorsed after December 6, 1978 will form part of this Agreement, subject to the Public Service Staff Relations Act (PSSRA) and any legislation by Parliament that has been or may be, as the case may be, established pursuant to any Act specified in Schedule II of the PSSRA.

...

7.03

(a) The following directives, as amended from time to time by National Joint Council recommendation and which have been approved by the Treasury Board of Canada, form part of this Agreement:

...

NJC Relocation - IRP Directive

...

7.04 Grievances in regard to the above directives shall be filed in accordance with clause 18.01 of the Article on grievance procedure in this Agreement.

[16] Also, the grievor submitted evidence based specifically on clause 13.4.3 of the *NJC Integrated Relocation Directive*:

13.4 Employee-Requested Relocation

13.4.1 Employee-related relocation provisions are subject to section 12.1 of the NJC Integrated Relocation Directive.

...

13.4.3 An employee-requested transfer that results in an authorized relocation to a position at the appropriate group and level which is vacant on arrival at the new place of duty shall be deemed to be an employer-requested relocation.

a. The relocated employee shall be reimbursed relocation expenses within the limits prescribed in this Directive. . . .

. . .

[17] The grievor had an alternative position, which was that the employer exercised its discretionary powers under clause 13.4.3(b) of the *NJC Integrated Relocation Directive* and that it did so inappropriately:

. . .

b. When a position is so certified, any relocation assistance is at the discretion of the deputy head or senior delegated officer, as outlined at the beginning of this section.

. . .

[18] Finally, the grievor's evidence centered on the reasons that triggered her request for the actual relocation from Windsor to London, Ontario, which I related in paragraphs 7 and 8 above.

B. For the employer

[19] The employer's evidence on this interpretation grievance is based on a twofold position: 1) clear, simple and unambiguous contract language; and 2) the testimony of one witness, Mary Lacey, Service Delivery Manager, in London, Ontario, who is responsible for all PM-02 positions, on the issue of dispute in this grievance.

[20] The specific language relied upon by the employer is from the *NJC Integrated Relocation Directive*, specifically clause 13.4:

. . .

13.4 Employee-Requested Relocation

13.4.1 Employee-requested relocation provisions are subject to section 12.1 of the NJC Integrated Relocation Directive.

13.4.2 *The Departmental National Coordinator shall ensure:*

- a. employees are provided with counselling and written confirmation on the provisions of this directive that apply; and*
- b. copies of all correspondence shall be retained on the employee's relocation file.*

13.4.3 *An employee-requested transfer that results in an authorized relocation to a position at the appropriate group and level which is vacant on arrival at the new place of duty shall be deemed to be an employer-requested relocation.*

- a. The relocated employee shall be reimbursed relocation expenses within the limits prescribed in this Directive, unless the deputy head or senior delegated officer provides written certification that, had the vacant position not been filled as a result of an employee-requested transfer, it would have been filled through normal staffing procedures without relocation expenses being incurred.*
- b. When a position is so certified, any relocation assistance is at the discretion of the deputy head or senior delegated officer, as outlined at the beginning of this section.*

...

[Emphasis added]

[21] The employer also relied on the wording and content of Exhibits U-5 and U-6. Exhibit U-5 is an email dated April 5, 2005, from the grievor to Wayne McKeen, with a copy to Amy Desjardins, in regard to the grievor's transfer request. It reads as follows:

...

Please accept this email as a formal request to transfer to the London HRCC as an Agent II or Universal Agent effective September 6, 2005. This request is due to my personal family circumstances. I am also requesting relocation assistance for this move.

...

[22] Exhibit U-6 is a letter dated June 6, 2005, to the grievor from Bob Adams, Director, Human Resource Centre of Canada (HRCC) London. It reads as follows:

...

On behalf of the Department of Human Resources and Skills Development, I am pleased to offer you a deployment to the position of Agent II at the PM-02 group and level, effective September 12, 2005.

...

This deployment is subject to the Public Service Employment Act and Regulations, Treasury Board policy and the Department's policy on deployments. Your employment will be governed by the Public Service Terms and Conditions of Employment Regulations and the applicable collective agreement.

*In accordance with the provisions of Section 13.4.3 of the National Joint Council (NJC) Integrated Relocation Directive, relocation assistance is **not** authorized. The vacant position, **Agent II, #43578** filled as a result of your employee-requested transfer, would have been filled through normal staffing procedures without relocation expenses being incurred. The NJC Integrated Relocation Directive can be found at the following website: http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TMB_113/irp1-2_e.asp#2.6.*

Should you have workplace accommodation needs, please inform your manager prior to your date of appointment, or as soon as possible. For further information on the Duty to Accommodate Policy, please visit the following websites: http://www.chrc-ccdp.ca/preventing_discrimination/toc_tdm-en.asp?langupdate=1 or http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_852/ppaed_e.asp.

...

Please confirm your acceptance or refusal of this offer by returning the attached duplicate as soon as possible to Deb Weiler, HR Officer, HRCC London.

Should you require any further information concerning this offer, please contact Mary Lacey, A/Service Delivery Manager. . . .

...

[Emphasis in the original]

[23] The second part of the employer's evidence was Ms. Lacey's testimony.

[24] The employer also submitted Exhibits E-1 and E-2. Exhibit E-1 is an email from Ms. Lacey to the grievor dated June 3, 2005. It reads as follows:

...

Hi Nancy, this email is to confirm our conversation of this afternoon...your deployment request will be effective Sept 12 2005...The deployment request was approved at the HRMC as a PM2 agent 2 which is the position you currently occupy.

Relocation for the deployment request was not approved. We look forward to having you join us here in London. I understand that my gain is Waynes' loss.

...

[25] Exhibit E-2 refers to a table enumerating a list of employees found in “feeder-groups” for the PM-02, Agent II, position at the London HRCC.

[26] Ms. Lacey’s testimony was to the effect that she was not attempting in June 2005 to bring to London any employee from outside London.

[27] On the contrary, her evidence was to the effect that she had an established list of her current employees who were all in the “feeder-groups” leading to the PM-02, Agent II, position, which was the group to which the grievor was requesting to relocate.

[28] Furthermore, Ms. Lacey had advised the grievor on June 3, 2005, that her relocation costs for the deployment request to London had been denied.

[29] The grievor accepted and signed a letter of acceptance of the deployment offer to London on June 7, 2005.

[30] Ms. Lacey’s testimony was that, as of the date of this hearing, no other Agent II had been hired since the grievor’s arrival in 2005.

[31] Finally, Ms. Lacey’s testimony was that it was not “essential” to the London operations that the grievor be deployed to London and that the grievor brought no “extraordinary skills” to the PM-02, Agent II, position. The grievor was only bringing to the position in London some two years of experience, compared to what Ms. Lacey already had in her London “feeder-group.”

III. Summary of the arguments

A. For the grievor

[32] The grievor’s representative referred to Exhibit U-3, the *NJC Integrated Relocation Directive*, and emphasized the principles of the Directive:

...

Principles

The following principles were developed jointly by the Bargaining Agents' representatives and the Employer side representatives to the National Joint Council (NJC). These principles are the cornerstone of managing government relocations and shall guide all employees and managers in achieving fair, reasonable and modern relocation practices across the public service.

Trust - *increase the amount of discretion and latitude for employees and managers to act in a fair and reasonable manner.*

Flexibility - *create an environment where management decisions respect the duty to accommodate, best respond to employees' needs and interests, and consider operational requirements in the determination of relocation arrangements.*

Respect - *create a sensitive, supportive relocation environment and processes which respect employees' needs.*

Valuing people - *recognize employees in a professional manner while supporting employees, their families, their health and safety in the relocation context.*

Transparency - *ensure consistent, fair and equitable application of the Directive and its practices.*

Modern relocation practices - *introduce relocation management practices that support the principles and are in keeping with relocation industry trends and realities; develop and implement an appropriate relocation accountability framework and structure.*

...

[33] The grievor's representative underlined the importance of the principles as the cornerstone of managing government relocations, and stressed the necessity for flexibility in management's decisions in its duty to accommodate employee needs.

[34] Furthermore, the grievor's representative drew my attention to the "Purpose and Scope" clause of the *NJC Integrated Relocation Directive* at clause 1.2 and to clause 2.7 of the Directive's "Administration" section:

1.2 Purpose and Scope

1.2.1 It is the policy of the government that in any relocation, the aim shall be to relocate an employee in the most efficient fashion, at the most reasonable cost to the public while having a minimum detrimental effect on the employee and family and on departmental operations.

...

2.7 Employee-requested Relocation

2.7.1 In an employee-requested relocation (see section 13.4), any assistance shall be at the discretion of the delegated departmental manager and shall be negotiated under the same terms and conditions as for appointees (see section 12) to the Public Service.

[35] A second part of the grievor's argument was that the employer must consider the circumstances surrounding her reasons for moving from Windsor to London, Ontario. The grievor's position is that not only did she clearly indicate the personal and family-related reasons for her request to relocate, but, in addition to these family considerations, her request for relocation met an urgent need by the employer to fill an upcoming opening in London and also avoided for the employer the costs and time of a full competition process to fill an eventual vacancy.

[36] The grievor's position is that personal circumstances are contemplated by the *NJC Integrated Relocation Directive* at clause 13.4 (described above), and that her personal circumstances should, as a result, have been considered by the employer.

[37] In the alternative, the grievor's representative argued under clause 13.4(b) that "discretion" was inappropriately applied because the grievor had flagged her personal circumstances to the employer.

[38] In final argument, the grievor's representative requested that the grievor's rights under the *NJC Integrated Relocation Directive* be applied retroactively and that she also be granted three weeks of leave for the period she took to prepare for her relocation from Windsor to London, Ontario.

[39] Finally, the grievor argued that she has met the test of clause 13.4.3 for her employee-requested transfer to be deemed an employer-requested relocation.

B. For the employer

[40] The employer, using Exhibit U-6, described above at paragraph 22, argued that the London office's management could have filled the position of PM-02, Agent II, through a normal staffing procedure.

[41] Ms. Lacey confirmed that she had more than adequate and qualified staff in the "feeder-groups" in London (Exhibit E-2, described above at paragraph 25). The position could have been filled in London.

[42] The employer argued that it was extremely accommodating throughout the entire process, and the accommodation was admitted by the grievor in her testimony.

[43] The employer argued that it showed flexibility when the grievor requested a three-week delay to start her new job in the London location. The additional time requested by the grievor was agreed to by the employer to assist in the grievor's preparations for her physical move to London. Again, the grievor agreed in her testimony that the employer had shown this flexibility.

[44] The employer argued that it was important to recognize that Exhibit U-6 (the letter of offer) is a contract and a legally binding document. In Exhibit U-6, at the last paragraph of page 1, the grievor agreed that the language mirrored clause 13.4.3(a) of the *NJC Integrated Relocation Directive*.

[45] The employer argued that this document was signed without any duress — in fact, the contrary — and that the employer, in that letter, gave the grievor the option to accept or refuse the offer in London, as well as the opportunity to seek any further information concerning the offer from Ms. Lacey, who would be the grievor's direct report. The grievor did not seek any further information about the offer or about any other provision of the letter of offer that she signed on June 7, 2005.

[46] The employer referred to the doctrine of *The Law of Contracts*, 5th ed. (2005), by S.M. Waddams, at page 60, which states:

...

Where a contractual document is signed it is generally assumed that the document is evidence of the existence of an agreement and its terms.

...

[47] At page 90 of that same document, under the heading “Communication of Acceptance,” it states:

...

As a general rule, it is not enough for one to whom an offer is made to assent inwardly: the offeree must communicate acceptance to the offeror.

...

[48] Finally, in that same text, under the heading “The Exchange Element: Consideration,” it states:

...

If agreement is the first aspect of a bargain, the second is the notion of exchange. . . .

A bargain is not formed merely by mutual assent. There must be some exchange of values. Something must be given or promised in exchange for the promise sought to be enforced.

...

[49] The employer went on to argue the question of cost to the public, and it stated that in the public service, monies allocated to relocation are not a “slush fund”; these monies are taxpayer dollars and must be spent diligently, in compliance with the established rules.

[50] Compliance with established rules, the employer argued, refers in this case to article 12 of the *NJC Integrated Relocation Directive*:

...

12.1 Initial appointment (other than EX/GIC) to the Public Service

(To be processed internally by departments)

12.1.1 Relocation expenses are not normally reimbursed to a person on initial appointment to the Public Service. However, in exceptional circumstances when it is considered that payment of such expenses is essential for effective staffing action, the relocation assistance to be provided, if any, shall be negotiated with the person during the selection phase (Public Service Commission Staffing Manual, Staffing Policies and Guidelines). The terms agreed upon shall be included in the offer and shall be recorded and adhered to when the person becomes an employee and is relocated to the first place of employment.

The NJC Integrated Relocation Directive funding envelope does not apply to those persons on initial appointment excluding those persons appointed by Order in Council and EXs. (See section 1.4.6).

12.1.1.a When considered essential for effective staffing action, relocation assistance, if any, may be negotiated with persons appointed to the Senior Management, Scientific and Professional, Administrative and Foreign Service, and Technical categories. All the provisions outlined in this directive may be approved, except where modified by this section. Assistance in the disposal and acquisition of accommodation shall not be given.

...

[51] The employer then argued that the last two paragraphs above go to the question of the “discretion point made by the union.”

[52] It is Ms. Lacey’s testimony that there were no exceptional circumstances in the consideration leading to the grievor’s relocation to London. The grievor’s experience was close to the bottom of the list of experience when compared to members of the “feeder-group” at the time the grievor was introduced to the PM-02, Agent II, position in London.

[53] The employer requested that the grievance be dismissed.

IV. Reasons

[54] An examination of the evidence and the respective arguments of the parties reveals that the central issue in dispute revolves around clause 13.4.3(a) of the *NJC Integrated Relocation Directive* and the context of the letter addressed to the grievor (Exhibit U-6), which she signed after accepting the relocation offered to her in clear and unambiguous terms.

[55] The dispute flows from the interpretation of section 13.4.3 which provides that an employee-requested transfer will be deemed to be an employer-requested relocation, when the transfer “. . . results in an authorized relocation to a position at the appropriate group and level which is vacant on arrival at the new place of duty. . . .”

[56] However, section 13.4.3 must be read as a whole, and this includes the clause that follows immediately, which provides for reimbursement, in the case of a deemed

employer-requested transfer, “. . . unless the deputy head or senior delegated officer provides written certification that, had the vacant position not been filled as a result of an employee-requested transfer, it would have been filled through normal staffing procedures without relocation expenses being incurred”.

[57] In this case, the department stated from the start, including in the letter of offer, that there would be no reimbursement of relocation expenses, precisely because the position could have been filled through local staffing, a fact amply demonstrated in the employer’s evidence.

[58] The grievor’s request for relocation was an employee-requested relocation. The Directive provides that relocation expenses are not normally reimbursed in such a case. There was no reason for the employer to exercise its discretion to reimburse relocation expenses.

[59] The grievor stated that she understood the letter of offer dated June 6, 2005, and admitted that she took it seriously because it was important to her to move to London.

[60] The grievor also stated that she had the choice to accept or refuse the offer, and that after full consideration she had voluntarily accepted the offer to relocate.

[61] The employer’s witness, Ms. Lacey, clearly established that she had not had any need to bring in employees from outside of London in June 2005. She produced Exhibit E-2, which establishes the existence of a “feeder-group” available to fill any PM-02, Agent II, positions from within London. This evidence was not contradicted.

[62] In her testimony, Ms. Lacey not only established that it was not essential for her to bring the grievor to London, but also that the grievor did not bring to the London position any “extraordinary skills to the PM-02, Agent II, function,” since she only had approximately two years of experience as an Agent II before coming to London, and Ms. Lacey already had more-experienced people working for her in London in that function.

[63] Therefore, with respect to clause 13.4.3(b) of the *NJC Integrated Relocation Directive*, the employer’s discretion was appropriately exercised based on the uncontradicted evidence before me.

[64] I find that the employer complied with the letter and the intent of the language of the collective agreement provisions and the *NJC Integrated Relocation Directive*.

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

(The Order appears on the next page)

V. Order

[66] The grievance is denied.

September 29, 2008.

**Roger Beaulieu,
adjudicator**