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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

RAYMOND ROBITAILLE

Grievor

and

**DEPUTY HEAD
(Department of Transport)**

Respondent

Indexed as
Robitaille v. Deputy Head (Department of Transport)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: [Michele A. Pineau, adjudicator](#)

For the Grievor: [Fernand Guérette, counsel](#)

For the Respondent: [Adrian Bieniasiewicz, counsel](#)

Heard at Montréal, Quebec,
February 18, 2011.
(PSLRB Translation)

I. Background

[1] This decision follows from the orders made in *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70.

[2] Raymond Robitaille (“the grievor”) is Manager, Surface Services, Quebec Region, for the Department of Transport (“Transport Canada” or “the employer”). The grievor filed four grievances contesting (a) the unfairness of the findings of an investigation into harassment allegations made against him by a subordinate (May 26, 2005); (b) the ensuing disciplinary action (June 22, 2005 and August 24, 2006); (c) his assignment to other duties without his consent (August 24, 2006); and (d) the imposition of a remedial plan (October 24, 2006). The grievances were allowed, and the deputy head was required to take six corrective actions on behalf of the employer.

[3] I remained seized of this case for 90 days following the rendering of the decision to deal with any disagreement between the parties, including the choice of a human resources expert, an actuary, the actuarial values and the calculation of the amounts ordered. The 90-day period was repeatedly extended and ends on March 15, 2011.

[4] The deputy head granted the grievor all the corrective action ordered in *Robitaille* except two, that set out in paragraph 352, and, in part, that set out in paragraph 353. The corrective action at issue was mediated but was not resolved.

[5] The deputy head applied for the judicial review of *Robitaille* with respect to the corrective action ordered in paragraphs 352 and 353, which is the subject of this decision, and that in paragraph 354, which ordered the deputy head to pay the grievor \$50 000 in punitive damages. The Federal Court will hear the application for judicial review on March 15, 2011.

[6] A hearing was scheduled for the issues arising from paragraphs 352 and 353 of *Robitaille*. The hearing allowed the parties to explain their respective views. The grievor testified about his personal financial losses, and the employer cross-examined him. The grievor presented a report prepared by the actuary chosen by the parties, a table explaining his claims and a binder of documents supporting his position on the amounts claimed.

II. Issues

[7] The following are the paragraphs at issue from *Robitaille*:

...

352 With respect to the grievor's career, I order the deputy head, at its expense, to have a human resources expert conduct a financial assessment of the grievor's loss of career advancement opportunities since September 6, 2005, and to reimburse the grievor for any loss of pay and benefits, including pension benefits, which resulted from that loss of advancement.

353 With respect to the loss of personal property incurred by the grievor to pay fees and expenses to his counsel, I order that an actuarial assessment of the loss incurred be carried out, at the deputy head's expense, and I order the deputy head to reimburse the grievor the actuarial value of that loss.

...

A. Paragraph 352

[8] After a call for bids, the employer retained the services of a human resources expert to assess the loss of career advancement opportunities. Following an assessment and a few meetings with the parties, the expert withdrew from the case. The employer then made a settlement offer of \$40 000 in compensation for the loss of career advancement opportunities. The grievor accepted the offer but refused to sign the discharge that, in his opinion, would have deprived him of certain remedies before the courts, if required.

[9] At the hearing, the parties agreed that the value of that corrective action was \$40 000 and that no evidence to justify that amount would be required. I gave the grievor the choice of signing the employer's proposed discharge and receiving the \$40 000 immediately or including that amount in my decision, which would mean that it would not be paid to him, if required, until the Federal Court rendered its decision. The grievor chose the payment order.

B. Paragraph 353

[10] The actuary chosen by the parties prepared a report on the value of the grievor's past losses, time-adjusted to November 1, 2010. The following calculations in the report are at issue: (a) the notary's fees and the "welcoming tax" from the grievor's purchase of real property in 2004; (b) the reimbursement of the lines of credit used to pay certain fees of his counsel from 2005 to 2010; and (c) the early repayment penalty on the mortgage, the discharge of sale of the real property and the real estate agent's fees in 2008.

III. Positions of the parties on the issues**A. The notary's fees and the "welcoming tax" from the grievor's purchase of real property in 2004**

[11] The employer objected to the reimbursement of those costs, arguing that they were not relevant.

[12] The grievor admitted that those costs were incurred before his grievances and agreed to waive them.

B. Reimbursement of the lines of credit used to pay certain fees of the grievor's counsel from 2005 to 2010

[13] On this point, the grievor claimed \$72 339.74, which represented the loans he took out to pay certain fees of his counsel, in addition to the Registered Retirement Savings Plans (RRSPs) that he liquidated. When he liquidated his RRSPs, the grievor received only half of their value.

[14] The employer objected to reimbursing those amounts, arguing that the grievor was reimbursed for the full value of his RRSPs plus interest accrued. The employer argued that that reimbursement complied with the spirit of the order set out in paragraph 353 of *Robitaille*.

[15] The grievor responded that the time-adjusted value of the RRSPs did not correspond to their value had they not been liquidated and did not take into account the personal financial losses resulting from the loans, or the interest.

C. The early repayment penalty on the mortgage, the discharge of sale of the real property and the real estate agent's fees in 2008

[16] The grievor argued that these costs were directly related to the forced sale of his property given the circumstances of this case and that they must be compensated. The employer argued that the disbursements were not relevant since they had no effect on the sale value of the property.

IV. Reasons

[17] After considering the parties' arguments, I conclude as follows.

A. The notary's fees and the "welcoming tax" from the grievor's purchase of real property in 2004

[18] The notary's fees and the welcoming tax from the grievor's purchase of real property in 2004 are not relevant to this case since they were incurred before the grievances and the incidents that gave rise to the sale of the real property. Accordingly, I do not allow this claim by the grievor.

B. Reimbursement of the lines of credit used to pay certain fees of the grievor's counsel from 2005 to 2010

[19] The following is an excerpt from the actuary's calculations of the time-adjusted value of the grievor's losses from 2005 to November 1, 2010 for his RRSPs and the amount paid to him (total including interest):

<i>DISBURSEMENT</i>	<i>AMOUNT BEFORE INTEREST</i>	<i>LEGAL INTEREST AND ADDITIONAL COMPENSATION</i>	<i>TOTAL INCLUDING INTEREST</i>
<i>2005</i>			
<i>15-09-05 RRSP liquidated</i>	<i>\$20 000</i>	<i>138.09%</i>	<i>\$27 618</i>
<i>2006</i>			
<i>14-09-06 RRSP liquidated</i>	<i>\$36 000</i>	<i>130.20%</i>	<i>\$46 872</i>

<i>2007</i>			
<i>21-02-07 RRSP liquidated</i>	<i>\$5000</i>	<i>126.26%</i>	<i>\$6313</i>
<i>22-02-07 RRSP liquidated</i>	<i>\$5000</i>	<i>126.23%</i>	<i>\$6312</i>

22-02-07 RRSP liquidated	\$3264	126.23%	\$4121
2008			
10-01-08 RRSP liquidated	\$8597	118.29%	\$10 169
2010			
08-06-10	\$29 215	102.12%	\$29 834
TOTAL	\$107 076		\$131 239

[20] The grievor presented the following calculations:

RRSP FEES PAID	RRSP LIQUIDATED (Gross)	RRSP LIQUIDATED (After taxes)	LOAN
2003/2004 \$12 000			
2005 \$29 200	\$20 000	\$10 000	Line of credit \$15 000
2006 \$38 800	\$36 000	\$18 000	Line of credit \$15 839.74
2007 \$13 500	\$13 264	\$6632.16	Credit cards
2008 \$31 500	\$8596.76	\$4293.38	Line of credit \$36 500
TOTAL \$125 000	\$77 860.76	\$38 925.54	\$72 339.74

[21] The grievor testified that he paid \$22 007.14 in interest on the loans. He claimed the amount of his loans (\$72 339.74) and the interest (\$22 007.14), totalling \$94 346.88.

[22] According to the actuarial calculations, the grievor received \$131 239 from liquidating his RRSPs, compared to the cost of \$107 076 when they were purchased. He also received \$38 925.54 after taxes when he liquidated the RRSPs, which was not included when the time-adjusted value was calculated. Thus, the net amount he received was \$170 164.54. In my opinion, that amount adequately compensates him for the loss of personal property set out in paragraph 353 of *Robitaille*.

C. The early repayment penalty on the mortgage, the discharge of sale of the real property and the real estate agent's fees in 2008

[23] The grievor was obliged to sell his real property to pay certain fees of his counsel, given the complexity of his case and the employer's slowness in dealing with the complaint and the consequences of the investigation, which I considered aggravating factors (see paragraph 336 of *Robitaille*). The premature sale of his property incurred an early repayment penalty on the mortgage (\$1629) for the grievor, which he would not otherwise have incurred. Although the discharge of sale of the property (\$629) and the real estate agent's fees (\$12 420) are inherent to the sale of any property, I am of the opinion that the obligation to sell the property at a time when the grievor had no control over market conditions is sufficient ground to allow the reimbursement of those costs.

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

(The Order appears on the next page)

V. Order

[25] As corrective action for the loss of career advancement opportunities, as set out in paragraph 352 of *Robitaille*, I order the deputy head to pay the grievor \$40 000 once the Federal Court has rendered its decision in the judicial review of *Robitaille* (2010 PSLRB 70).

[26] The claim for the notary's fees and the welcoming tax from the grievor's purchase of real property in 2004 is denied.

[27] The claim for the reimbursement of the lines of credit used to pay certain fees of the grievor's counsel from 2005 to 2010 is denied.

[28] As corrective action for the personal losses set out in paragraph 353 of *Robitaille*, I order the deputy head to pay the grievor \$14 678, which includes the early repayment penalty on the mortgage (\$1629), the discharge of sale of the real property (\$629) and the real estate agent's fees (\$12 420) once the Federal Court has rendered its decision in the judicial review of *Robitaille*.

February 25, 2011.

PSLRB Translation

**Michele A. Pineau,
adjudicator**