

**Date:** 20151023

**File:** 566-02-6427

**Citation:** 2015 PSLREB 84



*Public Service Labour Relations Act*

Before an adjudicator

---

BETWEEN

**LISA WALZAK**

Grievor

and

**TREASURY BOARD  
(Department of Health)**

Employer

Indexed as

*Walzak v. Treasury Board (Department of Health)*

In the matter of an individual grievance referred to adjudication

**Before:** Linda Gobeil, adjudicator

**For the Grievor:** Vance Coulas, Professional Institute of the Public Service of  
Canada

**For the Employer:** Léa Bou Karam, counsel

---

Heard at Edmonton, Alberta,  
June 10, 2014.

### **I. Individual grievance referred to adjudication**

[1] On March 8, 2007, Lisa Walzak (“the grievor”) filed a grievance against a decision of her employer, the Department of Health (“the employer”). In her grievance, she alleged that the employer failed to correctly apply the National Joint Council (NJC) *Integrated Relocation Directive* (“the *Directive*”) with respect to her relocation from Calgary to Edmonton, Alberta, in 2005.

[2] Specifically, the grievor alleged that her employer did not act diligently when the decision was made to relocate her, and as a result, she lost an opportunity to buy a home at a better price; that the employer was wrong when it denied her the right to delay listing her condo so that she could benefit from a more favourable market; and that the employer should reimburse her for some of the home inspections she paid for.

[3] The Professional Institute of the Public Service of Canada (“the bargaining agent”) represented the grievor in this matter, and the relevant collective agreement between the employer and the bargaining agent is for the Applied Science and Patent Examination Group, with an expiry date of September 30, 2007 (“the collective agreement”). Clause 36.01 of the collective agreement incorporates several NJC directives, such as the *Directive*. As per NJC By-Laws, a grievance arising from an NJC directive is referred to the employer at the second level of the grievance process and then, if no resolution is found, to the NJC Executive Committee. If the employee still feels aggrieved by the NJC Executive Committee’s decision, with the bargaining agent’s support he or she can refer the matter to adjudication under paragraph 209(1)(a) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *Act*”).

[4] On January 22, 2009, on behalf of the employer, Catherine Chagnon informed the grievor that the employer had denied her grievance. The matter was then referred to the NJC for a final decision under the grievance process (see the agreed statement of facts, at paragraphs 5 and 6).

[5] In November 2011, the NJC’s Executive Committee essentially decided as follows:

*... It was agreed that the evidence presented indicated that the grievor was treated within the intent of the Directive with respect to consultation (section 2.2.2.3), the requirement to submit a business case to delay sale of home (section 8.2 and*

2.13.1), the option not to sell (section 13.3.2.2), the appraisal value of home (section 8.9), return trips for appraisal and to finalize sale of home (section 8.12) and legal fees (sections 8.8 and 8.11).

More specifically, the Committee noted that the policy does not provide trips for appraisal purposes. The Directive states that where exchange of documents via courier or electronic means is not sufficient to finalize the sale, the employee shall be authorized to return to his/her previous place of duty to finalize the sale. The grievor however, did not submit documentation showing that it was necessary for her to be present.

With respect to legal fees (real estate commission and mortgage-breaking penalties), the Committee found that real estate commission was not payable in this case because private sale of a home does not incur a commission.

The Committee is of the view that the refusal to reimburse home inspections and absorption of costs of mortgage breaking penalty are moot, as both had been addressed at the previous grievance levels.

With respect to telephone costs in respect of the sale and purchase of a home, the Committee agreed that the department should absorb the telephone costs associated with the grievor's relocation and that the grievor should submit an itemized receipt for the applicable calls to the department for reimbursement.

...

[Sic throughout]

[6] At the beginning of the hearing, the parties explained that the NJC Executive Committee is composed of representative members of both the bargaining agents and the employer. The bargaining agent in this case is part of the NJC Executive Committee and was part of its decision, which was unanimous.

[7] On January 13, 2012, the grievance was referred to adjudication as per paragraph 209(1)(a) of the Act.

[8] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the new Board") to replace the former Public Service Labour Relations Board ("the former Board") as well as the former Public Service Staffing Tribunal. On the same day, the consequential and

transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* as that Act read immediately before that day.

## **II. Summary of the evidence**

[9] At the hearing, the parties jointly submitted the following agreed statement of facts, along with exhibits which I refer to herein by tab. The grievor's representative also submitted Exhibits G-1 and G-2. Finally, at the end of the hearing, the employer submitted a list of the home inspections that it was prepared to reimburse without prejudice.

### ***Grievance***

1. *Ms. Walzak filed a grievance on March 8, 2007, which stated*

*"This is an NJC grievance in respect of the Integrated Relocation Directive.*

*I grieve the following in respect of my relocation from Calgary to Edmonton:*

1. *Lack of due diligence in respect of consultation (section 2.2.2.3)*
  2. *Improper requirement to submit business case to delay sale of home (section 8.2, and 2.13.1)*
  3. *Denial of opportunity to exercise option not to sell (Section 13.3.2.2)*
  4. *Lack of due diligence in appraising value of home (Section 8.9)*
  5. *Refusal to reimburse home inspections (Section 8.16)*
  6. *Denial of benefits under section 8.12 in respect of return trips to for appraisal purposes and to finalize sale of home*
  7. *Denial of benefits under sections 8.8 and 8.11 in respect of legal fees*
  8. *Compelled to absorb costs of mortgage breaking penalty as a result of a lack of due diligence by agent of the employer*
  9. *Requirement to absorb telephone costs in respect of sale and purchase of home."*
2. *As a remedy Ms. Walzak requested "to be made whole in all respects relating to the above please".*

3. A grievance response was received on August 5, 2008 in which the grievance was denied.
4. The grievance was transmitted to the 2<sup>nd</sup> level NJC on August 26, 2008
5. A response to the grievance at the second level was received on January 22, 2009, in which the grievance was denied.
6. The grievance was transmitted to the NJC final level.
7. On December 5, 2011 a response for the NJC executive committee was received which indicated that the grievance was allowed, in that telephone fees would be reimbursed with receipts, and that the mortgage breaking and home inspection issues had been resolved at previous grievance stages.
8. January 13, 2012, Ms. Walzak's grievance was referred to adjudication under s. 209(1)(a) of the PSLRA.

#### **Employment History**

9. Ms. Lisa Walzak is an indeterminate employee of Health Canada working in Calgary, who, in April 2005, accepted an acting position with Health Products and Food Branch as Coordinator, Regional Adverse Reaction Reporting Centre (SG-SRE-05) in Edmonton.
10. At this time, her substantive position was in Calgary, where she owned an apartment condominium. While she was acting in Edmonton, she was on travel status.
11. Ms. Walzak was provided a letter of offer, dated November 14, 2005, which offered the Coordinator position in Edmonton on an indeterminate basis.
12. Ms. Walzak accepted the offer on November 15, 2005, and continues in this role to this day.
13. As a result of her acceptance of the position, Ms. Walzak became eligible for relocation assistance from Calgary to Edmonton pursuant to the Integrated Relocation Directive (IRD).

#### **Conditional Offer to Purchase 10025 94<sup>th</sup> St.**

14. On November 1, 2005 Ms. Walzak signed a conditional offer to purchase a single family dwelling at 10025 94<sup>th</sup> st., Edmonton, for \$175,000.

15. *The offer was to stay open until November 18, 2005, and was conditional upon:*

- *a satisfactory home inspection; and,*
- *Approval of relocation assistance pursuant to the IRD.*

16. *A property inspection was carried out on November 15, 2005, and disclosed no major defects.*

17. *The Employer sent the Authorization Notice of Relocation to the Third Party Service Provider (ie. Royal LePage Relocation Services) on November 18, 2005.*

18. *Ms. Walzak was not approved for the IRD by November 18, 2005, and thus the offer lapsed.*

19. *Ms. Walzak was contacted by Royal LePage on November 21, 2005.*

20. *She had her consultation session with Royal LePage on November 30, 2005.*

***Other attempts to purchase***

21. *November 30, 2005 an offer of \$210,000 was made for 10454 86 Ave, which was not accepted by the seller.*

22. *January 10, 2006 an offer on 9394 98 st. was not accepted by the seller.*

23. *February 14, 2006 an offer of \$240,000 was made on 9708 80 Ave, which was accepted but failed the ensuing home inspection. The inspection in the amount of 428\$ was reimbursed to Ms. Walzak.*

24. *March 2, 2006 an offer of \$222,500 was made on 9818 80 Ave, which was accepted but failed the ensuing home inspection. The inspection in the amount of 374.50\$ was reimbursed to Ms. Walzak.*

25. *March 22, 2006 an offer of was made on 7518 93 Ave, which was not accepted by the seller.*

26. *March 23, 2006 an offer was made on 9838 84 Ave, which was accepted but failed the ensuing home inspection.*

***The purchase of 9245 92<sup>nd</sup> St.***

27. *April 5, 2006, an offer was made on 9425 92<sup>nd</sup> St, for \$242,000, which was accepted, and passed the ensuing*

home inspection, and was ultimately the residence that Ms. Walzak purchased.

28. The home inspection for this home has not been reimbursed to Ms. Walzak.

***Conditions of the Real Estate Market in Alberta in 2005/2006***

29. During the time Ms. Walzak was working to acquire a residence, Edmonton and Calgary were in the midst of what has been described as a “market frenzy” with low inventories.

30. Sellers often had the luxury of choosing from multiple offers.

31. During the period of mid-November 2005 to mid-April 2006, the average price of a single family dwelling in Edmonton rose by almost 17.5%,

32. From December 2005 to March 2006, the average price for a condominium in Calgary rose by over 20%.

***Sale of 204-1420 Memorial, Calgary***

33. On December 1, 2005, Ms. Walzak requested to delay placing her Calgary residence on the market, to take advantage of seasonal market fluctuations.

34. Ms. Walzak received an email, dated December 1, 2005 which indicated that she would need submit a business case delay the listing of her property for sale, which may or may not be approved.

35. December 15, 2005, she was advised her business case had been denied.

36. The property at 204-1420 Memorial was appraised at \$222,000 on December 2005 by a Real Estate Appraiser.

37. Ms. Walzak did not list her property for sale in December 2005, nor January 2006, nor February 2006.

38. On February 7, 2006, Ms. Walzak sold her property privately by accepting an offer of \$240,000 of the person renting 204-1420 Memorial, which was later amended to \$239,520 as this was the limit the financial institution would loan to the purchaser.

[Sic throughout]

[10] In his opening statement, the grievor's representative stated that in this case, both the employer and Royal LePage, which was acting on the employer's behalf as its service provider, showed a complete lack of support and no flexibility towards the grievor. The process was not transparent, and as a result, she suffered an important financial loss.

[11] The grievor's representative maintained that the grievor lost an opportunity to purchase a home in Edmonton in November 2005 due to Royal LePage's inaction. Had it acted within 48 hours, the grievor would have bought the house located at 10025 94th Street in Edmonton at a lower price than what she finally had to pay a few months later, in April 2006. Her representative also stated that the grievor did not receive the necessary support for the sale of her condo in Calgary, which as a result was sold below market value. He also claimed that in the circumstances, the grievor should be entitled to the reimbursement of the home inspections she paid for and compensated for the loss of opportunities, which he estimates at \$110 000 for both transactions.

[12] At the hearing, while the employer still disputed the grievor's claim, its counsel stated that, without prejudice, the employer was prepared to reimburse the grievor for three home inspections as long as she submitted acceptable proof of payment. A list of the inspections that the employer was prepared to pay for was provided at the end of the hearing.

[13] Counsel for the employer maintained that under the *Directive*, the grievor is not entitled to loss of opportunity and is not entitled to expenses that she incurred before she received all necessary authorizations under the *Directive*. Counsel insisted that in this case, the NJC Executive Committee, of which the bargaining agent is a member and was part of its decision, denied the grievance on its merits.

**A. For the grievor**

[14] Ms. Walzak is an indeterminate employee who was working in Calgary, where she owned a condo. In April 2005, she accepted an acting position as a food branch coordinator at the SG-SRE-05 group and level in Edmonton.

[15] The grievor testified that following a staffing process, on November 14, 2005, the employer offered her the coordinator position on a permanent basis. She indicated



that she already knew on November 1, 2005 that she was the successful candidate following an email she received from Zena Kwan, a manager with the employer.

[16] The grievor stated that she was aware that there was a house shortage in Edmonton. Therefore, she decided to be proactive in her search for a new home as soon as she knew she was the successful candidate on November 1, 2005. She explained that she wanted peace of mind and wanted to settle things quickly, even if it meant having to absorb some costs, such as for the home inspection, before receiving all authorizations under the *Directive*. She indicated that at that time, the housing markets in Edmonton and Calgary were very frenzied. (See the agreed statement of facts, at paragraphs 29 to 32; and tabs 14 to 24).

[17] The grievor testified that despite the fact that she had not signed the job offer letter, which she eventually did on November 15, 2005, she made an offer on a house on November 1, 2005, located on 94th Street in Edmonton (see the agreed statement of facts, at paragraph 14, and Tab 8, page 3). The offer was conditional on her receiving relocation approval from the employer by November 18, 2005. She indicated that once she was told that she was the successful candidate, she hoped to receive the job offer letter within 10 days. She also indicated that to be entitled to the *Directive*'s benefits, she then had to wait 48 hours after signing the job offer before Royal LePage would contact her (see section 2.2.3.1 of the *Directive*).

[18] The grievor testified that she signed the offer letter on November 15, 2005 (Exhibit tab 6), but although the employer sent the authorization, entitled "Notice of Relocation," to Royal LePage on November 18, 2005 (Tab 7, last two pages), she did not hear from Royal LePage within 48 hours of signing the offer letter (see the agreed statement of facts, at paragraphs 17 and 18, and section 2.2.3.1 of the *Directive*). As a result, she was unable to finalize the offer she made on that house in Edmonton by November 18, 2005, and the deal fell through. She indicated that Royal LePage finally contacted her on November 21, 2005, and that she had a consultation session with its representative on November 30, 2005 (see the agreed statement of facts, at paragraphs 19 and 20).

[19] In cross-examination, the grievor explained that she was expecting to receive Royal LePage's authorization by November 17, 2005. She admitted that she could have had the deadline of November 18, 2005, removed as a condition and gone ahead with

the transaction, but then she would have been on her own, without the benefit of the *Directive*.

[20] The grievor claimed that she was never reimbursed the \$422.65 for the home inspection on 94th Street in November 2005 since she was told that she did not receive prior authorization to go ahead with it (Exhibit tab 9).

[21] The grievor testified that she then looked at 20 other properties, which was not easy since she wanted a house located in a safe area, walking distance from her work. She stated that between November 2005 and March 2006, she made a series of offers that were either not accepted or for which the home inspections failed (see the agreed statement of facts, at paragraphs 21 to 26).

[22] In April 2006, the grievor made an offer on a house on 92nd Street that was accepted; that house passed the inspection.

[23] The grievor indicated that not all the inspections she had done on the different properties were reimbursed. In cross-examination, she admitted that she never submitted to her employer all her requests for reimbursement for those inspections (see the agreed statement of facts, at paragraphs 21 to 27).

[24] The grievor testified that at the same time as she was trying to buy a house in Edmonton, she was also trying to sell her condo in Calgary. However, since she thought in December 2005 that the market for selling her condo would be better later on, she wanted to delay putting her condo on the market until March 2006. She explained that section 3.4.2.2 of the *Directive* required that if she did not want to sell her condo at that point, she would have had to elect “not to sell” within 14 days from the time she received the employer’s appraisal. She explained that before deciding “not to sell” as per section 3.4.2.2, she then decided, under section 8.2, to make a formal request to her employer to delay the sale of her condo until March 2006. On December 1, 2005, she provided the employer an email justifying the delay until March. Her request was denied on December 15, 2005 (Tabs 25 to 27). The grievor indicated that she then had no choice but to opt out under section 3.4.2.2 and to sell her Calgary condo on her own since she thought she would get a better price if she listed it later.

[25] The grievor testified that throughout the process of selling her condo, she did not receive adequate information from Royal LePage and that she wanted to know

more about the lease, rental and policy entitlements (Exhibit G-1). While she was contacted on November 1, 2005, about the sale of her condo, the meeting took place only on November 30, 2005. She testified that Royal LePage advised her that her condo was appraised at \$222 000 on December 2, 2005 (Tab 28).

[26] The grievor also indicated that she thought that the appraisal was too low and that later on, her neighbour sold his condo for \$258 000 in February 2006. However, the grievor admitted that her condo was on the second floor of the building, while her neighbour's condo was located on the fourth floor (Exhibit G-2). She sold her condo herself, without the help of a realtor, on February 5, 2006, for \$239 520. She estimated that she would have sold it for more had her employer allowed her to delay listing it until March 2006. She estimated that she suffered a loss because of her employer's inflexibility.

[27] The grievor stated that the relocation had a negative impact on her and that not knowing where she would live and when she would live there was very stressful. She felt that it was a very difficult experience, in which her employer did not show flexibility or transparency.

#### **B. For the employer**

[28] Leslie Jones testified for the employer. Mr. Jones has been the senior policy and program analyst responsible for the *Directive* for the last 12 years.

[29] Mr. Jones explained that relocating an employee starts with the offer letter at his or her new work location. The Human Resources Branch then informs the Finance Division, which in turn authorizes the service provider, in this case Royal LePage, to contact the employee being relocated. As per the *Directive*, Royal LePage has 48 hours from the notification to contact the employee (see section 2.2.3.1).

[30] Mr. Jones pointed out that the *Directive* is quite clear that an employee is not to incur any relocation expense before obtaining all necessary authorizations in writing; otherwise, the employee will be responsible for those expenses (see sections 2.1.1 and 2.2.2.2). Mr. Jones testified that the need to have all the proper authorizations in place before incurring any expenses is also clearly spelled out in paragraph 3 of the offer letter that the grievor received on November 14, 2005 (Tab 6).

[31] Mr. Jones testified that with respect to the sale of the grievor's condo in Calgary, the *Directive's* intent is that if an employee has to sell a property under it, the property has to be put on the market right away. This is done to reimburse the current value of the property and not to wait until the market improves.

[32] Mr. Jones pointed out that in this case, the grievor had 14 calendar days from when she received Royal LePage's appraisal on December 2, 2005, to decide whether she would put her condo up for sale as per the *Directive* or exercise her option to sell the property herself outside the *Directive* (see section 3.4.2.2 of the *Directive* and Tab 28).

[33] Mr. Jones indicated that while the grievor tried to make a business case for not having to exercise her option "not to sell" pursuant to section 3.4.2.2 of the *Directive*, her request was denied, and she decided to sell her condo herself. Mr. Jones indicated that he did not know why the request for an extension of time was denied (see section 8.2 of the *Directive* and Tab 27).

### **III. Summary of the arguments**

#### **A. For the grievor**

[34] The grievor's representative argued that the employer did not treat the grievor fairly and that she faced a difficult situation without its help. He insisted that throughout the relocation process, the employer was inflexible and that it did not provide her with the support she needed.

[35] The grievor's representative maintained that the grievor often did not receive all the information she needed on time and therefore was rushed to make decisions.

[36] The grievor's representative argued that the grievor lost an opportunity in November 2005 to buy a home because the employer's service provider did not contact her in the 48 hours provided for in the *Directive*. The employer should be held responsible for her loss.

[37] Moreover, the grievor's representative insisted that the employer did not properly address the sale of the grievor's Calgary condo, contrary to section 8.10 (appraisal fees) of the *Directive*. He insisted that at the very least, she should have been able to delay listing her condo for sale until March 2006. It is clear that had the employer agreed to wait until March 2006, she would have received more money. Her

representative maintained that the fact that her neighbour sold his condo for \$258 000 was proof that had the employer agreed to wait just a little longer before listing the condo, the grievor would have received a much better sale amount than had she listed it in December 2005. Her representative also pointed out that she had two years, as per section 2.13.1, to have her condo on the market and that at the very least, the employer was unreasonable when it refused her business case to delay listing the condo.

[38] Finally, the grievor's representative maintained that the employer was not being reasonable when it decided not to reimburse all the home inspections the grievor had arranged on the properties she made offers for.

### **B. For the employer**

[39] Counsel for the employer argued that the burden of proof in this case was on the grievor. She had to demonstrate that the employer did not meet its obligations under the collective agreement and that as a result, she suffered proven damage. Counsel referred me to *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55.

[40] Counsel for the employer argued that the *Directive's* purpose is clear: it is to reimburse reasonable and justifiable expenses that follow a relocation. It is not to upgrade an employee's financial situation (see section 1.2.4). Moreover, the entitlements must be specified in the *Directive*. Counsel submitted that the grievor's claims are not covered by the *Directive* and that if she incurred expenses because of a misinterpretation or mistake, the *Directive* is clear that such expenses may not necessarily be reimbursed (see section 1.2.6).

[41] Counsel for the employer argued that under the *Directive*, the employee has the responsibility for obtaining authorization in writing if he or she wishes to be reimbursed for an incurred expense (see sections 2.1.1, 2.1.2 and 2.2.2). If the employee decides to act on his or her own, like the grievor did when she decided to sell her condo herself, then the *Directive's* benefits do not apply to him or her.

[42] As for the grievor's claim that she lost an opportunity in November 2005 to buy a house for less money, counsel for the employer insisted that the grievor knew that a relocation would not kick in as soon as she received the offer letter on November 14, 2005. Counsel argued that the grievor could have had the deadline of

November 18, 2005, removed and could have gone ahead with the transaction. She did not even entertain that possibility.

[43] Counsel for the employer argued that the *Directive* is clear in that no expenses incurred before November 18, 2005, should have been covered (see section 2.1.2). Therefore, the cost for inspecting the house on 94th Street was not reimbursed since it was incurred before the grievor was approved for relocation on November 18, 2005.

[44] As for the grievor's argument that she paid more for the house she bought than she would have paid had the employer or Royal LePage been more diligent, counsel for the employer submitted that I could not draw that conclusion since that is pure speculation. Counsel insisted that no real comparison was made between any properties. It does not suffice to indicate that the price of the first home the grievor put an offer on was lower than what she finally paid. Numerous factors that were not brought forward, such as the exact location of the houses, their sizes, etc., could explain why the prices differed.

[45] Counsel for the employer maintained that the same reasoning applies to the sale of the grievor's Calgary condo. She decided not to put her condo on the market and acted alone, without a realtor and without being covered by the *Directive*. It was her decision to wait until the market improved. The fact that the appraisal done in December 2005 happened to be lower than what her neighbour received was irrelevant. Again, numerous factors could explain the difference; for instance, the neighbour's condo was not even located on the same floor as the grievor's.

[46] Counsel for the employer referred me to *Hicks v. Treasury Board (Department of Human Resources and Skills Development)*, 2006 PSLRB 60, and insisted that market fluctuations will always happen. In this case, they are not a reason to justify the grievor's demands.

[47] Counsel for the employer also pointed out that the NJC Executive Committee reviewed this grievance and, after considering it, denied it.

#### **IV. Reasons**

[48] In his remarks, the grievor's representative argued that the grievor is entitled to \$110 000 in damages for what were termed the inactions and inflexibility of the

employer and Royal LePage. From the start, I should point out that there was just no evidence supporting that amount.

[49] The grievor alleged that she lost an opportunity to buy a home located on 94th Street in Edmonton because she did not hear back from Royal LePage within 48 hours of signing her offer letter on November 15, 2005. As a result, the November 18, 2005, deadline that the grievor made in her offer was not met, and the deal did not materialize.

[50] I do not agree with that argument. First, and even if I were to recognize that being relocated can be stressful and that people want to be proactive, it is clear from the *Directive* that the grievor could not make whatever arrangements she felt necessary and then expect to be reimbursed for them before receiving the appropriate authorization in writing. Sections 2.1.1 and 2.1.2 of the *Directive* are clear that to be reimbursed, an employee must first receive the proper authorization in writing; otherwise, the employee will not be compensated for expenses:

*2.1.1 The employer has the responsibility to authorize a relocation and to ensure that all relocation arrangements are consistent with the provisions of this Directive.*

- *The authorization shall be in advance in writing;*
- *The employer shall authorize the Third Party Service Provider in writing to provide IRP contracted relocation services to the employee referred;*

...

*2.1.2 The employer shall not be responsible for such expenses, unless and until the relocation is subsequently authorized and the employee may be ineligible for some entitlements.*

[51] In her testimony, the grievor admitted that she was eager and prepared to assume the costs, such as for a home inspection, since on November 1, 2005, she was not yet authorized under the *Directive*. In the circumstances, I find that she was clearly not entitled to a reimbursement of the inspection done for that first home. Indeed, the bargaining agent did not dispute the interpretation to be given to these sections. Its argument focused on the employer's application of the *Directive*.

[52] Moreover, the grievor argued that because Royal Lepage did not contact her and make the appropriate arrangements within 48 hours, she had to let her offer expire on that home on 94th Street since she did not meet the November 18, 2005, deadline.

[53] Section 2.2.3.1 of the *Directive* states in part as follows:

*2.2.3.1 The Third Party Service Provider shall:*

- *Provide services as specified in the contract and in this Directive.*
- *Establish contact with the referred employee within 48 hours and confirm personal information and counselling dates as per the contract.*

...

[54] The evidence in this case is that the grievor signed her offer letter on November 15, 2005 (see the agreed statement of facts, at paragraph 12). Royal Lepage was informed on November 18, 2005 (Tab 7, last two pages). The grievor was contacted on November 21 (see the agreed statement of facts, at paragraph 19).

[55] Section 2.2.3.1 of the *Directive* states that the service provider shall make contact in 48 hours. In this case, Royal Lepage was authorized to contact the grievor on November 18, 2005 (Exhibit, tab 7, last two pages, and the agreed statement of facts, at paragraph 17). As it appears on the covering sheet of the last two pages of Tab 7, November 21, 2005, was a Monday. So, in my view, Royal Lepage contacted the grievor within 48 hours of being advised, taking into account that November 19 and 20 were a Saturday and Sunday. Therefore, Royal Lepage met the obligation to contact the grievor within 48 hours, and I conclude that Royal Lepage contacted the grievor on Monday, November 21, 2005, in accordance with sections 2.2.1.3 and 2.2.3.1 (see the agreed statement of facts, at paragraph 19). The *Directive* does not require that Royal Lepage contact the grievor within the 48 hours following her signing a letter of offer, as her testimony suggests. Rather, it requires that it contact “the referred employee” within 48 hours, which it did.

[56] In addition, I agree with counsel for the employer that there is no evidence that the grievor tried to remove or delay the deadline of November 18, 2005, which she herself had included in the offer for the home on 94th Street in Edmonton. I am therefore unable to find for the grievor as she has not met her burden of proof to



convince me that the employer violated the *Directive* and that she suffered a loss as a result.

[57] Finally, even if I am wrong on the above, there is also just no evidence to prove that the grievor incurred a loss from the price difference between the house she made an offer on and the one she finally bought on 92nd Street. While I recognize that there is a price difference, \$175 000 vs. \$242 000, there are other factors, such as location, size, neighbourhood, etc., which may explain it, other than just the date on which the house was purchased.

[58] The grievor also claimed that the employer was responsible for refusing to delay the sale of her condo until the market was more favourable in March 2006 and that as a result, she had to sell it herself, without the support and benefit of the *Directive*. I am not convinced by that argument. I have been provided with no argument in support of this allegation, have had no provision of the *Directive* cited as having been breached and have been cited no jurisprudence which supports her contention. The provisions cited by the employer have convinced me that the normal application of the *Directive* means that the house has to be put on the market right away at its current market value and that it cannot be left to an employee to decide when the market is more favourable. I do not agree that section 2.13.1 of the *Directive* allows two years for an employee to put his or her home on the market. This provision does not give the employee a choice of listing a home right away on the market at a given price or choosing to wait. It only provides for reimbursement to the employee within two years of registering with the service provider. The grievor alleged that the employer had been unreasonable in rejecting the business case she had put forth in favour of delaying the sale of her Calgary condo, but given my interpretation of the *Directive*, the employer was entitled to reject her proposal as it was contrary to the clear intent of the *Directive*. In any event, aside from the mere allegation that the employer was unreasonable, the grievor provided me with no evidence to substantiate this claim.

[59] The grievor's representative submitted several reports about the real estate market in 2005 and 2006 (Exhibit tabs 14 to 25). I looked at those reports. They clearly indicate that it was, to say the least, a very busy market in both Edmonton and Calgary during that period. While the market was very hot at that time, it is important to keep in mind the *Directive's* intent, which is that the employee should be reimbursed for legitimate and authorized expenses that result from the relocation. As provided in

section 1.2.4, the relocation should not become a financial exercise through which the employee can choose the timing of when the market is financially optimal for him or her. Section 1.2.4 reads as follows:

*1.2.4 Relocation expenses must be directly attributable to the relocation, and must be clearly reasonable and justifiable. They must not upgrade the financial position of the employee and must be supported by receipts as stipulated within the Directive. The provisions shall provide only for the employee's legitimate expenses, without opening the way for personal gain or for the underwriting of extravagances.*

[60] Again in this case, the grievor had the burden of proof. I find that the allegations made are not supported by the facts, the arguments nor the jurisprudence cited.

[61] Finally, I agree with the NJC Executive Committee's conclusions that in this case, the grievor was treated within the spirit of the *Directive*. Therefore, the grievance is denied. However, I take notice that the employer undertook at the hearing to reimburse the grievor without prejudice for the inspections done on the three houses located on 80th and 84th Avenues and 92nd Street.

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

*(The Order appears on the next page)*

**V. Order**

[63] The grievance is denied.

October 23, 2015.

**Linda Gobeil,  
adjudicator**