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Citation: 2017 FPSLREB 48

Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

JONATHAN GAGNON

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as

Gagnon v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Tony Jones, Professional Institute of the Public Service of Canada

For the Employer: Marc Séguin, counsel, Treasury Board Legal Services

Decided on the basis of written submissions filed November 7 and December 5 and 19, 2016.

I. Summary

[1] Jonathan Gagnon ("the grievor") lived in Ottawa, Ontario, and was hired on a full-time basis, for a determinate term of approximately nine months, as a clinical social worker for the Correctional Service of Canada ("the employer") at the Kingston Penitentiary (KP) in Kingston, Ontario. His term appointment was extended to a cumulative total of approximately 18 months, after which his workplace was moved to another facility in the Kingston area.

[2] Before his extended term expired, the grievor was appointed to an indeterminate position, and his letter of appointment advised him to contact an employer representative to determine if he was eligible for relocation cost assistance. The employer replied, stating that he was not eligible. He then filed a grievance with the National Joint Council (NJC) against the employer. Shortly after that, he sold his home in Ottawa and moved to Kingston.

[3] The NJC determined that it did not have jurisdiction over the subject matter of the grievance as it found that he was an initial appointee. The grievor then referred his grievance to the Board for adjudication. For the reasons noted later in this decision, I find that the grievor was not an initial appointee but rather that he was subject to the NJC's "Relocation Directive" ("the Directive") upon his indeterminate appointment.

[4] In applying the terms of the Directive to the grievor's circumstances, I conclude that he did qualify for the relocation allowance and therefore award the grievance.

II. Background

[5] The grievance was filed with the NJC on January 8, 2014, contesting the employer's denial of the grievor's request for relocation assistance under the Directive. It was referred to adjudication on the January 8, 2016.

[6] The Directive states as follows: "This Directive is deemed to be part of collective agreements between the parties represented on the National Joint Council (NJC), and employees are to be afforded ready access to this Directive."

[7] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of

the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

[8] Section 1.4.1 of the Directive states that it applies to all departments and other portions of the public service of Canada listed in Schedules I and IV of the *Financial Administration Act*.

[9] Section 1.4.2 states that "[p]ayment of relocation expenses shall be authorized for employees who are … term employees appointed to indeterminate positions …" The Directive defines "employee" in part as a person employed in the federal public service who is performing continuing full-time duties of a position and whose salary is paid out of the Consolidated Revenue Fund.

[10] Section 2.8 ("Initial Appointment") states in part that relocation provisions for appointees to the public service or other persons who are not employees before they are authorized to relocate at public expense are found in the Integrated Initial Appointees Relocation Program (IIARP).

[11] The Treasury Board policy setting out terms of the IIARP states at section 1.03 as follows:

> *All newly appointed employees (other than EX/GIC) to the public service must be relocated under the Initial Appointees Relocation Program.…*
>
> *A newly appointed employee is defined as a person recruited from outside the Public Service and appointed or on assignment to a department or agency listed in Schedules I and IV of the Financial Administration Act, for duration of one year … or more.*
>
> …

[12] Section 1.02 states that "[f]or specified term appointments of less than two years, the reimbursement will be proportional to the period by which the employee's service falls short of the original duration of the term."

[13] The Directive also states that when it is allegedly misapplied, the grievance procedure of such a matter involving a represented employee within the meaning of

the *Act* will be in accordance of section 15.0 of the NJC By-Laws.

[14] The grievor points out that NJC By-law 15.1.2 deems that a grievance filed with the NJC involving its Directive is also a grievance under the *Act* and further that the NJC grievance was heard at the final level on December 23, 2015, thus allowing it to be referred to adjudication by this Board. The employer did not submit an argument on the matter of my jurisdiction to hear this grievance.

III. Summary of the submissions

A. For the grievor

[15] The grievor submits that at all relevant times he was either a full-time indeterminate or full-time term employee subject to the Directive. He submits in the alternative that if in fact he was an initial appointee, I should declare that the IIARP forms part of the Directive and that therefore the NJC had jurisdiction to hear his claim of being denied IIARP benefits.

[16] I note that at all relevant times, the grievor was employed in or around Kingston. The parties' agreed statement of facts indicates that he was initially employed at the Kingston Penitentiary, located at 560 King Street West in Kingston. Later, on September 30, 2013, his workplace was relocated to the Collins Bay Institution at 1455 Bath Road, Kingston.

[17] Approximately two months later, on December 2, 2013, the grievor was appointed to indeterminate full-time status effective December 9, 2013, which triggered his first statement of interest to relocate his residence to Kingston and to seek relocation financial assistance from the employer. It declined that request. He filed his grievance, sold his condo in Ottawa, and, on March 14, 2014, purchased a home in Kingston.

[18] The grievor argued that the IIARP formed part of the Directive but did not support his argument by pointing to any related evidence or jurisprudence. I decline to make any ruling on the IIARP as I find that at the relevant time, when the grievor requested relocation assistance, he was subject to the Directive.

[19] Looking at the matter of the grievor being subject to the Directive, I note that its section 1.4.2 clearly states that relocation expenses shall be authorized for term employees appointed to indeterminate positions, which was his precise circumstance,

as established by the agreed statement of facts.

[20] I find that section 1.4.2 unequivocally confirms that the Directive applied to the grievor at the time of his request for relocation assistance as he was a term employee appointed to an indeterminate position.

[21] Again, I note that the grievor's circumstances do not fit within the definition in section 2.8 of an initial appointment as he was an employee when he was relocated within Kingston. This is further evidence that the Directive applies to his situation, rather than the IIARP.

[22] I further note that "relocation" is a defined term in the Directive, in part as "… the authorized move of an employee from the employee's place of residence to the employee's first place of duty upon appointment to a position …"

[23] I also note that in section 2.6 ("Employer-requested Relocation"), employer-requested relocations are defined as "… relocations within Canada, including employee relocations that result from staffing actions except on initial appointment." My reading of the Directive shows that "appointment" is not a defined term. However, "appointee" is listed in the definitions section as "a person recruited from outside the public service …"

[24] Section 1.4.2 clearly states that relocation expenses shall be authorized for term employees appointed to indeterminate positions, and furthermore, the Directive defines "relocation" in part as "… the authorized move of an employee from the employee's place of residence to the employee's first place of duty upon appointment to a position …"

B. <u>For the employer</u>

[25] The employer argued that the IIARP is a Treasury Board policy and thus was not co-developed with the bargaining agents and does not form part of the Directive and that therefore, the NJC has no jurisdiction or role in hearing IIARP disputes.

[26] As noted earlier in this decision, I have determined that at the relevant times, the grievor was not an initial appointee. Therefore, I make no ruling as to either my jurisdiction to hear, or the grievor's entitlement to benefits under the IIARP.

[27] The employer further argued that the grievor's December 2013 appointment was not his first, and therefore, it did not meet the definition of "relocation" under the Directive. Specifically, in paragraphs 29 and 30 of the employer's submissions, its counsel states as follows:

> *29. Regarding, the "first place of duty upon appointment", section 1.4.2 of the Directive states that "Payment of relocation expenses shall be authorized for employees who are…term employees appointed to indeterminate positions".*
>
> *30. When Mr. Gagnon was appointed from a term position to an indeterminate position, he was not being appointed to his "first place of duty upon appointment to a position in the public service". The reason being that he had an initial appointment to a position in the public service as a term employee almost 18 months prior to December 2013. The Employer maintains that Mr. Gagnon's letter of offer of June 2, 2012 was his initial appointment to the public service.*

[28] I find the logic behind the employer's submissions in these two paragraphs completely untenable.

[29] The employer cites section 1.4.2 of the Directive, which states that the payment of expenses shall be authorized for term employees appointed to indeterminate positions. But in the employer's next paragraph, it states that the grievor did not qualify for relocation upon being appointed indeterminately because he had previously been appointed. This submission would render all terms employees who attain an indeterminate appointment ineligible for relocation assistance, which is the exact opposite of what section 1.4.2 states.

[30] The definition of "relocation" in the Directive is "the authorized move of an employee from one place of duty to another or the authorized move of an employee from the employee's place of residence to the employee's first place of duty upon appointment to a position in the public service."

[31] The employer's submission would add the word "initial" to the definition, thus creating new text, as follows: "the authorized move of an employee from one place of duty to another or the authorized move of an employee from the employee's place of residence to the employee's first place of duty upon [initial] appointment to a position in the public service."

[32] Adjudication is not the place to add words to or delete words from a collective agreement.

[33] The grievor quite rightly notes the express statutory prohibition on adjudication awards having this unintended effect as s. 229 of the *Act*, states: "An adjudicator's or the Board's decision may not have the effect of requiring the amendment of a collective agreement …"

[34] Of the several authorities submitted by the grievor, which I read, I note with approval that guidance with respect to an adjudicator's approach to interpreting a collective agreement. Adjudicator Shannon relied upon a Supreme Court of Canada case (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21), which found that there is only one approach to interpreting a statue; the words of an Act must be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. She then found that this same approach to interpretation applies equally to interpreting collective agreements. (see *Legge v. treasury Board (Department of Fisheries and Oceans)*, 2014 PSLREB 47 at paras. 38-39)

[35] Given the overall scheme of the Directive and the relevant sections that I have identified in this decision, I find that the agreed statement of facts clearly establishes that the Directive applied to the grievor at the time of his request for relocation assistance.

[36] Section 1.4.2 of the Directive states that "[p]ayment of relocation expenses shall be authorized for employees who are … term employees appointed to indeterminate positions …" [emphasis added].

[37] The agreed-upon facts clearly establish that that was the grievor's situation when he requested in writing that the employer provide him relocation assistance for his move to Kingston.

[38] I conclude that section 1.4.2 creates a mandatory duty upon the employer, and therefore, I award the grievance.

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

(The Order appears on the next page)

IV. Order

[40] The grievance is allowed.

December 20, 2017.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board