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File: 166-2-31468

Citation: 2003 PSSRB 51



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**CHERYL OUTINGDYKE**

Grievor

and

**TREASURY BOARD**  
**(Solicitor General Canada - Correctional Service)**

Employer

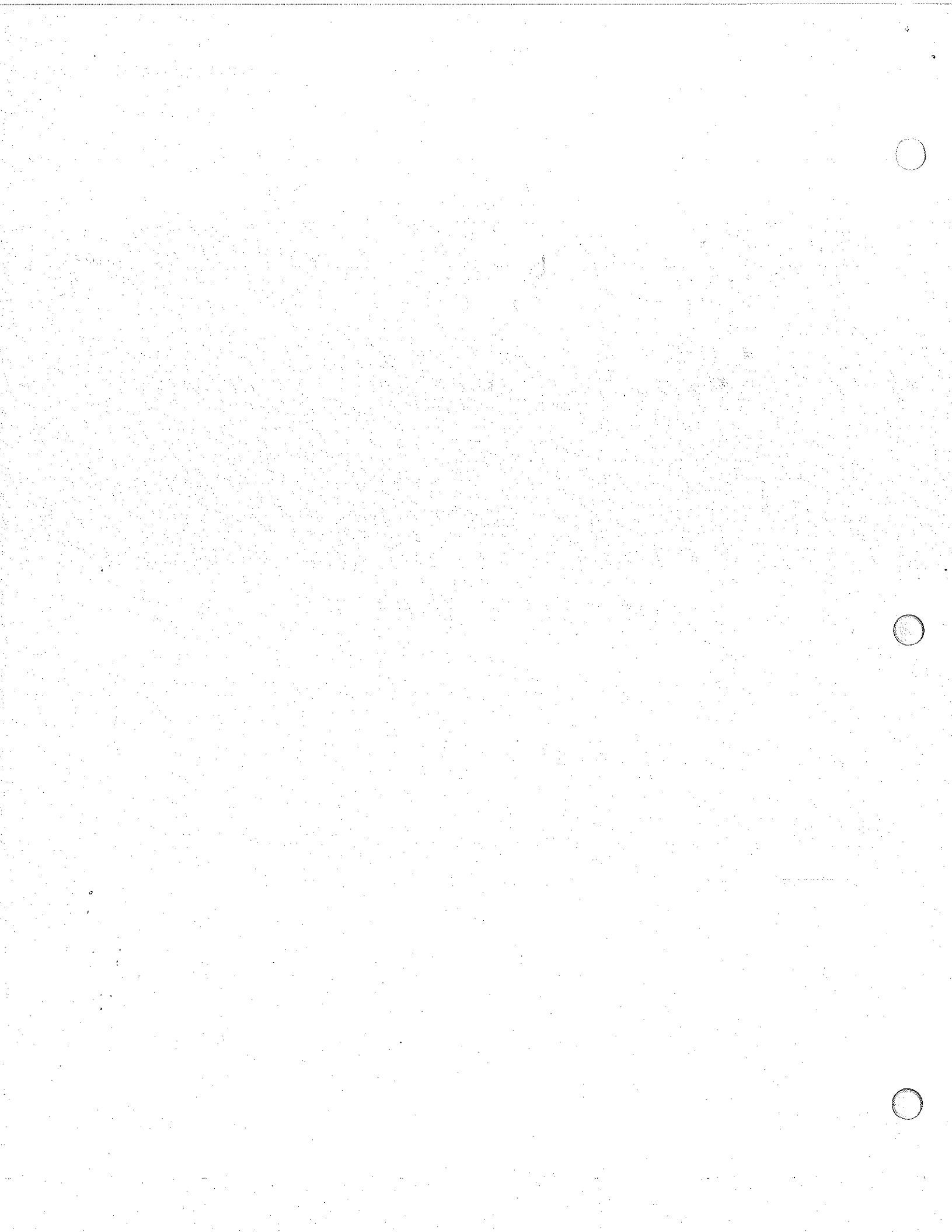
**Before:** Ian R. Mackenzie, Board Member

**For the Grievor:** Barry Done, Public Service Alliance of Canada

**For the Employer:** Robert Holmes, Student-at-Law

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Heard at Kingston, Ontario,  
March 20, 2003.



## DECISION

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[1] This is a grievance relating to the relocation of Cheryl Outingdyke, a parole officer (WP-4) with the Correctional Service Canada (CSC). Specifically, the grievance is against the refusal of the employer to reimburse the grievor for the expenses relating to the sale of her home and for administrative penalties she incurred by withdrawing money from a mutual fund account for a down-payment on a new home.

[2] The grievance falls under the National Joint Council (NJC) Relocation Directive, dated October 15, 1993 (Exhibit G-1). Pursuant to Article 7 of the collective agreement between the parties (Public Service Alliance of Canada; Program and Administrative Services group; expiry date: June 20, 2000), the Relocation Directive has been incorporated into the agreement.

[3] The grievance was filed on August 16, 2000. The employer allowed some of the expenses claimed as corrective action to the grievance. The grievance was referred to the NJC Government Travel Committee on October 2, 2001. The Executive Committee of the NJC issued its response to the grievance on April 30, 2002, and the departmental liaison officer referred this response to the grievor on May 23, 2002. The Executive Committee upheld the grievance in part. With regard to the reimbursement of the administration fee, the Executive Committee agreed that the grievor had been treated within the intent of the Relocation Directive in that the grievor's former principal residence had been sold and therefore the provisions regarding administration fees contained in the Directive did not apply. The Committee reached an impasse on the issue of the reimbursement of costs associated with the sale of the grievor's home prior to the relocation. The grievance was referred to adjudication on August 9, 2002.

[4] An order for the exclusion of witnesses was requested and granted. The grievor testified and the employer called no witnesses. The exhibits were introduced on consent at the commencement of the hearing.

### Evidence

[5] Ms. Outingdyke has worked for the CSC since 1987. Prior to February 1993, she was working at Warkworth Institution in Campbellford, Ontario, as a secretary (SCY-4). In February 1993, she took an acting assignment as an AS-2 in Regional Headquarters in Kingston, Ontario, and stayed for six months before returning to Warkworth Institution. In April of 1994, she took a lateral transfer to the Regional Treatment

Centre, a facility inside the Kingston Penitentiary. This transfer was a permanent move, subject to the terms of the Relocation Directive. She put her home in Campbellford up for sale and rented a furnished apartment in Kingston. She testified that it was her intention, at that time, to remain permanently in Kingston. In the fall of 1994, she was successful in a competition for a Program Delivery Officer (WP-2) position and was appointed to a position in early January of 1995 at Bath Institution, in Kingston. By February of 1995, her home had not yet sold and remained empty.

[6] In February of 1995, her mother, who lived in Campbellford, broke her hip. While she was in the hospital, it was discovered that she was legally blind and not capable of taking care of herself. In May of 1995, Ms. Outingdyke applied for a transfer back to Warkworth Institution, so she could care for her mother. She testified that this was her sole reason for returning to Warkworth Institution. Before she left, she had a discussion with Kier MacMillan, the Assistant Warden at Bath Institution, where she made it clear that she would rather not leave. She also made it clear that she wanted to return to Bath Institution in the future. She testified that she received verbal assurances from him that she would be welcomed back.

[7] For her performance appraisal for 1995, Warkworth Institution sought input from Bath Institution. The grievor testified that in the document provided to Warkworth Institution, signed by Mr. MacMillan, it stated that she was a valued employee and that the Institution would "welcome her back at any time". At the Christmas dance in December of 1995, the grievor had a conversation with Mr. MacMillan and told him not to forget that she wanted to come back to Bath Institution. He told her that he would not forget and that she should just let him know when she wanted to return.

[8] Near the end of March of 1998, Ms. Outingdyke put her Campbellford house on the market. At that time, her mother's prognosis was "dim". Her daughter was also finishing high school that year. Ms. Outingdyke knew from her previous effort to sell the house that it was a difficult property to sell because it was out in the country. The spring was a good time to see if the market had improved. She knew that her mother would likely pass away soon; she was expecting the call from the hospital at any time. She also testified that she knew that once the process for a transfer back to Kingston was initiated, it would go quickly. She knew this because of informal discussions she had had with people at Bath Institution. She also knew that having a house on the

market after her relocation would be stressful and she wanted to reduce her level of stress about the relocation.

[9] Exhibit G-2 is an undated request for reimbursement of the administration fee for the withdrawal of mutual funds, signed by Ms. Outingdyke. The document reads, in part:

*My fluid cash was equivalent to approximately 10% of the purchase home price. However, this would have required me to purchase mortgage default insurance at a premium of \$2,750 (levied in one payment) which according to the directives was refundable to me even though I was not a homeowner at a former residence.*

*In May 1998, I chose to sell my home of 23 years and move into an apartment. I was fully responsible for this decision and accordingly absorbed the more than \$8,000 real estate and lawyer fees to do so. At that time, I did not have any idea my personal circumstances would change so drastically and so quickly. In less than six months my mother passed away and I found myself requesting a return to Kingston. This was approved in March 1999, and I have been living in Kingston in a room and board situation since August 1999. Directives allow for a maximum of \$420.00/month for these expenses yet I have been paying \$500.00 and covering the extra \$80.00 myself.*

[...]

*I believe that my request to be reimbursed the amount of \$1,200.19 for this administrative fee is reasonable and fair. It is much less than the \$2,750 mortgage insurance would have been. I have been open in all my financial disclosures. It would appear to be an exception and may require the approval of the President of the Treasury Board. As relocation provisions are intended to cover an employee's legitimate expenses without allowing for personal gain, I am respectfully requesting reimbursement for this expense.*

[10] In cross-examination, Ms. Outingdyke testified that she could not anticipate how quickly her mother would die, but it was not a surprise to her. It was her decision to sell the house, and that decision was based on concerns about leaving it vacant, avoiding stress, and the fact that she would be starting a new job in Kingston. She also testified that initially she was not considering claiming the costs relating to the sale of her home but that she decided to submit a claim after reading the Directive and concluding that costs incurred in the sale of a home would be eligible.

[11] On May 28, 1998, she sold her house in Campbellford. Ms. Outingdyke remained in Campbellford, and rented an apartment on a month-to-month basis. She invested the proceeds of the sale in locked-in mutual funds. In cross-examination, Ms. Outingdyke agreed that it was fair to say that at that time she had no formal job offers in Kingston and no details of an upcoming assignment. At the time of the sale, however, she anticipated moving within six months. The move back to Kingston hinged on her mother's health. In cross-examination, she testified that she did not discuss the sale of her house with anyone in management or financial services at CSC.

[12] On November 4, 1998, Ms. Outingdyke attended a training session in Kingston. Mr. MacMillan was in attendance and Ms. Outingdyke told him that she was anxious to return to Kingston. Mr. MacMillan was no longer responsible for parole officers at Bath Institution and he told her to contact Joe Beatty. She e-mailed him and received a phone call from Mr. Beatty. Mr. Beatty told her that they would like to have her at Bath. He told her that they anticipated requiring someone on an urgent basis.

[13] Shortly after that conversation, Ms. Outingdyke's mother passed away. Ms. Outingdyke then took approximately two months off work.

[14] On her return to work on January 4, 1999, she made a formal request for a transfer to Bath. In February, she received a call from Bath Institution asking her if she could start in a WP-4 parole officer position on March 3, 1999. She started her new job on that date, without having all the paperwork signed. A memorandum of agreement was eventually signed on June 16, 1999 (Exhibit G-5), for an assignment from June 1, 1999 to June 30, 2002. (The agreement was extended for one year, and at the time of the hearing it was expected that it would be renewed again.)

[15] The terms and conditions of the assignment included the following:

*....As it is expected that the employee will remain permanently in the Kingston area, relocation expenses are approved for this assignment over three years, in accordance with the Treasury Board Relocation Directive.*

[16] The grievor testified that she did not have any discussions with anyone on what she could claim under the Relocation Directive prior to her move back to Kingston. She was not provided with a copy of the Relocation Directive by anyone at Bath Institution, although her supervisor at Warkworth, who had moved recently, gave her a copy. The grievor also testified that she had made requests for information to the

financial officer at Bath Institution who was assigned to look after her relocation. The response that Ms. Outingdyke received to her questions about what was eligible to claim was: "read the directive". The grievor testified that the financial officer stated she was too busy to meet with her.

[17] Ms. Outingdyke received reimbursement for the costs of cleaning her rented apartment in Campbellford, as well as for the expenses associated with her move from that apartment. On August 9, 1999, she signed a Relocation Questionnaire (Exhibit G-4) and an Authority to Relocate form (Exhibit G-3). Ms. Outingdyke testified that she answered the question, "Is there a mortgage penalty?" in the negative because she had already incurred that cost. In answer to the question: "Will you be selling your principal residence?", she answered in the negative and indicated that her principal residence was "already sold".

[18] On November 5, 1999, Ms. Outingdyke moved to a purchased condominium. The closing date for the sale was October 24, 1999. For the down-payment, she withdrew \$20,000 from the proceeds of the sale of her Campbellford home, which had been invested in mutual funds. The mutual funds were locked in, and she was required to pay a six percent administrative fee (\$1,200). The withdrawal was made in the first or second week of October 1999. At the time, she thought that the provisions of the Relocation Directive would cover the administrative fee. She did not have a discussion with the financial officer at Bath or anyone else about whether this cost would be covered. The grievor also testified that if she had known that the employer would have paid for the cost of mortgage default insurance, she would not have withdrawn this money to go towards the down-payment.

### Arguments

#### For the Grievor

[19] The employer has failed to apply the Relocation Directive, in particular in its failure to reimburse the grievor for the sale of her home and the monies spent in order to purchase a new home at the new location. The fact that the grievor sold her home prior to the authorization for relocation does not prevent her from receiving reimbursement. Article 1.1.1 of the Relocation Directive (Exhibit G-1) specifically provides for situations such as the one faced by this grievor:

**Part I - Administration****1.1 Authorization**

*If an employee incurs expenses related to a specific relocation before having received written authorization to relocate, the employer shall not be responsible for such expenses, unless and until the relocation is subsequently authorized.*

[20] The meaning is clear that if the relocation is subsequently authorized (which it was in this case), the employee is entitled to the expenses related to that relocation.

[21] The grievor's frame of mind is relevant, as well. She took a permanent transfer to Bath Institution in 1995 and listed her home for sale, intending to permanently relocate to Kingston. She only returned to Campbellford (and Warkworth Institution) because of her mother's illness. Subsequent to her return to Warkworth Institution, Mr. MacMillan assured her, both orally and in written material submitted for her performance appraisal, that she would be welcome back at Bath. In this situation, the sale of her home was preparation for her return to Kingston. Her mother's health was deteriorating, her daughter was finishing high school, and she knew from previous experience that the market for her house was a difficult one. In effect, the sale of the house allowed her to be flexible on her return to Kingston. In addition, she took a month-to-month rental arrangement after the sale of her home in order to be flexible on moving to Kingston.

[22] Article 3.5 of the Relocation Directive is the authority for the reimbursement of the approximately \$8,000 in incurred costs. The Relocation Directive sets out the conditions for the reimbursement of costs associated with the sale of a home (article 3.4.1) and the grievor met all the conditions for payment except one: at the time of the notification of relocation, she did not occupy the principal residence (article 3.4.1(a)). If the parties had intended that there be no exceptions to the requirement that the principal residence be occupied prior to the relocation, they would not have agreed to article 1.1.1 (see above).

[23] With regard to the administrative fee or penalty for removing money from her mutual funds account, the grievor did not need to take out this money for the down-payment. She could have elected for a smaller down-payment and obtained mortgage default insurance, which is covered by the Relocation Directive (article 3.8.7). The overlying principle for the Directive is set out in the introduction where it states:



***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.*

[24] If she had not withdrawn the down-payment from her mutual funds account, the higher cost of mortgage default insurance would have had to be covered by the employer. The administrative penalty of \$1,200 is a savings for the employer and in keeping with the policy requirement of efficiency. Employees should not gain from a relocation, but neither should they incur any losses.

[25] The employer also did not meet its obligations under the Relocation Directive to ensure that the grievor was informed of the terms and conditions of the Relocation Directive, as required by article 1.2.1. This sets up an estoppel; the employer should be estopped from asserting its rights because it failed to provide her with assistance in understanding the Directive. The finance officer was not able to sit down with her and provide answers to her questions. The employer was in breach of article 1.2.2(c), which provides that managers shall ensure that employee's enquiries are answered promptly and accurately. The grievor did not get prompt or accurate answers. If she had, she would have saved \$1,200 (the administrative fee). She relied, in good faith, on her own reading of the Directive and did so to her detriment.

[26] In conclusion, the employer wanted the grievor to return to Kingston and has benefited from her return to Kingston and to Bath Institution. The grievor should not have to pay the bulk of the costs associated with the relocation.

**For the Employer**

[27] The Relocation Directive sets out certain conditions relating to the reimbursement of costs for the sale of a home (article 3.4.1). Reimbursement is conditional on the employee's occupying the principal residence at the time of the notification of the relocation. Principal residence is defined in the Directive as follows:

***Principal residence (résidence principale)*** - means a single-family dwelling owned or rented by the employee or dependant residing with the employee, which was occupied continuously at the time the relocation at public expense was authorized and which is recorded as the employee's permanent address on the departmental or agency personnel

*file. Temporary or seasonal accommodation is excluded by this definition.*

[28] The grievor does not fall under this definition. At all times - when she applied for the transfer, when she was advised of the transfer and when the relocation occurred - she was not living in an owned property. There cannot be two principal residences. The Relocation Directive always refers to "the" principal residence (articles 3.4.1 and 3.1.1). Article 3.1.3 provides that an employee is only eligible for one type of assistance - either sale of a home or assistance with a rental property. It is only the rental property that Ms. Outingdyke lived in for 17 months prior to her relocation that can be considered her principal residence.

[29] With regard to the administration fee, there is no provision in the Relocation Directive for the withdrawal of funds. The Directive requires the approval of Treasury Board for any expenses not covered by the Directive. The decision to invest the proceeds of her home sale in mutual funds and her decision to withdraw that money for a down-payment on a new home were her own personal financial decisions, and not reimbursable under the Directive.

[30] In any event, the grievor would not have been eligible for reimbursement for mortgage default insurance under article 3.8.7(a) of the Directive, as she was not a homeowner at the former place of duty. Also, the grievor did not meet the other conditions for reimbursement, in particular articles 3.8.7(b) and 3.8.8.

[31] The provision in article 1.1.1 that allows for subsequent authorization is not applicable here. This article was designed to catch the situations when an employee is asked to report for duty on short notice and does report without formal documentation. In this case, there was no specific relocation at issue. It was seven months after the sale of the home that the transfer request was made. At the time the expenses were incurred, there was no plan to move. Also, it is a rule of interpretation that the general is superseded by the specific, and in this case, the specific provisions in the Directive apply.

[32] With regard to the allegation that the employer did not meet its obligations to provide advice under the Relocation Directive, the evidence simply does not establish that the employer failed to meet its obligations. The grievor did have a copy of the Relocation Directive, she was given a contact name and number and there was significant communication about her claim under the Directive.

[33] Estoppel requires that there be a promise made, and reliance on that promise to the detriment of the employee. In this case, all the grievor's decisions were made months before the specific relocation and also months before assistance was sought from the employer. Any representations of the employer could not have altered what had already happened. At the time of making her decisions, she was not relying on any promises made by the employer.

[34] Also, the purpose and scope section of the Relocation Directive provides:

*Purpose and scope*

...

*Employees should read the directive carefully and, where the advice given by the department contradicts the directive, the employee should request that the advice be given in writing. This is important as expenses resulting from misinterpretation or mistakes shall not necessarily be reimbursable.*

[35] The Relocation Directive applies to specific relocations. To allow for exceptions would go against the agreement reached by the parties in the Directive and have the effect of rewriting it. The language is quite clear. Discretion is specifically not allowed in the purpose and scope section of the Directive, where it states that managerial and departmental discretion "shall be confined to those provisions where discretion is specifically authorized".

Reply

[36] The Relocation Directive provides that it is the responsibility of the employer to pay all reasonable and actual expenses (Exhibit G-1, page 6). These expenses are both actual and reasonable. Article 1.6.2 of the Directive specifically provides that in relocations such as this, employees shall be reimbursed actual and reasonable expenses, and that once relocation is authorized the employee is entitled to all the provisions of the Directive.

[37] In article 3.7.3 it states that there is no requirement that an employee be a homeowner prior to the relocation in order to be eligible for reimbursement of costs related to the purchase of a principal residence.

[38] In interpreting contract language, it is common for the Board to balance interests. The balancing of the interests of the employee and the employer swings to the employee in this case, as the employee is the least able to absorb the additional costs of the relocation.

[39] Advice under the Relocation Directive was simply not given to the employee in this case. The obligation under article 1.2.2 is that an employee's enquiries should be answered "promptly and accurately". The failure of the employer to observe this requirement is why we are at adjudication. There is a clear onus on the employer to provide that advice, and it was not done. The employer has to come to the hearing with clean hands and has not done so because of its failure to provide advice to the grievor.

#### Reasons for Decision

[40] There are two issues in this grievance: (1) whether the costs associated with the sale of Ms. Outingdyke's home are eligible for reimbursement; and (2) whether the administrative fees incurred when she withdrew mutual funds for the down-payment for her new home in Kingston are eligible for reimbursement.

[41] The part of the grievance relating to the sale of her home in Campbellford is the end result of a failure to communicate, both by the grievor and by management. Much of the dispute could have been avoided if both had been clear on their expectations arising out of the move back to Campbellford in 1995. It is clear that management made every effort to accommodate Ms. Outingdyke's personal family situation by facilitating a transfer back to Warkworth Institution in 1995. Also, management made a diligent effort to arrange for her return to Kingston in March of 1999. It is also clear that the grievor intended to return to Bath Institution and that management at Bath Institution were keen to have her return.

[42] No witnesses for the employer testified; therefore, the account of what communications there were between the return to Warkworth in 1995 and the sale of Ms. Outingdyke's home in 1998 is one-sided. However, I can assume that the employer does not dispute Ms. Outingdyke's account of her conversations with management representatives. Ms. Outingdyke was clear in her communications with managers at Bath Institution, and in particular Mr. MacMillan, the Assistant Warden, that she was returning to Campbellford for the sole purpose of caring for her mother and that she

wished to return to Bath Institution once those obligations were at an end. From her testimony, it is also evident that Mr. MacMillan knew it was her intention to return, and he assured her, both orally and in writing, that Bath Institution management would welcome her return.

[43] In Exhibit G-2, Ms. Outingdyke seems to contradict her oral testimony with regard to her intention at the time she sold her house in Campbellford. In this document she wrote that she was "fully responsible for this decision" and absorbed the cost herself. She also wrote that she had no idea her personal circumstances would change "so drastically and so quickly". In her oral testimony, Ms. Outingdyke explained that it was her decision to sell the house, but that she did it in anticipation of her move back to Kingston. She also testified that she did not form the intention to claim the expenses associated with the sale at the time of the sale. It was only after reviewing the Relocation Directive that she decided to make a claim for this expense. Her motives for selling the house were obviously mixed. However, the primary purpose was to facilitate her return to Kingston.

[44] The Relocation Directive provides a general authorization for expenses incurred prior to an employee's receiving written authorization for the relocation:

*1.1.1 If an employee incurs expenses related to a specific relocation before having received written authorization to relocate, the employer shall not be responsible for such expenses, unless and until the relocation is subsequently authorized.*

[45] The Directive also contains specific provisions relating to the sale of a principal residence. Article 3.4.1 sets out the conditions of assistance. Paragraph (a) is the relevant condition for this grievance:

*3.4.1 When a homeowner employee is authorized to relocate within Canada and sells the principal residence at the old place of duty, reimbursement shall be authorized for a number of the costs related to the sale of the home, provided that:*

*(a) at the time of notification of relocation, the principal residence was occupied by the employee;*

[46] "Principal residence" is defined in the Directive as:

*Principal residence (résidence principale) — means a single-family dwelling owned or rented by the employee or dependant residing with the employee, which was occupied continuously at the time the relocation at public expense was authorized and which is recorded as the employee's permanent address on the departmental or agency personnel file. Temporary or seasonal accommodation is excluded by this definition;*

[47] There is some discrepancy in the Directive between the definition of "principal residence" and the eligibility criteria for reimbursement for the sale of a principal residence. The definition of "principal residence" refers to continuous occupation at the time of the "authorization of the relocation", while the conditions of assistance refer to the occupation of the residence at the time of "notification of relocation". "Authorization of relocation" and "notification of relocation" are not the same thing, or else the parties would have used the same term. It is a well-known principle of interpretation that the specific provision prevails over the general provision. Therefore, it is the "notification of relocation" that is the important event that triggers eligibility.

[48] An overarching principle of authorization for reimbursement is set out in article 1.1.1. This principle applies to the interpretation of subsequent provisions in the Directive. The general principle allows for expenses to be considered for eligibility if they relate to a "specific relocation" that is subsequently authorized. Reading the conditions of assistance for the sale of a principal residence in light of the overarching principle in article 1.1.1, leads to the conclusion that eligibility hinges on there being a specific relocation in the mind of both the employee and the employer, and that the employee has been notified of this relocation.

[49] At the time Ms. Outingdyke sold her home there was not a specific relocation being considered by either her or management at Bath Institution. In March of 1998, when she put her house on the market, the promise of a relocation was vague, although well meaning. It was still vague when she sold the house in May of 1998. Ms. Outingdyke was first told of the possibility of a relocation as early as November 1998. Based on the evidence heard at the hearing, it is difficult to pinpoint the actual date that she received "notification of a relocation". It might have been as early as November 1998, depending on the assurances she was provided about her relocation

by Mr. Beatty; it was certainly by February 1999, when she was advised of the upcoming assignment commencing on March 3, 1999. It is clear, however, that she had not received notification of her relocation either at the time she put her house on the market, or at the time that it sold. Accordingly, this part of the grievance is dismissed.

[50] Administrative penalties or fees relating to the withdrawal of funds from investments are not covered under the Relocation Directive. The grievor's argument for reimbursement rests on the assumption that if she had not used the money in her mutual funds account, she would have made a smaller down-payment and obtained mortgage default insurance (which is reimbursable). The Relocation Directive is a comprehensive document with very specific categories of reimbursable expenses and it is not open to an adjudicator to expand the categories and include additional expenses. Ms. Outingdyke could have placed the proceeds from the sale of her home in a more liquid investment but chose not to do so. The employer cannot be expected to be required to pay fees and penalties associated with an employee's choice of investment.

[51] Although the assistance provided to Ms. Outingdyke by the employer in understanding the terms of the Relocation Directive was less than helpful, I find that the lack of information did not influence Ms. Outingdyke's decision to withdraw her mutual funds. There was no evidence that she raised this issue directly with the financial officer or anyone else at CSC prior to making the withdrawal. Accordingly, the part of the grievance relating to the claim for administrative fees is also dismissed.

[52] In conclusion, the expenses claimed by Ms. Outingdyke in her grievance at adjudication are not eligible for reimbursement under the Relocation Directive, and her grievance is denied.

**Ian R. Mackenzie,  
Board Member**

OTTAWA, June 24, 2003.

