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Citation: 2018 FPSLREB 74

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

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD
(Department of Citizenship and Immigration)

Employer

Indexed as
Public Service Alliance of Canada v. Treasury Board (Department of Citizenship and Immigration)

In the matter of a policy grievance referred to adjudication

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

For the Bargaining Agent: Andrew Astritis, counsel

For the Employer: Joel Stelpstra, counsel

Heard at Edmonton, Alberta,
June 12 to 15, 2018.

I. Summary

[1] The Public Service Alliance of Canada (PSAC or "the union") and one of its components, the Canada Employment and Immigration Union, represent approximately 180 employees at the Vegreville, Alberta, immigration case processing centre (CPC). The CPC has seen an increase in its workload of processing visas and permanent resident cards in recent times due to increasing immigration in Canada. The Department of Citizenship and Immigration ("the department") has also been challenged in recruiting staff willing to work in Vegreville. When the office lease came up for renewal, the decision was made to relocate the CPC to Edmonton, Alberta, for several reasons, including the better prospects in a large urban centre for recruiting new well-educated and bilingual employees.

[2] The department informed the staff and their union that all employees of the Vegreville office would be able to keep their jobs in the new Edmonton location if they wished to. Vegreville is a community of about 6000 people located approximately 100 km east of Edmonton. There would be no job losses as a part of the relocation.

[3] In fact, the department explained that the move to Edmonton would allow it to add new positions and eventually add a second shift for immigration file processing. Approximately 50 employees decided for different reasons that they would not follow their jobs to Edmonton, and so advised the department. They requested that they be allowed access to options and benefits under the workforce adjustment (WFA) appendix in the collective agreement. The agreement relevant to this case is between the Treasury Board and the PSAC for the Program and Administrative Services group, and it expired on June 20, 2018 ("the collective agreement").

[4] However, despite knowing that those employees would not follow their jobs, the department decided to make them guarantees of a reasonable job offer (GRJO) in the new Edmonton office, which, by a rule in the collective agreement, denied them some WFA benefits that they could otherwise have accessed.

[5] As a result of that decision, the employees have been declared surplus and now face being laid off. Although they are eligible for layoff benefits, they are not able to access other WFA options and benefits, such as a retraining allowance.

[6] The union grieved that decision. It alleged that it was unreasonable and that other provisions of the WFA appendix had also been breached. The department submitted that at all times, it acted within the terms of the collective agreement and that it worked with all the employees affected by the relocation to search for other opportunities for them to pursue their public service careers. However, it stated that such options are very limited or non-existent for staff unwilling to relocate from a small community such as Vegreville that has no other federal government offices.

[7] After hearing the testimony and arguments from both parties, and after carefully reviewing the WFA provisions of the collective agreement, I conclude that the employer breached the voluntary programs (clause 6.2) provision of the WFA appendix. Therefore, I allow the grievance on that ground.

[8] I reject the union's allegations that the employer breached the WFA's relocation (Part III) and retention payment provisions (clause 6.5.7).

II. Background

[9] The uncontested evidence presented at the hearing established that the employer sent a written notice to each employee at the Vegreville CPC that included the following text:

…

> *As stated on October 27, 2016, the Department of Citizenship and Immigration … will be relocating its Vegreville office to ensure that it has the capacity to expand and modernize its growing operations, as well as to meet ongoing business needs. The purpose of this letter is to provide you with information about how this will impact your employment with the Department and outline what resources will be made available to you to support this transition.*
>
> *As such, I wish to inform you that your position will be relocated to 9700 Jasper Avenue, Edmonton, Alberta, effective September 4, 2018. In accordance with the ENTENTE/DIRECTIVE (enclosed), I am advising you of this move and giving you the opportunity to decide whether you wish to continue working in your position in the new location, or be treated as if you were subject to a workforce adjustment situation.*

> *You have six months from the date of this notice within which to make your decision, upon which you must notify your director of your decision by returning a signed copy of the Workplace Relocation Decision Form. Failure to do so will be deemed as having selected that you do not wish to follow your position to the new location.*
>
> …
>
> [Emphasis added]

[10] Before sending it to all employees, the employer gave the union written notice of it on October 21, 2016, as follows:

> …
>
> *I am writing to advise you in confidence of a new impending workforce adjustment situation at Immigration, Refugees and Citizenship Canada (the Department) resulting from the relocation of a work unit.*
>
> …
>
> *Employees will be verbally informed of the workforce adjustment situation on October 27, 2016. Impacted employees will subsequently be provided with a letter advising them of the relocation and providing them with the opportunity to choose whether they wish to move with the position or be treated as if they were subject to a workforce adjustment situation.*
>
> …
>
> [Emphasis added]

[11] The WFA provisions are found in Appendix D of the collective agreement. The WFA's objectives are defined as follows:

> …
>
> *It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment.*

> *To this end, every indeterminate employee whose services will no longer be required because of a workforce adjustment situation and for whom the deputy head knows or can predict that employment will be available will receive a guarantee of a reasonable job offer within the core public administration. Those employees for whom the deputy head cannot provide the guarantee will have access to transitional employment arrangements (as per Parts VI and VII).*
>
> …

[12] Under the collective agreement, a WFA is defined as "…a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required…" and includes "…a relocation in which the employee does not wish to participate…". Part III of the WFA appendix deals with the relocation of a work unit. The first step after the requisite notification is given is in clause 3.1.1, which specifies the choice for all employees whose positions are to be relocated to move with their positions or to be treated as if they were subject to a WFA.

[13] Employees must reply within six months as to their choice under clause 3.1.1. If an employee chooses not to relocate, then under clause 3.1.2, the deputy head can provide the employee with either a GRJO or access to the options set out in clause 6.4.

[14] Clause 3.1.4 states that although departments will endeavour to respect employee location preferences, nothing precludes a department from offering a relocated position to an employee in receipt of a GRJO from his or her deputy head after having spent as much time as operations permitted looking for a reasonable job offer in the employee's preferred location.

[15] As mentioned earlier, approximately 50 employees decided not follow their jobs to Edmonton, however, the department decided to make them GRJOs in the new Edmonton office anyways. In this regard, clause 6.4.1 of the WFA appendix indicates that "[o]nly opting employees who are not is receipt of the guarantee of a reasonable job offer from the deputy head will have access to the choice of option below…". Those options include a surplus priority period (option A), transition support measures (option B) or an education allowance (options C (i) and (ii)).

[16] Finally, clause 6.2 states as follows:

> ***6.2** Voluntary programs*
>
> *Departments and organizations shall establish voluntary departure programs for all workforce adjustments [sic] situations involving five or more affected employees working at the same group and level and in the same work unit. Such programs shall:*
>
> *A. Be the subject of meaningful consultation through joint union-management WFA committees;*
>
> *B. Volunteer programs shall not be used to exceed reduction targets. Where reasonably possible, departments and organizations will identify the number of positions for reduction in advance of the voluntary programs commencing;*
>
> *C. Take place after affected letters have been delivered to employees;*
>
> *D. Take place before the department or organization engages in the SERLO process;*
>
> *E. Provide for a minimum of 30 calendar days for employees to decide whether they wish to participate;*
>
> *F. Allow employees to select options B, Ci or Cii;*
>
> *G. Provide that when the number of volunteers is larger than the required number of positions to be eliminated, volunteers will be selected based on seniority ….*
>
> [Emphasis added]

III. Issues

[17] The union claims the employer breached the WFA appendix by failing to establish a voluntary program pursuant to clause 6.2. It further alleges that employer's decision to issue a GRJO to employees to follow their jobs to Edmonton, when those employees had already informed the employer that they would not relocate, was unreasonable and, therefore, did not constitute a GRJO. Finally, the union contends that the employer breached clause 6.5.7 of the WFA appendix with respect to retention payments.

A. Preliminary matter

[18] Mr. David Orfald, the union's director of bargaining, was a witness at the hearing. Mr. Orfald testified for the first day of the hearing. At the midday break

during his testimony, I checked my Board email. It notified me that three new Board members had been appointed effective September 2018, including Mr. Orfald.

[19] Given the surprising timing of this news, I reconvened both counsel immediately after the break and shared that news. I advised counsel that I did not know Mr. Orfald and that in fact, I had never heard of him before he testified that day.

[20] I invited both counsel to consider the news, and I offered additional time for their deliberations if they wished. I stated that I would accept submissions from the parties on this situation if either wished to do so.

[21] After a brief discussion, and again after the afternoon break and before Mr. Orfald's cross-examination began, I confirmed that there were no submissions or any objections to the situation. Receiving none, the hearing continued with the cross-examination of Mr. Orfald.

B. Did the employer breach the WFA appendix by failing to establish a "voluntary program"?

[22] The union argues that the text of clause 6.2 regarding "voluntary programs" is clear. And further argues that it applies to all WFA situations involving five or more employees at the same group and level, as was the situation at the Vegreville CPC.

[23] The employer replied by arguing that several different clauses in the WFA appendix clearly state that the employer could offer a GRJO or access to the options under the WFA but that both were not available. It added that by inference, it was illogical to interpret clause 6.2 to allow employees access to the options as it would render other provisions meaningless and necessarily alter the collective agreement, which the *Federal Public Sector Labour Relations Act* (the *Act*) expressly prohibits.

[24] Clause 6.2 was negotiated and added to the WFA appendix in the most recent round of bargaining. I heard testimony that the collective agreement was signed on June 17, 2017, but heard no argument about coming into force, and I will not address it any further.

[25] I note that clause 6.2 applies to "…all workforce adjustments situations involving five or more affected employees…". As indicated above, the definition of WFA includes a relocation in which an employee does not wish to participate. Further, "affected employee" is a defined term in the WFA: "… an indeterminate

employee who has been informed in writing that his or her services may no longer be required because of a workforce adjustment situation."

[26] Having considered the WFA definition of "affected employee" in the context of the entire WFA, I conclude the definition of affected employee clearly includes the Vegreville CPC employees at issue. The evidence before me established that each employee at the CPC was, in fact, given written notice that they were being placed into a situation which could lead to their services no longer being required because of a workforce adjustment situation. They thereby fit within the definition of "affected employee."

[27] The uncontested evidence also clearly established that the Vegreville relocation was a WFA situation that involved more than five employees at the same group and level.

[28] The union argued that given the plain language stating that clause 6.2 applies to all WFA situations involving five or more employees at the same group and level, I should interpret this clause as allowing employees to opt out of the process upon receiving the employer's letter giving notice of the intention to relocate the workplace, as required in clause 3.1.1.

[29] Counsel for the union argued that if an employee opts out that early, clause 6.2(F) operates to then give that employee access to the options in clauses 6.4.1(b) (a transition support measure of a cash payment) and (c)(i) and (ii) (an education allowance). That employee would then not be later subjected to the employer's decision to make a GRJO or the other WFA options, according to the union.

[30] The employer argued that clause 6.2 speaks only to staff reduction situations. That is, a "voluntary departure program" must be established. Its counsel noted specific references to reduction targets (in clause 6.2(B)) and to SERLO (selection of employees for retention or layoff, in clause 6.2(D)), both of which are exclusively in the domain of a workforce reduction exercise.

[31] The employer's counsel suggested that if I accepted the grievor's argument on clause 6.2, it would necessarily render meaningless other sections of the WFA, which clearly state that the employer will choose whether to offer an employee a GRJO or to allow her or him access to the WFA options.

[32] The employees were initially informed in writing that they would be able to continue their employment in the new location if they wished to, and later that those who initially declined the offer were issued a GRJO. As such, I conclude that the employer did notify the employees in question that their services might no longer be required, which brings them within the definition of "affected employee" and triggered the obligation for the employer to establish a voluntary departure program under clause 6.2.

[33] I find the wording of clause 6.2 to be clear and unambiguous. It is a mandatory provision ("shall") and applies to "all" WFA situations such as was the case in the Vegreville CPC.

[34] While I accept the well-articulated arguments of the employer's counsel that my interpretation of clause 6.2 might impact other parts of the WFA, which deal with the employer's choice to offer GRJOs or the other options, I find that it speaks more to the challenge to seamlessly negotiate and insert a new section into a long-standing agreement rather than to me doing harm to other ancillary sections of the WFA.

[35] Given my finding of the very clear and unambiguous language in clause 6.2, I cannot accept the employer's submission, which relies upon inference and logical deduction to arrive at a different conclusion than mine. Further, accepting the employer's submission on this clause would result in its text being rewritten to state that it does not apply to all WFA situations, which I am expressly prohibited from doing under s. 229 of the *Act*.

B. Did the employer breach the collective agreement when it issued a guaranteed reasonable job offer to employees to follow their jobs to Edmonton when those employees had already informed the employer that they had chosen not to follow their jobs?

[36] The union set the foundation for this allegation by pointing out that clause 1.1.1 of the WFA appendix states as follows:

> ***1.1.1*** *Since indeterminate employees who are affected by workforce adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure they are treated equitably and, whenever possible, given every reasonable opportunity to continue their careers as public service employees.*

[37] In support of this allegation, the union's counsel called five witnesses who were employees of the CPC at the relevant time and all disaffected to different extents by the relocation. They were from a group of what Mr. Orfald testified was composed of 27 staff who did not wish to move with their jobs and therefore faced layoff at the end of August 2018.

[38] Each witness had commenced her career with the department around the time the CPC first opened in February 1994. Each one gave sincere testimony as to the challenges she and her family faced by the move to Edmonton. Each spoke of the stress that she and her family endured as they contemplated whether she should move to continue her position. Each spoke from the heart about her financial and family commitments. Each narrative was unique and compelling.

[39] I heard testimony of roots that run deep in family farms that have been passed through generations, elder care responsibilities, a dog with an anxiety disorder that would not like being left alone for long days, financial stress upon families who felt they could not move, and the heartbreak of parents who had children in a very sensitive teenage phase who did not want to be uprooted and who were being made ill by the stress of considering the move. One witness testified about her family having a seriously ill young child whom she helped provide care for and did not want to be away from.

[40] Another witness was posed what I considered very unfortunately detailed questions in her examination-in-chief about her difficult situation at home as a single parent caring for her children and her own challenges to succeed despite the challenges of mental illness and tendencies to self-medicate.

[41] Counsel for the employer also addressed this issue of the high-level direction of the WFA appendix and brought clause 1.1.7 to my attention. It states as follows:

> ***1.1.7*** *Deputy heads will be expected to provide a guarantee of a reasonable job offer for those employees subject to workforce adjustment for whom they know or can predict that employment will be available in the core public administration.*
>
> [Emphasis added]

[42] Counsel for the employer submitted that that clause provides a very clear understanding of the parties' intent to focus the WFA on continuing employees' employment while going through WFA transitions. Specifically, Part III, which as indicated above is about the "relocation of a work unit", provides a detailed direction to the decisions involved in a situation like the one that occurred in Vegreville.

[43] In cross-examination, when questioned about clauses 3.1.2 and 3.1.4, and the employer's ability to make a GRJO, including one that is outside an employee's location preferences, or allow access to the options set out in clause 6.4, Mr. Orfald stated that in fact it gives the employer a choice but that the employer made the wrong choice by issuing GRJOs as the offer to move to Edmonton was not reasonable in the circumstances.

[44] However, the evidence shows that the employer found no other more suitable federal government positions in Vegreville or in its immediate vicinity. After looking for a reasonable job offer in the employee's location preference area, clause 3.1.4 indicates that "…nothing precludes the department or organization from offering a relocated position to an employee…". In view of the evidence and the clear and unambiguous wording of clause 3.1.4, I find the employer's job offer did not breach the WFA appendix.

[45] Counsel for the union led evidence on the negotiating history of the WFA and on other WFA situations in which affected employees were given access to the same options in the WFA that were sought in this case. In one case a GRJO was rescinded at the request of the affected staff who would not move to follow their relocated positions. The union called two of its employees to testify about the history and the many years of evolving the WFA appendix's text (one was Mr. Orfald) and about how other WFA situations have been handled in the past (a Mr. West).

[46] Counsel for the employer objected to me receiving any testimony about negotiating history or a past practice. He argued that the rules of collective agreement interpretation clearly state that adjudicators should not look to extraneous evidence when the clause in question is found to have clear and unambiguous text. He cited my analysis of this same issue in *Fehr v. Canada Revenue Agency*, 2017 FPSLREB 17 at paras. 52 and 56 to 59, as follows:

52 In support of her objection on this point, the grievor cites several passages from Brown and Beatty that state that parole or extrinsic evidence is that which lies outside the written contract that is being interpreted. While the authors note several exceptions, they state that the general common law rule is that such evidence is not admissible to contradict or to vary the terms of the agreement. If a term is ambiguous, then such evidence is admissible to aid in the interpretation, to explain the ambiguity. They suggest the most common forms of such evidence are the parties' negotiating history and practices. They add that for such evidence to be relied upon, it must be consensual between the parties and must not merely represent the hopes of one party (see para. 3:4400).

…

56 Both parties rely upon the arbitral decision in Schlegel Villages v. Service Employees International Union, Local 1 Canada*, [2016] O.L.A.A. No. 104 (QL) ("Schlegel Villages"), which relies heavily upon the Supreme Court of Canada case* Sattva Capital Corp. v. Creston Molly Corp.*, 2014 SCC 53 (*"Sattva Capital*").*

57 Schlegel Villages *stands as authority for the proposition that the contextual evidence of surrounding circumstances can be relied upon but that it cannot contradict the parties' words.*

58 Sattva Capital *adds that contextual evidence should consist only of objective evidence of the background facts at the time the contract was executed and that it includes anything that would have affected how a reasonable person would have understood the language of the document.* Sattva Capital *concludes with the admonishment that surrounding circumstances or context cannot be used to rewrite the parties' bargain.*

59 The grievor cites Taticek v. Canada (Border Services Agency)*, 2014 FC 281, which refers to* Eli Lilly and Co. v. Novopharm Ltd*, [1998] 2 S.C.R. 129 at paragraph 54, as authority that the parties' contractual intent is to be determined by referring to the words they used drafting the contract, possibly in light of the surrounding circumstances prevalent at the time. However, evidence of one party's subjective intention has no place in the determination. That case also notes that the words of the contract must be given their plain and ordinary meaning unless the results of doing so would be absurd (at paras. 58 and 59).*

[47] As argued by counsel for the employer, and consistent with my findings in *Fehr*, I do not find relevant any of the union's testimony about negotiating history or examples of established practice to be relevant. I examined the WFA appendix text and considered the well-prepared arguments of both parties. I found that text sufficiently clear and unambiguous such that it would be unjust for me to consider extraneous evidence that might be contrary to the plain and ordinary meaning of the text that the parties have agreed to. Given this finding, I place no probative value whatsoever upon the evidence of negotiating history and past practice.

[48] Counsel for the employer called Robert Orr, who was at the times relevant to this matter the assistant deputy minister for operations. He testified to the CPC's increasing workload and explained that changes in how applications are handled require that staff have more analytical capacity.

[49] Mr. Orr also stated that the office must be able to hire more bilingual workers. He testified that those two requirements along with the location of Vegreville made it very difficult to hire new staff. He explained that when the office lease in Vegreville came up for renewal, the relocation decision was made, and the clear plan was to retain every possible staff member that would move, to hire many more people, and possibly to start a second shift in the new location. He explained the many preparations under way to recruit new staff and to try to ensure as minimal a work impact as possible given the CPC's heavy caseload.

[50] The argument made by the union's counsel for more equitable treatment was supported by the Board's recent decision in *Cianciarelli v. Treasury Board (Department of the Environment)*, 2017 PSLREB 32, which considered a WFA in which the grievor in that case was deemed surplus and in which a dispute ensued over a request to provide the transition support measure funds in a way to reduce the grievor's tax liability. The employer exercised its discretion under the relevant collective agreement to deny the request, thus providing the funds in one payment and maximizing the ensuing tax liability. The Board determined as follows that the exercise of discretion over the payment was not done fairly:

…

> *[34] … it seems to me that a principle of fairness has been ignored. The employer has agreed, in the collective agreement proper and in the WFA, to treat employees fairly.*

…

> *[40] … I can find no reasonable explanation from the employer of any impediment to the two-payment option, especially when it clearly had been in place for some time ….*

…

[51] Having read *Cianciarelli*, I note that at paragraph 40, the Board found that the employer had no reasonable explanation of any impediment to allowing the grievor's request. I distinguish the case on that ground.

[52] The evidence before me and the uncontested testimony of Mr. Orr clearly established a *bona fide* justification for the employer choosing to offer a GRJO to all staff. There was a desperate need for more staff at the office, and the employer was trying to avoid losing good employees due to the relocation. It was also motivated to reduce the impact of the move, and retaining as many staff as possible would ease the transition.

[53] Counsel for the employer relied upon the Board's decision in *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 50, for the broad but helpful finding that "[t]he fact that a particular provision may seem unfair is not a reason for me to ignore it if the provision is otherwise clear …".

[54] The employer also relied upon the finding of Mr. Justice Rothstein, then of the Federal Court's Trial Division, in *Attorney General of Canada v. Edwards* (1999), Federal Court file no. T-105-98, which heard the judicial review of a challenge to what was "reasonable" in a GRJO in which an employee declined a request to take a new position at the same grade but in a reorganized office in the same community as her former position.

[55] Counsel for the union submitted that the fact situation and collective agreement in this case are different. However, I find the gravamen of that decision helpful. The Court considered whether the grievor's personal circumstances and opposition to the offer made it unreasonable. Upon considering the applicable contract language then in place, the Court found the following at page 6:

…

> *In this case, the offer was one of indeterminate employment with the Public Service at an equivalent level. The offer was*

> *within the employee's headquarters. The fact the respondent* [grievor] *did not want the job, that another employee found the job unstable … are irrelevant considerations. There is nothing in the definition that implies that a job offer is not reasonable because the employee does not want it. Nothing in the definition implies that the employer is bound to work out a working relationship "fully acceptable to both parties".…*
>
> …

[56] This aspect of the decision was upheld on appeal; see *Edwards v. Attorney General of Canada*, [2000] F.C.J. No. 645 (C.A.)(QL).

[57] While *Edwards* was decided based on a different collective agreement and upon a fact situation in which a grievor was being relocated to a new position within her same headquarters area, nevertheless, I share the Court's sentiment as to its reasons.

[58] I find that the argument of the union's counsel that the employer essentially owed the employees better and more equitable treatment (per clause 1.1.1) necessarily leads to the equivalent of an ersatz standard of care being created. If the Board recognized such a thing, it would allow a grievor an avenue to seek to overcome clear collective agreement language when they feel their own personal, subjective circumstances are unfavourably affected by the employer's otherwise valid action allowed by the collective agreement. I don't accept this submission.

[59] All the testimony from the grievor's witnesses was very sincere and challenging for each one to share. However, none of the challenging circumstances that they faced are the responsibility of the employer under the collective agreement.

C. Did the employer breach the WFA by denying Art. 6.5.7 retention payments to employees who are staying to work at the Vegreville CPC until its final day of operation at the end of August 2018?

[60] Clause 6.5.7 states as follows:

> ***6.5.7*** *Subject to 6.5.6, the deputy head shall pay to each employee who is asked to remain until the relocation of the work unit and who offers a resignation from the core public administration to take effect on the relocation date, a sum equivalent to six (6) months' pay payable on the day on which the departmental or organizational operation relocates, provided the employee has not separated prematurely.*

[61] When counsel for the grievor made his argument on this matter, I asked him

if I had any evidence on the requirement in clause 6.5.7 that each employee must be asked to remain until the office relocation is done. He replied that setting the relocation date and then laying off the staff that did not relocate served as the request for staff to remain at work.

[62] I disagree with that submission. Establishing the relocation date and the related layoff date was not a request for the staff to keep working. I do not accept the grievor's inferential argument as satisfying the very clear requirement of clause 6.5.7 that staff must be asked to remain at work.

[63] I read this clause as intending to provide an incentive to induce staff who might otherwise leave their jobs early to stay at work and ensure its continuity until the office relocation is complete.

[64] I had no evidence whatsoever that any of the employees who remained at their jobs did so for any reason other than their own desire to maximize their remaining potential pay before their work ceased, per their decisions not to relocate.

[65] Given the lack of any evidence indicating the employees were "asked to remain", as required under clause 6.5.7, I conclude on a balance of probabilities that the union failed to meet its burden of proof to establish a breach of the collective agreement under this clause.

IV. Conclusion

[66] For the reasons that I have explained, the grievance is allowed in part. I find that the employer breached clause 6.2 of the WFA appendix.

[67] The parties requested that if I made such a finding that I would allow them the opportunity to seek an appropriate remedy. As such, I shall remain seized of this matter for 60 days from the date of this decision should the parties need to make submissions to me on the remedy.

[68] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[69] The grievance is allowed in part.

[70] I declare that the employer violated clause 6.2 of the WFA appendix.

[71] I shall remain seized of this matter for 60 days from the date of this decision should the parties be unable to agree on the appropriate remedy.

August 29, 2018.

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