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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

RYAN BENSON

Grievor

and

TREASURY BOARD
(Department of Citizenship and Immigration)

Employer

Indexed as
Benson v. Treasury Board (Department of Citizenship and Immigration)

In the matter of an individual grievance referred to adjudication

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Michael Fisher, counsel

For the Employer: Philippe Giguère, counsel

Heard at Vancouver, British Columbia,
January 7 and 8, 2020.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Ryan Benson ("the grievor") referred a grievance to adjudication under s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; ("the *Act*"). This provision applies to the interpretation and application of a collective agreement. At the time of the events that gave rise to this grievance, the grievor worked for the Department of Citizenship and Immigration (DCI), a department for which the Treasury Board is the employer. He was part of a bargaining unit within the Program and Administrative Services group that was represented by the Public Service Alliance of Canada ("the bargaining agent"), which had concluded a collective agreement with the Treasury Board that expired on June 20, 2014 ("the collective agreement"). It still applied at the time of the events surrounding the grievance.

[2] The grievor submits that the DCI misconstrued the expression "common-law partner", as used in the collective agreement, and that in doing so, it deprived him of his right to spousal relocation leave. For the reasons that follow, I agree with him.

II. Summary of the evidence

[3] At the hearing, the grievor testified. The employer called one witness, Timothy Weil, who was the grievor's manager.

[4] In March 2014, the grievor met Sarah. They fell in love. Very soon, they both knew it would be a serious, long-term commitment. At the end of June 2014, Sarah moved in with the grievor, who owned a house in Ottawa, Ontario.

[5] Sarah had pursued her medical studies in Ottawa; she was originally from Vancouver, British Columbia. By July 2014, having completed her residency, she could move back to her home town, which she very much wanted to do, to be close to her family. The grievor and Sarah discussed the move at length. They agreed that it was probably wise for Sarah to move immediately and to start her career in Vancouver. They did not want to be separated, but the grievor did not want to lose his federal public service career, which he had begun in 2002. Sarah moved to Vancouver in September 2014 and found a position but was still able to work intermittently in Ottawa until the end of 2014, when her Ontario licence expired.

[6] The grievor testified that during the year that followed, until October 2015, when he moved to Vancouver permanently, both he and Sarah took every opportunity to visit each other. Sarah came to work in Ottawa. He visited Vancouver, staying with Sarah at her parents' home, until they rented a condo together in July 2015. When he was in Vancouver, he sought out all opportunities for work in the federal public service. However, it was a difficult proposition, because of the rules of employment governing federal public servants. He could have been deployed, but it would have meant that the welcoming department would have had to pay his moving expenses (which are rather steep for a homeowner). He could apply to appointment processes, but generally, one of the conditions was that he had to already be in the region.

[7] The grievor testified that from the time Sarah moved to Vancouver, it was clear to both of them that they would eventually live together. It was a matter of arranging his employment, the sale of his house, and his move. To be together, they visited each other in Ottawa and Vancouver, as stated. They also took all their vacations together, with and without friends. To organize their finances rationally, given the considerable expenses they had to incur to ensure time together, they opened a joint bank account and obtained a joint credit card. As soon as Sarah moved to Vancouver, the grievor added her as second driver on his car for when she came to Ottawa; she did the same with her car insurance in Vancouver.

[8] The grievor also testified that their respective families and friends perceived them as a couple, which I have no reason to doubt. They devoted all their spare time outside work to each other, in either travel or visits. When they were not together, they spoke by phone every day.

[9] To facilitate his move to Vancouver without jeopardizing his job security, the grievor considered the possibility of spousal relocation leave, which would have placed him on a priority list for positions in Vancouver.

[10] Spousal relocation leave is provided for in the collective agreement. Two provisions are of import to this decision. They read as follows:

…

ARTICLE 45

LEAVE WITHOUT PAY FOR RELOCATION OF SPOUSE

> ***45.01*** *At the request of an employee, leave without pay for a period of up to one (1) year shall be granted to an employee whose spouse or common-law partner is permanently relocated and up to five (5) years to an employee whose spouse or common-law partner is temporarily relocated.*
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> …
>
> ***ARTICLE 2***
>
> ***INTERPRETATION AND DEFINITIONS***
>
> …
>
> ***"common-law partner"*** *(*conjoint de fait*) means a person living in a conjugal relationship with an employee for a continuous period of at least one (1) year.*
>
> …

[11] In May 2015, as the grievor and Mr. Weil were discussing options for him to work in Vancouver, the grievor wrote the following: "My primary goal is to rejoin my partner in BC. We missed qualifying for common law spousal relo [*sic*] by two months …".

[12] By July 2015, the grievor considered that he was entitled to spousal relocation leave. He believed that his relationship with Sarah qualified as a "conjugal relationship" that had started at least a year before. He set the date at which Sarah moved in, the end of June 2014, as the start date of a conjugal relationship.

[13] However, the DCI interpreted it differently. Mr. Weil testified and the documentary evidence shows that the DCI sought advice to determine whether the relationship qualified as conjugal. It seems that the DCI was convinced that cohabitation was necessary to the definition.

[14] At the hearing, Mr. Weil returned several times to the May email in which the grievor had stated that he was not entitled to spousal leave. It was clear that the DCI considered that the couple had cohabited only briefly before Sarah's departure for Vancouver. Therefore, they did not cohabitate for a year, and thus, they did not have a year of a conjugal relationship.

[15] The DCI denied the spousal relocation leave on August 12, 2015. The grievor asked to discuss it further, and a meeting was held on August 19 with Mr. Weil. The DCI agreed to receive the grievor's arguments that he was entitled to the leave and to submit the question to the Treasury Board Secretariat.

[16] It was clear from the evidence presented at the hearing that the DCI communicated only part of the grievor's arguments and that it added its own interpretation that cohabitation was essential to the definition of conjugal relationship. The Treasury Board Secretariat confirmed that interpretation. For this reason, Mr. Weil denied the grievor spousal relocation leave on September 16, 2015. Somehow, the legal arguments that the grievor brought up about the definition of conjugal relationship according to the courts were cast aside without further consideration.

[17] Mr. Weil offered as an alternative the use of leave without pay for personal needs provided for at article 44 of the collective agreement, which reads as follows:

> ***ARTICLE 44***
>
> ***LEAVE WITHOUT PAY FOR PERSONAL NEEDS***
>
> ***44.01*** *Leave without pay will be granted for personal needs in the following manner:*
>
> *(a) subject to operational requirements, leave without pay for a period of up to three (3) months will be granted to an employee for personal needs;*
>
> *(b) subject to operational requirements, leave without pay for more than three (3) months but not exceeding one (1) year will be granted to an employee for personal needs;*
>
> *(c) an employee is entitled to leave without pay for personal needs only once under each of paragraphs (a) and (b) during the employee's total period of employment in the public service. Leave without pay granted under this clause may not be used in combination with maternity or parental leave without the consent of the Employer.*

[18] The DCI insisted that the only way for the grievor to be placed on a priority list was to free up his position in Ottawa so that it could be staffed. For Mr. Weil to backfill the grievor's position in Ottawa so that the grievor could be placed on a priority list in Vancouver, the grievor had to take the whole 15 months of leave without pay for personal needs. That is not in dispute. In fact, within a month of his arrival in Vancouver in October 2015, the grievor found a position in the federal public service and has been continuously employed since then. However, the terms of the leave for personal needs still applied. The leave of absence was from November 2, 2015, to February 3, 2017. It cannot be granted again.

[19] Spousal relocation leave would have accomplished the same thing, but it was denied to the grievor. Therefore, the purpose of the grievance is to have the Federal

Public Sector Labour Relations and Employment Board ("the Board") declare that spousal leave was unfairly denied and that it should have been granted, and the remedy would be to reinstate the leave without pay for personal needs that the grievor would still be able to use had he not been forced to use it to move to Vancouver.

[20] Some facts related to the grievance must also be included in this evidence summary.

[21] The grievor applied for spousal relocation leave in July 2015; it was denied on September 16, 2015.

[22] The collective agreement provides that a grievance must be filed within 25 days of the incident giving rise to it.

[23] On January 26, 2016, the bargaining agent filed a grievance on behalf of the grievor about the denial of the spousal relocation leave. It withdrew the grievance the same day. No explanation was provided at the hearing as to the circumstances of the same-day filing and withdrawal. However, it is clear the employer never had the opportunity to respond to the grievance in January 2016.

[24] On April 12, 2017, the bargaining agent filed the same grievance on behalf of the grievor. It was presented to the DCI despite the fact that by then, the grievor was working for Natural Resources Canada. This is the grievance before me.

[25] The DCI never objected to the grievance's tardiness. Instead, it refused to deal with the grievance, for the reason that it should have been submitted to the grievor's immediate supervisor at the time of filing. According to the DCI, it should have been filed with Natural Resources Canada. It was never dealt with at any level of the grievance procedure. It was duly transmitted from level to level. The bargaining agent treated the grievance as denied with each refusal to deal with it. It was referred to the Board in the absence of any response from the DCI.

III. Summary of the arguments

[26] Before the hearing, the employer objected to the referral of the grievance to adjudication. According to the employer, the grievance was not validly before the Board, since it had never been filed properly. The employer also objected on the basis

of estoppel or abuse of process because the grievance had been filed, withdrawn, and then filed again more than a year later.

A. For the grievor

[27] With respect to the employer's objections, the grievor submits that the grievance was properly filed before the proper authority and that its filing did not constitute an abuse of process.

[28] The grievor argues that he was in a dual employment situation. In fact, the letter authorizing the leave without pay for personal needs states that for the duration of the leave, the grievor remained a DCI employee. Moreover, the events leading to the grievance occurred at the DCI; therefore, it was logical to present the grievance to the DCI.

[29] On the issue of the withdrawal of the first grievance constituting an obstacle to filing the grievance anew, the grievor introduced a number of recent decisions that have brought some nuance to the idea that a withdrawal is final. The two following passages reflect the essence of his argument.

[30] *Maple Leaf Consumer Foods Inc. v. Schneider Employees' Association*, 2011 CanLII 10254 (ON LA), states as follows:

> …
>
> *… I conclude that there is no absolute rule against the litigation of a grievance which is identical in substance to a prior withdrawn or abandoned grievance, and that the circumstances attendant upon the withdrawal or abandonment give colour to the manner in which it should be viewed… While it is important, in the interests of sound industrial relations, to discourage the litigation of settled issues, the withdrawal or abandonment of a grievance does not always reflect agreement with the position of the opposing side. It may well be that there is a presumption that a grievance withdrawal or abandonment signals a concession of the issue raised, especially when the grievance has been dealt with by a senior official of the grieving party, but it is also possible that the circumstances surrounding the non-pursuit of the grievance indicate that the party had another motive in failing to proceed. In such circumstances, the withdrawing party should not be prevented from litigating a legitimate issue unless, by its actions, it has induced the other side to change its position - thus creating an estoppel - or unless the withdrawal constituted all or part of the consideration for a negotiated settlement.*
>
> …

[31] *St. Lawrence Lodge, Brockville v. Canadian Union Of Public Employees, Local 2107*, 2013 CanLII 75618 at para. 69 (ON LA), states as follows:

> *[69] Thus, distilling the foregoing review of the arbitral jurisprudence for purposes of deciding the Employer's preliminary objections in the case before me, to the extent the earlier arbitral awards may stand for the existence of a "rule" that the unilateral withdrawal or abandonment of a grievance leads to issue estoppel or application of the doctrine of abuse of process to prevent a subsequent grievance on the same or substantially similar matter, the rule is only properly applied where the surrounding factual circumstances support the finding of conduct amounting to the misuse of the grievance and/or arbitration procedures, or the existence of an agreement between the parties having the effect of finally disposing of the matter in dispute, which agreement may be in writing, verbal and/or evidenced through their conduct. Moreover, the onus is on the party raising that rule as a bar to proceeding with the merits of the subsequent grievance to show the existence of an earlier agreement between the parties that finally disposes of the matter in dispute, or to demonstrate a sufficient level of misuse of the grievance and/or arbitration procedures to give the arbitrator proper cause to intervene under the doctrine of abuse of process. The fact that a party may withdraw an earlier grievance "without prejudice" to its position on the merits, even though not accepted by the other party, is not conclusive of the arbitrability of the subsequent grievance but rather is part of all of the surrounding circumstances to weigh in determining whether the parties have finally agreed upon the merits of their dispute on the basis of the withdrawal or abandonment of the earlier grievance.*

[32] Finally, the grievor states that the employer never objected to the grievance on the basis of timeliness, and so it cannot invoke untimeliness as an argument, as provided under s. 95 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "*FPSLR Regulations*").

[33] On the merits of the grievance, the grievor submits that his interpretation of the term "common-law partnership" in the collective agreement is the correct one.

[34] The definition of common-law partner in the collective agreement does not include cohabitation. Rather, it speaks of a conjugal relationship lasting at least one year. The parties have chosen to define it thus, and an adjudicator should not go beyond the terms of the collective agreement.

[35] Courts and tribunals have had to define "conjugal relationship". The grievor referred to the following decisions.

[36] In *M. v. H.*, [1999] 2 S.C.R. 3, the Supreme Court of Canada held that it was discriminatory to consider that same-sex couples were not entitled to the benefits of Ontario family legislation. When determining whether same-sex couples could be said to be in a conjugal relationship, the Supreme Court wrote the following:

> …
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> *59* Molodowich v. Penttinen *(1980), 1980 CanLII 1537 (ON SC), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognized that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal.…*
>
> *60.… Obviously the weight to be accorded the various elements or factors to be considered in determining whether an opposite-sex couple is in a conjugal relationship will vary widely and almost infinitely… Courts have wisely determined that the approach to determining whether a relationship is conjugal must be flexible. This must be so, for the relationships of all couples will vary widely.…*
>
> …

[37] The characteristics of a conjugal relationship are repeated in the context of a common-law partnership in *McLaughlin v. Canada (Attorney General)*, 2012 FC 556; that is, "… shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple."

[38] In *United Steelworkers, Local 1-2010 v. Columbia Forest Products*, 2017 CanLII 15842 (ON LA), the arbitrator found that despite a brief cohabitation period, the grievor and his partner were "spouses" for the purpose of the bereavement leave provision of the collective agreement in that case, as the agreement did not set a minimum period of cohabitation. As stated by the arbitrator, at para. 74, "In the absence of a negotiated limit, it would be inappropriate for me to read one in."

B. For the employer

[39] The employer supported its objections with the following arguments.

[40] Finality is an important principle in labour relations, and not allowing a grievance to be reintroduced once it has been withdrawn is consistent with that principle. The employer referred to the seminal case on reintroducing a grievance that

has been settled, abandoned, or withdrawn, *Canadian Union of Public Employees, Local 207 v. City of Sudbury* (1965), 15 L.A.C. 403, and in particular, to the following extract:

…

> *The authorities are legion that a board of arbitration has no jurisdiction to consider or, alternatively, that the grievor and his or her union representatives are barred and estopped from processing a grievance which is identical to a former grievance filed by the grievor and either withdrawn, abandoned or settled, or determined by a board of arbitration.…*

…

[41] The employer notes that the grievance was simply withdrawn; the bargaining agent never specified "without prejudice". Therefore, according to the employer, the withdrawal was complete and unconditional.

[42] The employer states that it would run counter to the harmonious labour relations promoted by the *Act* in its preamble to allow the bargaining agent to relitigate a matter it has withdrawn; it certainly does not encourage an efficient resolution of disputes.

[43] In addition, the employer submits that the grievor has not followed the proper procedure, since at the time he filed the grievance, he was no longer employed by the DCI.

[44] Finally, the grievance is moot, since no remedy can be awarded, by virtue of the reasoning in *National Film Board of Canada v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), which was recently confirmed in *Canada (Attorney General) v. Duval*, 2019 FCA 290. I will come back to these decisions in my analysis.

[45] On the substantive issue, the employer maintains that its interpretation of the term common-law partnership was correct.

[46] The employer's main argument is that the grievor did not cohabit with his girlfriend for the 12 months preceding his request for spousal relocation leave. The phrase "living in a conjugal relationship", as stated in the collective agreement definition of "common-law partnership", means to cohabit with someone under the same roof.

[47] The employer cited *Henschel Estate*, 2008 ABQB 406, in which the Court of Queen's Bench of Alberta concluded that living together required cohabitation.

[48] In addition, the grievor did not establish a clear conjugal relationship; there was no documentary evidence. Elements of such a relationship were missing, according to the grievor's testimony. For example, the couple did not share a daily routine, did not cook and eat meals together, did not share household chores, could not take care of each other when either one was sick, did not sleep under the same roof, and did not own property together.

[49] The employer also submits they did not purchase gifts for each other, as none was mentioned and no proof was presented; some important dates were not spent together, and no common residence was established. All in all, the employer submits that their relationship was more consistent with that of a boyfriend and girlfriend in a long-distance relationship.

[50] The fact that the grievor and Sarah have since married and have had a child is irrelevant for the Board's determination as to the reasonableness of the employer's assessment at the time the spousal relocation leave request was made.

[51] To interpret the collective agreement as the grievor would have it, the Board would have to leave out the terms "living" and "continuous".

IV. Analysis

A. The employer's objections

[52] The striking feature of this grievance is its lateness. It was filed over a year-and-a-half after the expiry of the period for filing one, according to the collective agreement. Yet, the employer never objected to its lateness. Because it did not, the bargaining agent never applied for an extension of time. The Board could have granted or denied one. I do not need to decide this issue, since neither party asked me to address it.

[53] The employer's objections are that the grievance was not filed with the proper authority and that filing it anew after it was withdrawn was an abuse of process.

[54] I agree with the employer that the grievor was no longer working for the DCI when he filed the grievance. The leave without pay ended in February 2017, and the grievance was filed in April 2017.

[55] That said, the grievance arose from the DCI's decision to deny the grievor spousal relocation leave. The DCI was the proper authority to receive the grievance, since its action gave rise to it. The DCI could certainly have objected on the basis of timeliness; however, it did not.

[56] I agree with the employer that as a general rule, once withdrawn, a grievance cannot be revived. However, it is important to consider the rationale for such a rule.

[57] Finality in labour relations and in quasi-judicial proceedings is a useful principle. Parties to a dispute should not have to address twice matters that have been settled; doing so is a waste of resources and is correctly termed an abuse of process.

[58] However, in this case, the facts do not add up to an abuse of process. The grievance was filed and withdrawn on January 26, 2016, within a few hours. The parties spent no time on the grievance. Rather, it seems that the bargaining agent was simply not ready to proceed, so the employer never reacted. The grievance was not at all dealt with at that point. Therefore, it is hard to conclude that the second grievance is an abuse of process, given that the first grievance never proceeded.

[59] As stated as follows in *St. Lawrence Lodge, Brockville*, at para. 68:

> *[68] … "The bottom line remains whether one can say, considering all of the circumstances of the withdrawal, that it was reasonable for the other party to infer from the withdrawal that the grieving party accepted the employer's position and was content to abide by it in the future."*

[60] There was nothing to infer from the withdrawal except that the bargaining agent was unwilling to go forward with the grievance at that point. It did not signal consent or agreement.

[61] Therefore, neither of the objections is sustained.

[62] The employer argues that it was entitled to rely on the withdrawal as a signal that it would not have to deal with the issue, and it invokes finality as a reason the grievance should not be receivable. The argument makes sense, but again, it goes to

the lateness of the grievance rather than to the fact that it was once quickly withdrawn. A year-and-a-half after the grievor had been denied the spousal relocation leave, the employer might well have thought that the matter would not be brought up again. There is a reason for time limits in collective agreements and the legislation — to ensure matters that appear settled remain so. However, the Board has adopted rules about using timeliness objections. They must be raised when a grievance is presented and at every further step. And a party must raise a timeliness objection within 30 days of the referral to adjudication (*FPSLR Regulations*, s. 95). None of these steps was taken.

[63] The *FPSLR Regulations* provide at s. 90(2) that if no decision is received at the final level of the grievance procedure, a grievance may be referred to adjudication.

[64] Since the employer did not object to the lateness, and since its two objections have been rejected, I believe that I am properly seized of a grievance duly referred to adjudication in the absence of a response from the employer.

B. Substantive issue

[65] The issue is whether the grievor was entitled to the spousal relocation leave provided in the collective agreement. It is clear that if his relationship with Sarah was a common-law partnership that had lasted a year at the time he made his request, he was entitled to the leave.

[66] The definition of “common-law partner” in the collective agreement speaks of a continuous “conjugal relationship” of over a year. It does not mention cohabitation. This would serve to distinguish it from *Henschel*, cited by the employer, in which cohabitation was required. In that case, cohabitation was specifically mentioned as a condition in the legislation. It is not so in the relevant collective agreement.

[67] Courts and tribunals have discussed the issue of what constitutes a conjugal relationship, and the grievor referred me to several decisions, which I quoted earlier.

[68] In *M. v. H.* and *McLaughlin*, the hallmarks of a conjugal relationship were specified as follows: “… shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple.” Both decisions emphasized that those factors might not all be present and that each case warrants an individual assessment.

[69] From the moment Sarah moved in with the grievor in late June 2014, they intended to live together and to share a common home. They lived together until Sarah left for Vancouver. She stayed in the grievor's home when she came to Ottawa, and he stayed at her parents' home, where she lived when she arrived in Vancouver, until they signed the lease on the condo in July 2015. Because they were separated until their employment issues were sorted out, they could not live together all the time; but when they found themselves in the same location, they shared the same lodging.

[70] I have no reason to doubt the grievor's testimony as to the exclusive relationship the couple enjoyed. I also believe his testimony with respect to the psychological and emotional support they provided each other, with constant exchanges and communication.

[71] The employer raised the fact that I had received no documentary evidence as to a common bank account and a common credit card. The grievor's sworn testimony was not challenged on this front, no contradictory evidence was presented to me at the hearing, and again, I see no reason to doubt his statements. I accept that he and Sarah had a joint bank account and a joint credit card, that they were insured on each other's cars, and that finances were a joint concern, given the expense of maintaining a close relationship while living in Ottawa and Vancouver.

[72] Finally, the grievor testified to the fact that they presented themselves as a couple to family and friends. Each was well received in the other's family. Friends became shared friends in social contexts and on vacations.

[73] In *United Steelworkers, Local 1-2010*, time spent living together was less important than the obvious commitment.

[74] In the present case, I must interpret the collective agreement as faithfully as possible, without adding to it. To conclude that the couple was in a common-law partnership, I must find that they lived in a continuous conjugal relationship that lasted at least a year. Given the factors described earlier, I so find. Therefore, the grievor was entitled to spousal relocation leave under article 45 of the collective agreement.

[75] When it was deciding whether to grant the spousal relocation leave, the DCI did not carry out the required individual assessment. It concluded that since the couple

had not cohabited for a year, they could not be a in a conjugal relationship. This largely ignored what the jurisprudence had established and did not take into account the fact that cohabitation is not included in the common-law partner definition in the collective agreement.

C. Remedy

[76] The employer argued that in any event, the grievor could not be entitled to any remedy, given the fact that his grievance was out of time. It cited both *Coallier* and *Duval* for that proposition.

[77] In *Coallier*, the Federal Court of Appeal stated that Mr. Coallier was entitled to a correction of his salary, despite the fact that his grievance had been presented years after the error was made. However, the remedy could go back only 25 days from the date on which the grievance was presented, since that was the deadline to present a grievance.

[78] In *Duval*, the Federal Court of Appeal further explained the rule in *Coallier*. A grievor cannot file a grievance beyond the deadline provided in the relevant collective agreement (subject to the *FPSLR Regulations* or an extension granted by the Board), unless it is a continuous breach of the collective agreement, an example of which would be an error in every paycheque. In that case, the employer is continuously breaching the pay provisions of the collective agreement, and thus, a grievance can always be presented. However, the remedy cannot go back beyond the time provided to file the grievance.

[79] In the present case, the grievance deals with a one-time action, the denial of leave, and thus, the rule in *Coallier* as to the retroactivity of remedy cannot apply, since it is not a continuous grievance.

[80] The employer never objected to the lateness of the grievance, and I have already decided that I am validly seized of it.

[81] According to s. 228(2) of the *Act*, the Board must make the order that it considers appropriate in the circumstances. I have concluded that the grievor was unfairly denied the opportunity to make use of the mandatory leave that would have been granted to him under article 45 of the collective agreement, which was spousal relocation leave without pay.

[82] I consider it appropriate in the circumstances to reinstate the grievor's right to the leave provided under clauses 44(a) and (b) of the collective agreement, which is leave without pay for personal needs, since he had to use it when he was unfairly denied the spousal relocation leave.

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

(The Order appears on the next page)

V. Order

[84] The grievance is allowed.

[85] I order the reinstatement of the grievor's right to leave without pay for personal needs, as found in article 44 of the 2011-2014 collective agreement for the Program and Administrative Services group.

March 18, 2020.

Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board