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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

THOMAS ADAM GRESLEY-JONES AND DAVID GROOTJES

Grievors

and

TREASURY BOARD
(Canada Border Services Agency)

Respondent

Indexed as
Gresley-Jones v. Treasury Board (Canada Border Services Agency)

In the matter of individual grievances referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Morgan Rowe, counsel

For the Respondent: Richard Fader, counsel

Heard at Kelowna, British Columbia,
May 28, 2019.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Thomas Adam Gresley-Jones and David Grootjes ("the grievors") are both employed by the Treasury Board (TB or "the employer") and work at the Canada Border Services Agency (CBSA) as border services officers (BSOs), classified at the FB-03 group and level, in British Columbia in the Okanagan and Kootenay district of the CBSA's Pacific Region.

[2] On December 22, 2013, Mr. Grootjes filed a grievance against the employer's decision to compensate him only up to $5000 for his relocation from its Cascade, B.C., port of entry (POE) to the Kelowna International Airport POE ("the Kelowna POE") in Kelowna, B.C.

[3] On January 11, 2015, Mr. Gresley-Jones filed a grievance against the employer's decision to compensate him only up to $5000 for his relocation from its Victoria, B.C., POE to the POE in Waneta, B.C., which is also in the Okanagan and Kootenay district.

[4] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40; *EAP No. 2*) also came into force (SI/2014-84). Pursuant to s. 393 of the *EAP No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *EAP No. 2*.

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

[6] The grievors' terms and conditions of employment are governed, in part, by agreements entered into between the TB and the Public Service Alliance of Canada for all employees in the Border Services Group. However, the agreements in place at the times of the grievances were different. At the time of the grievance of Mr. Grootjes, the agreement in force was signed on January 29, 2009, and expired on June 20, 2011, and at the time of the grievance of Mr. Gresley-Jones, the agreement in force was signed on March 17, 2014, and expired on June 20, 2014.

[7] The article at issue in the collective agreements is the same in both of them, and for simplicity, I shall simply refer to the collective agreement in the singular.

[8] The parties filed an agreed statement of facts, and each called two witnesses.

II. Summary of the evidence

A. The collective agreement and the National Joint Council directive

[9] The issues in these two grievances flow from article 7 of the collective agreement and the *NJC Relocation Directive* ("the directive") of the National Joint Council (NJC).

[10] Article 7 of the collective agreement states as follows:

> **ARTICLE 7**
>
> **NATIONAL JOINT COUNCIL AGREEMENTS**
>
> ***7.01*** *Agreements concluded by the National Joint Council (NJC) of the public service on items which may be included in a collective agreement and which the parties to this Agreement have endorsed after December 6, 1978, will form part of this Agreement, subject to the* Public Service Labour Relations Act *(PSLRA) and any legislation by Parliament that has been or may be, as the case may be, established pursuant to any Act specified in section 113(b) of the PSLRA.*
>
> ***7.02*** *The NJC items which may be included in a collective agreement are those items the parties to the NJC agreements have designated as such or upon which the Chairperson of the Public Service Labour Relations Board has made a ruling pursuant to clause (c) of the NJC Memorandum of Understanding which became effective December 6, 1978.*
>
> ***7.03***
>
> *(a) The following directives, as amended from time to time by National Joint Council recommendation, which have been*

> *approved by the Treasury Board of Canada, form part of this Agreement:*
>
> . . .
>
> *NJC Integrated Relocation Directive*
>
> . . .
>
> [Emphasis in the original]

[11] The relevant provisions of the directive are as follows:

> ***Principles***
>
> *The following principles were developed jointly by the Bargaining Agents' representatives and the Employer side representatives to the National Joint Council (NJC). These principles are the cornerstone of managing government relocations and shall guide all employees and managers in achieving fair, reasonable and modern relocation practices across the public service.*
>
> **Trust** – *increase the amount of discretion and latitude for employees and managers to act in a fair and reasonable manner.*
>
> **Flexibility** – *create an environment where management decisions respect the duty to accommodate, best respond to employees' needs and interests, and consider operational requirements in the determination of relocation arrangements.*
>
> . . .
>
> **Transparency** – *ensure consistent, fair and equitable application of the Directive and its practices.*
>
> . . .
>
> ***General***
>
> ***Collective agreement***
>
> *This Directive is deemed to be part of collective agreements between the parties represented on the National Joint Council (NJC), and employees are to be afforded ready access to this Directive.*
>
> ***Grievance procedure***
>
> *In cases of alleged misinterpretation or misapplication arising out of this Directive, the grievance procedure, for all represented employees within the meaning of the Public Service Labour Relations Act, will be in accordance with section 15.0 of the NJC By-Laws. For unrepresented employees the departmental grievance procedure applies.*
>
> ***Definitions***
>
> . . .
>
> ***Appointee*** *(*personne nommée*) – a person recruited from outside the public service and appointed or on assignment to a department*

or agency listed in Schedules I and IV of the Financial Administration Act. On relocation to the first place of employment, a person is deemed not to be an employee for the purposes of this Directive. Members of the Canadian Forces on initial appointment to the public service are considered to have the status of appointees.

. . .

Relocation *(*reinstallation*) – the authorized move of an employee from one place of duty to another or the authorized move of an employee from the employee's place of residence to the employee's first place of duty upon appointment to a position in the public service.*

. . .

2.6 Employer-requested Relocation

2.6.1 Employer-requested relocations are relocations within Canada, including employee relocations that result from staffing actions except on initial appointment.

2.6.2 When an employee requests consideration for a transfer to a different location, a relocation which may eventually result from that request may be an employer-requested relocation as outlined in section 12.1.2

. . .

2.8 Initial Appointment

2.8.1 Relocation provisions for appointees to the public service or other persons who are not employees before they are authorized to relocate at public expense are found in the Integrated Initial Appointees Relocation Program (IIARP), which can be found on the TBS website . . . .

. . .

Part XII - Employee-requested Relocation

12.1 Employee-requested Relocation

. . .

12.1.2 An employee-requested transfer that results in an authorized relocation to a position at the appropriate group and level which is vacant on arrival at the new place of duty shall be deemed to be an employer-requested relocation subject to the following:

(a) The relocated employee shall be reimbursed relocation expenses within the limits prescribed in this Directive, unless the deputy head or senior delegated officer provides written certification that, had the vacant position not been filled as a result of an employee-requested transfer, it would have been filled through normal staffing procedures without relocation expenses being incurred.

(b) When a position is so certified, the employee is entitled to:

- *the sum of up to five thousand dollars ($5,000.00) in their Customized fund;*
- *the Core and Personalized Funds do not apply;*
- *unused or remaining monies shall be returned to the Receiver General of Canada/department and are not payable to the employee as a cash-payout.; and*
- *a contract with a relocation services supplier who will provide the employee with professional assistance such as counselling on the relocation benefits available, guidance on accommodation at the new location and expense management.*

. . .

[Emphasis in the original]

[12] Before they become indeterminate employees, newly hired BSO recruits must successfully complete a training program at the CBSA College located in Rigaud, Quebec ("the staff college"). The relocation expenses of successfully trained BSOs ("the new BSOs") were governed by the TB's Integrated Initial Appointees Relocation Program (IIARP; "the TB policy"), the relevant portions of which state as follows:

. . .

1.01 Effective Date

The Initial Appointees Integrated Relocation Program came into effect 1 December 2007. All newly appointed employees other than EX/GIC appointees to the Federal public service who accept a letter of offer on or after 1 December 2007, will be relocated under the Initial Appointees Relocation Program. This program is annexed to the current National Joint Council Relocation Directive.

. . .

1.03 Eligibility

All newly appointed employees (other than EX/GIC) to the public service must be relocated under the Initial Appointees Relocation Program. This includes relocations from abroad on initial appointment.

A newly appointed employee is defined as a person recruited from outside the Public Service and appointed or on assignment to a department or agency listed in Schedules I and IV of the Financial Administration Act*, for a duration of one year (365 days) or more.*

. . .

> ***1.08 Relocation Expenses***
>
> *Relocation expenses must be directly attributable to the relocation, and must be clearly reasonable and justifiable. They must not upgrade the financial position of the newly appointed employee and must be supported by receipts. The employee shall submit a complete relocation expense claim with necessary supporting documentation within 60 days after the date of the employee's arrival at the new place of duty.*
>
> . . .
>
> *Relocation expenses* ***include but are not limited to*** *House Hunting Trip, Destination Home Inspection Trip, Interim Accommodation, Travel to new Location, Movement of House-hold [sic] Goods and Effects, Rental of Vehicle, Child Care and Pet Care.*
>
> . . .
>
> ***1.09 Non-Accountable Incidental Expenses Allowance***
>
> *Newly appointed employees may claim a Non Accountable Incidental Expense Allowance in the amount of $650 as part of the $5,000.00 allocation of Customized funds.*
>
> *Receipts are not required however they should be retained by the newly appointed employee in the event of a Tax audit.*
>
> *The newly appointed employee must sign a statement certifying that the expenses were incurred.*
>
> . . .
>
> ***Footnotes***
>
> *While the Initial Appointees Integrated Relocation Program is annexed to the National Joint Council Relocation Directive it does not form part of it. Therefore, persons subject to the provisions of the Initial Appointees Integrated Relocation Program seeking recourse are to use departmental processes and not the National Joint Council grievance process.*
>
> [Emphasis in the original]

B. Mr. Grootjes' grievance

[13] Mr. Grootjes joined the CBSA in 2008. He first worked out of the Carson, B.C., POE, which is in the Okanagan and Kootenay district. After two years there, at the employer's request, he moved to the Cascade POE. While at the Carson and Cascade POEs, he and his spouse and three children lived in Grand Forks B.C., which is a town located approximately midway between the two POEs.

[14] In 2013, his spouse, who is a teacher, secured a teaching position in Kelowna, and Mr. Grootjes and his family wished to move there. On July 2, 2013, he requested relocation to the Kelowna POE.

[15] As of the hearing, Anita Andersson was the CBSA's executive director for force generation and strategic direction and was located at its Human Resources branch in its National Headquarters in Ottawa, Ontario. Between September of 2012 and 2014, she was the district director for the Okanagan and Kootenay district.

[16] By email dated September 24, 2013, Ms. Andersson certified that Mr. Grootjes' deployment was employee-requested in accordance with section 12.1.2(a) of the directive and that otherwise, the position would have been staffed through the staff college. As such, his relocation reimbursement was capped at $5000.

[17] By letter dated October 3, 2013, Ms. Andersson offered Mr. Grootjes a full-time deployment to an FB-03 BSO position at the Kelowna POE, effective November 4, 2013. He accepted the offer on October 4, 2013. He was authorized to be paid $5000 in relocation expenses under section 12.1.2(a) of the directive.

[18] By email dated November 18, 2013, Mr. Grootjes inquired as to why he was to receive the employee-requested relocation package of up to $5000 when as of that date, another BSO has been deployed there, and two other BSOs were to start there in January of 2014. He testified in detail that at or about the time he moved to the Kelowna POE, a BSO from Penticton, B.C., also deployed there and that the week before him, another BSO had arrived, from Osoyoos, B.C. He said that in January of 2014, two more BSOs started there. He said that none of the four BSOs came from the staff college and that as of the hearing, none of the BSOs at the Kelowna POE had come from the staff college.

[19] Ms. Andersson testified that the region receives many deployment requests and that there is a list of BSOs who want to live in Kelowna. She testified that the CBSA was prepared to staff the positions at the Kelowna POE through the normal staffing process.

[20] Ms. Andersson testified about the staffing process and stated that a new BSO may choose a preferred POE or geographical area but that the chance of receiving that choice is limited due to the number of BSOs that graduate and the POEs' needs for

BSOs; the offer letters to new recruits graduating from the staff college require them to go anywhere in Canada. When she was asked about staffing vacant positions at the Kelowna POE, Ms. Andersson stated that they could have been staffed by bringing in new recruits from the staff college but that the decision had not been hers but of more senior management in the Pacific region. She said that where to staff BSOs is based on the greatest need.

[21] In cross-examination, Ms. Andersson confirmed that there were only so many graduating BSOs and only so many opportunities for the regions to acquire them. POEs in all regions have requests for BSOs graduating from the staff college, but not every region or POE receives what it wants. She stated that she was not aware of the POEs on the lists in 2013-2014 to receive staff college graduates.

[22] Ms. Andersson stated that one of the BSOs who deployed to the Kelowna POE shortly after Mr. Grootjes went there under a priority transfer and that there had been no cost for the deployment.

C. Mr. Gresley-Jones's grievance

[23] Mr. Gresley-Jones joined the CBSA in 2010. He is originally from Rossland, B.C. His first work location was the Victoria POE, which is on Vancouver Island.

[24] On August 30, 2013, he submitted a relocation request as he and his spouse wished to move their family closer to their extended family, which was in and around Trail, B.C.

[25] As of the hearing, Lorne Black was the chief of operations for the Kootenay area POEs in the Okanagan and Kootenay district, which included the Waneta POE. He succeeded Ms. Andersson.

[26] He stated that at the time Mr. Gresley-Jones sought to deploy to the Waneta POE, a BSO there had retired. He said that the Waneta POE has a complement of three BSOs, that there is a large turnover of BSOs at Waneta, and that there is always a need for them. He also said that he kept a deployment inventory.

[27] By email dated September 22, 2014, Mr. Black certified that Mr. Gresley-Jones's deployment was employee-requested in accordance with section 12.1.2(a) of the

directive and that otherwise, the position would have been staffed through the staff college. As such, his relocation reimbursement was capped at $5000.

[28] Mr. Black testified that by default, staffing was done through the staff college, which meant that if a position was not staffed by another means, eventually, it was staffed from the staff college.

[29] In cross-examination, Mr. Black confirmed that at the time he certified Mr. Gresley-Jones's deployment, he did not have a specific recruit available to fill the vacant position. He further agreed that just because there is a vacancy and local management wishes to fill it with a recruit, it does not mean that a recruit will be available and sent to that POE. He also confirmed that all districts provide their staffing needs to the region and that the region determines which needs get covered. He confirmed that he did not know what if anything the region would do about staffing in his district at the relevant time.

[30] By letter dated October 16, 2014, Mr. Black offered Mr. Gresley-Jones a full-time deployment to an FB-03 BSO position at the Waneta POE, effective December 1, 2014. Mr. Gresley-Jones accepted the offer on October 17, 2014.

[31] Mr. Gresley-Jones was authorized to be paid the sum of $5000 in relocation expenses under section 12.1.2(a) of the directive.

[32] By email dated October 30, 2014, Mr. Gresley-Jones sought clarification on when an employee-requested relocation is deemed an employer-requested relocation. He wished to clarify what would constitute normal staffing procedures without relocation expenses being incurred.

[33] Mr. Gresley-Jones stated that during 2014-2015, no one was brought in to the Waneta POE from the staff college. He did confirm that over the next 4.5 years, 2 new BSOs were deployed from the staff college to the Patterson POE, which is in the Okanagan and Kootenay district.

[34] Both grievors' deployment offer letters had an appendix that contained the following paragraphs:

. . .

Relocation

The Canada Border Services Agency agrees to provide you with relocation assistance up to a maximum of $5000, in accordance with Part XII of the National Joint Council Relocation Directive [web address deleted].

The maximum relocation assistance for an employee-requested relocation is $5000 unless advised otherwise. You are responsible for all costs over and above the maximum amount. In addition, you will be registered with Brookfield Global Relocation Services, the Contracted Relocation Service provider (CRSP), to provide you with professional assistance such as counseling on your relocation benefits, guidance on accommodation at the new location and expense management. Please note that CBSA through the Central Removal Services (CRS) of the Public Works and Government Services Canada (PWGSC) will arrange the shipment of your household goods and effects (HG&E). The cost of such shipment is included in the maximum allowance of $5000.

Upon signing this offer, and before making arrangements or incurring any expenses on relocation, please contact [name and contact information deleted] *within ten working days of signing the Letter of Offer. She will provide you with information regarding your relocation process.*

. . .

[Emphasis in the original]

III. Summary of the arguments

A. For the grievors

[35] The grievors made two arguments. The first was a direct interpretation of the directive, and the second was based on the facts. The second argument was to be considered only if the Board did not accept the first argument.

[36] There is no question that both grievors met the first part of the condition set out in section 12.1.2 of the directive. Initially, they requested deployments, which started out as employee-requested relocations. However, they moved into positions that were vacant when they arrived. As such, their relocations became deemed employer-requested. An employer-requested relocation is limited only by section 12.1.2(a), which states that the employee shall be reimbursed relocation expenses within the limits of the directive unless the deputy head or senior delegated officer provides written certification that had the vacant position not been filled as a result of

an employee-requested transfer, it would have been filled through normal staffing procedures, without relocation expenses being incurred.

[37] In both cases, the senior delegated officers certified that the vacant positions that the grievors moved into would have been filled by a staff college recruit.

[38] New appointees from the staff college incur relocation expenses. “Appointee” is defined in the directive. While the directive does not specify what an appointee is entitled to, it does set out that he or she is entitled to relocation expenses set out in the TB policy, and a link (URL) is provided to the policy.

[39] The TB policy specifies that all new appointees are to be relocated under it, and it defines “appointee” in a manner similar to the directive. The scheme of the TB policy mirrors the directive, and it is integrated into the directive. Even if the employer is right, relocation expenses would still be incurred for an appointee arriving from the staff college. Section 12.1.2 requires the employer to certify that someone was to fill those vacant positions. It is not enough to rely on inference and deduction in the face of clear and unambiguous language.

[40] The employer can rebut the presumption of the deemed employer-requested relocation only to show that it could have filled the vacancies with staff college recruits. It cannot in this case because those recruits would have had relocation costs, as contemplated by the directive. It does not matter that the costs would have been capped; they were still costs, and the language is clear.

[41] This is not simply a technicality. The language is there to allow the employer to honour relocation requests but to still cap costs if there are local candidates or a local feeder system to fill vacant positions.

[42] The parties are sophisticated; they consist of the employer and multiple professional bargaining agents. Had they wished to exclude appointees, from the directive, it would specify so. Had they meant for the directive to state that appointees could not have relocation expenses in excess of $5000 reimbursed, they would have specified as much.

[43] The grievors referred me to the wording in a prior version of the directive. The deeming provision in section 12.1.2 of the directive at issue is the same as the one in that prior version.

[44] The grievors referred me to Brown & Beatty, *Canadian Labour Arbitration*, at paragraph 4:2000, *Professional Institute of the Public Service of Canada v. National Research Council of Canada*, 2013 PSLRB 88, *Daigneault v. Treasury Board (Correctional Service of Canada)*, 2017 PSLREB 38, and *Public Service Alliance of Canada v. Treasury Board (Department of Citizenship and Immigration)*, 2018 FPSLREB 74.

1. Factual argument

[45] The employer certified that for each grievor, the vacancy was to be filled by new staff college recruits. It could not make an empty certification. The presumption is established in section 12.1.2 of the directive, and to rebut it, the employer had to certify something; it had to be based on something. The grievors were told that there was a need for them in the locations to which they requested relocations; the positions they relocated into were vacant. There was no recruit or any evidence of one. The employer provided only a theoretical recruit to fill each position, which was insufficient to meet the requirements under section 12.1.2 of the directive.

[46] The grievors referred me to *Sullivan on the Construction of Statutes*, Fifth Edition, at 85 to 91, to address the use of the term "deem".

B. For the employer

[47] This case involves a straightforward collective agreement interpretation. The bargaining agent had the burden of establishing that on a balance of probabilities, the employer's interpretation violated the collective agreement.

[48] There is no extrinsic evidence. The parties negotiated specific language into the collective agreement, and the task is to determine, based on an objective assessment of the language, the parties' intent.

[49] The following basic rules of interpretation are in play:

a. the collective agreement should be read as a whole; and,
b. each word should be given some meaning (this is the rule against redundancy).

[50] The issue in this case is whether the grievors are entitled to the employer-requested relocation benefits under the directive, which forms part of the collective agreement. The specific question is, when does an employee-requested relocation become an employer-requested relocation?

[51] The trigger for that change is set out in Part XII of the directive. The question is whether the delegated authority has certified that had the vacant position not been filled through the employee-requested transfer, it would have been filled through normal staffing procedures without relocation expenses being incurred.

[52] What is meant by the phrase, “relocation expenses”? Does it mean those under the directive, or relocation expenses in general, including those provided for outside the directive, such as under the TB policy? To answer this, two definitions set out in the directive are of assistance: “appointee” and “relocation”. Their combined effect is to recognize that the directive does not cover relocations in general such as initial appointments from the staff college.

[53] Further clarification is found at section 2.6.1 of the directive, which excludes relocations on initial appointment from being employer-requested; thus, they are not covered by the directive. Additionally, section 2.8 specifically states that initial appointments are dealt with not by the directive but by the TB policy.

[54] The TB policy explicitly states that it does not form part of the directive and that grievances filed under it proceed through the departmental grievance procedure and not the NJC. The directive explicitly excludes initial appointment relocations. The employer submitted that the parties did not intend relocation expenses (as set out in section 12.1.2) to include those outside the directive.

[55] The $5000 that initial appointees receive under the TB policy is not a relocation expense as defined under the directive and could not have been what the parties intended when they mentioned “relocation expenses” in section 12.1.2. While an initial appointment is a relocation, it does not involve a relocation expense as set out in the directive.

[56] The purpose of section 12.1.2 is to prevent the employer from using employee-requested relocations to avoid paying the full cost of an employer-requested relocation.

1. Alternative argument

[57] The directive imposes obligations on the employer and on employees before expenses are incurred. The employer submitted that these obligations require a certainty of terms before employees can incur expenses, which is intended to prohibit

what happened in this case. The employer provided detailed offer letters, which stated that their relocation expenses would be capped at $5000, and the grievors signed them knowing full well that they had no intent of respecting their terms.

[58] The employer did not advance an estoppel argument or suggest that employees can contract out of their rights under the collective agreement. It took the position that the collective agreement provides for certainty of terms before expenses are incurred. In this respect, it referred me to *York v. Treasury Board (Department of Human Resources and Social Development)*, 2008 PSLRB 75.

2. Factual argument

[59] It is not known whether the lists that Ms. Andersson and Mr. Black describe exist. Many demands are made on POEs; it would be fiction to suggest otherwise. Operations adjust over time. The default process was to staff vacancies from the staff college.

[60] The evidence of both Ms. Andersson and Mr. Black was that the vacancies that the respective grievors filled would have been filled with recruits or new appointees from the staff college. Otherwise, the POEs could adjust their operations to cope with personnel shortfalls. Both Ms. Andersson and Mr. Black believed that the vacancies could have been staffed from the staff college and certified as much, as referred to under section 12.1.2.

C. The grievors' reply

[61] The grievors referred me to *Daigneault* for the proposition that the parties cannot carve away an expense or category of expense provided by a policy, in this case, the TB policy.

[62] With respect to the argument that the grievors accepted the terms in their offer letters, the jurisprudence is clear that employees and managers cannot contract out of a collective agreement. While the employer suggested that it did not argue estoppel, in fact, it made just that argument. It could not use the offer letters to forgive its collective agreement breach. In this respect, the grievors referred me to *Amalgamated Transit Union, Local 583 v. Calgary (City)*, [2008] A.G.A.A. No. 58 (QL).

IV. Reasons

[63] The issue I must decide is whether the employer breached the collective agreement by not treating the grievors' transfers as employer-requested and thus without the $5000 expense cap under the directive.

[64] Section 2.6.1 of the directive states that employer-requested relocations are relocations within Canada, including those that result from staffing actions, except on initial appointment. Section 2.6.2 states that an employee's request for a transfer to a different location may be an employer-requested relocation as outlined if it meets the requirements set out in section 12.1.2.

[65] Section 12.1.2 of the directive provides that an employee-requested transfer that results in an authorized relocation to a position at the appropriate group and level, which is vacant on the employee's arrival at the new place of duty, shall be deemed an employer-requested relocation. However, section 12.1.2(a) places a limit the employer's responsibility for the relocation costs if the deputy head or senior delegated officer provides written certification that had the vacant position not been filled as a result of an employee-requested transfer, it would have been filled through normal staffing procedures without relocation expenses having been incurred. The section goes on to place the $5000 cap.

[66] In their arguments, both counsel referred me to the TB policy. It has no bearing as the collective agreement is clear because it incorporates the directive, and the directive is also clear. At best, it provides some context to understanding the unique situation of BSOs and the CBSA.

[67] In short, the directive states that if the employee requests the transfer but there is a vacant position in the location of the requested transfer, the transfer is an employer transfer, and the employer shall reimburse the employee his or her transfer costs up to the sum of $5000 if the deputy head or senior delegated manager provides written certification that the vacant position the employee transfers into would have been filled through normal staffing procedures without relocation expenses being incurred.

[68] In both grievances, the then-current district director for the Okanagan and Kootenay district provided the written certification under section 12.1.2(a) of the

directive. No one suggested that either district director who provided the written certification was not so delegated. As such, I assume they were.

[69] "Certify" is defined in the *Canadian Oxford Dictionary*, Second Edition, as "to make a formal statement of; to attest; attest to; . . . declare by a certificate that something has been met."

[70] "Attest" is defined in that dictionary as "to confirm the validity or truth of; **transitive**: be evidence or proof of; **intransitive**: bear witness to" [emphasis in the original].

[71] It defines "declare" as "announce openly or formally; pronounce to be something; assert emphatically; state explicitly."

[72] Each district director in each grievor's situation required some factual basis to make the certification. In *Power v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-17064 (19880225), [1988] C.P.S.S.R.B. No. 56 (QL), the Board's predecessor, the Public Service Staff Relations Board, when addressing that the employer relied on "operational requirements" to deny leave under the collective agreement, stated that operational requirements are ". . . not a magic wand which the employer can wave in order to deny employees their due under a collective agreement." There is no reason that the rationale expressed in *Power* with respect to the use of the term "operational requirements" cannot be equally applied here with respect to the use of the written certification under the directive.

[73] If the employer wishes to rely upon the certification process set out in the directive to limit paying legitimate relocation expenses, it must not be a hollow statement; there must be some facts behind it to back it up.

[74] While the TB has agreed with the bargaining agents to what appears to be an all-encompassing relocation policy that covers a wide swath of the federal public sector, the CBSA, and its hiring of BSOs, is somewhat unique. The evidence about the normal staffing process, as it involves recruiting new BSOs, disclosed that they are required to attend and successfully complete a lengthy training program at the staff college, which has only one location, Rigaud, which is about halfway between Ottawa and Montreal.

[75] Only so many recruits can be successfully trained every year. While the parties did not provide exact numbers, it was clear from the evidence adduced that the demand for successfully trained recruits outweighs the supply. In short, despite what part of the country these new BSOs come from, they may not return there to work; they are required to go where the CBSA determines they are needed.

[76] Also disclosed was that the decisions made with respect to allocating new BSOs were not done at the district level but at the regional level. District-level management merely identified its staffing needs to superiors. However, the evidence did disclose that the information about where the new BSOs would be sent did exist somewhere; both Ms. Andersson and Mr. Black referred to lists that existed identifying the staffing requests and the allocation of those BSOs. Neither Ms. Andersson nor Mr. Black was privy to that information.

[77] I was provided no documentary evidence of any kind indicating that ever, in or around the time either grievor requested relocation or had his request approved, any recruits or new BSOs who would otherwise have been able to fill the vacancies that the grievors filled were either available or designated at any point to fill them. I would expect that if that were the case, a document would have indicated it.

[78] Mr. Black's evidence was that filling positions from the staff college was the default process; however, it did not translate in reality into staffing the vacant positions at issue or mean that any such attempt was even made. He confirmed that at the time he authorized Mr. Gresley-Jones's deployment, he did not have a specific recruit or new BSO available to fill the vacant position.

[79] Mr. Grootjes testified that at or about the time he relocated to the Kelowna POE, four other BSOs also transferred there. He further stated that none of the four arrived from the staff college and that as of the hearing, some 5.5 years after his relocation, no new BSOs at the Kelowna POE had come from the staff college.

[80] As the certifications that Ms. Andersson and Mr. Black executed with respect to each grievor's relocation request are without factual underpinning, therefore, the grievors' situations do not fall under the limitation of section 12.1.2(a) of the directive but instead under the directive as if they were both employer-requested transfers.

[81] In the alternative, the employer argued that even if its interpretation were incorrect, the grievances must fail, as by virtue of the operation of the directive and thus the collective agreement, the grievors would have been required to comply with the terms of the directive to be entitled to the reimbursements it sets out. In other words, if each relocation was employer-requested and not employee-requested that by virtue of section 12.1.2 of the directive became employer-requested, then under the directive, the grievors were required to have taken certain steps in compliance with it to be entitled to reimbursement for certain costs incurred.

[82] This position cannot be maintained as it would permit the employer to benefit from its breach of the collective agreement and would deprive the grievors of the legitimate benefit that their bargaining agent negotiated and obtained for them. The grievors accepted what the employer's delegated authority told them and acted based on that information. It would be absurd for the very party that provided the false information to use their legitimate reliance on that false information to deprive the grievors of a legitimate benefit.

[83] As significant time passed from the grievors filing their grievances to them being heard, and, since an employer-requested relocation would have afforded the employer some control with respect to cost provisions within the directive with respect to certain options or benefits available to the grievors, I shall remain seized of this matter for a period of 120 days to assist the parties with any issues that arise from determining the appropriate amount of remedy each grievor is entitled to.

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

(The Order appears on the next page)

V. Order

[85] The grievance in file no. 566-02-13424 is allowed. The relocation of Thomas Adam Gresley-Jones to a position in the Okanagan and Kootenay Division effective December 1, 2014, is deemed to be an employer-requested relocation within the meaning of Section 2.6 of the NJC Integrated Relocation Directive.

[86] The grievance in file no. 566-02-13425 is allowed. The relocation of David Grootjes to a position at the Kelowna POE effective November 4, 2013, is deemed to be an employer-requested relocation within the meaning of Section 2.6 of the NJC Integrated Relocation Directive.

[87] The employer shall reimburse all eligible expenses for the grievors' relocations as employer-requested relocations, in alignment with the NJC Integrated Relocation Directive.

[88] I shall remain seized of this matter for a period of 120 days to address any issues related to the implementation of this decision.

June 10, 2020.

John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board