Date: 20200922

File: 566-02-9235

Citation: 2020 FPSLREB 88

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

HONOR WESTON

Grievor

and

TREASURY BOARD
(Immigration and Refugee Board)

Employer

Indexed as
Weston v. Treasury Board (Immigration and Refugee Board)

In the matter of an individual grievance referred to adjudication

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Erin Sandberg, counsel

For the Employer: Joel Stelpstra, counsel

Heard by videoconference,
August 12, 2020.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Honor Weston ("the grievor") was a tribunal officer at the Immigration and Refugee Board of Canada ("the employer" or IRB). Her last day of work there was January 25, 2013. At that point, she occupied a position classified at the PM-05 group and level.

[2] On March 21, 2013, Ms. Weston grieved the employer's determination of the transitional support measure (TSM) she would receive. The employer decided that she was entitled to 28 weeks of TSM. She was informed of that decision in a letter dated February 15, 2013. She then alleged that the employer had previously informed her that she was entitled to 52 weeks of TSM.

[3] The details section of Ms. Weston's grievance reads as follows:

> *I grieve my employer's determination of my Transitional support measure (TSM) entitlement, specifically of its' equivalent number of weeks of pay, and that was communicated to me in writing on February 19th, 2013;*
>
> *I grieve the fact that my Employer has violated article 6, 64, appendix D, and all other relevant articles of the collective agreement by providing me inaccurate assessments of my entitlement to Transitional Support Measure Payments causing me to act to my detriment in selecting a date to retire.*
>
> [*Sic* throughout]

[4] In its replies to the grievance at the first and second levels of the grievance process, the employer did not address its merits. Instead, the employer objected to it on the basis that Ms. Weston was no longer a public service employee when she filed it on March 21, 2013, since she left her employment on January 25, 2013. That point was raised at a pre-hearing conference the week before the hearing and at the opening of the hearing. On both occasions, the employer stated that it had changed its position in that it no longer objected to the grievance. Consequently, I will not deal with that objection.

[5] The grievance was referred to adjudication on September 24, 2013. The applicable collective agreement is the one for the Program and Administration Services Group that expired on June 20, 2014.

[6] 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*.

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

II. Summary of the evidence

[8] The parties submitted a brief joint statement of facts. They also submitted many documents, totalling more than 200 pages. Ms. Weston was the only witness called.

[9] On May 5, 1975, Ms. Weston began her employment in the federal public service at Parks Canada. In 1985, she took leave to relocate with her spouse. In September 1986, she was laid off pursuant to s. 29 of the *Public Service Employment Act* (R.S.C., 1985, c. P-32). In January 1987, she obtained a position at Employment and Immigration Canada and in August 1987 at the Immigration Appeal Board, the IRB's predecessor, where she remained until her retirement in January 2013. She was very familiar with the IRB, and in 2012, she knew that changes were coming, coupled to the budget pressure across the federal government. She holds a law degree from Carleton University. In the past, she was involved with public service unions. In the early 1990s, she was a national officer of a union representing IRB employees.

[10] On April 1, 2012, the employer wrote to the grievor, informing her that she had been identified as "an affected employee" and that her services as a tribunal officer "… may no longer be required due to lack of work or discontinuance of a function". The letter also mentioned that she was encouraged to explore and consider different placement options. She was also encouraged to consult the workforce adjustment (WFA) "Guide" and her union representative. The grievor testified that it made her think about her future.

[11] In October 2012, affected IRB employees received a form to complete and return to the employer. Ms. Weston completed it, as required, and returned it on October 9, 2012. The form indicated that its purpose was to inquire into employees' interest in three types of positions that the employer would need to fill. It also indicated that the employer was taking that opportunity to gather information about employees' long-term plans that was to be used for planning purposes. The employees had to choose one of the following three options:

> ○*I wish to apply to the Analyst position, RPD/RAD (EC-05)*
>
> ○*I wish to apply to the Early Resolution Officer position (PM-05)*
>
> ○*I wish to leave the Public Service (and to be declared surplus with the options)*

[12] Ms. Weston chose option 3. She testified that she wanted to attend an upcoming information session, to make a decision based on what she would receive if she left the public service. She wanted to know how much she would be offered. However, in cross-examination, she testified that she had an idea of the amount that she could receive were she to leave. She had seen the WFA tables and could read the collective agreement.

[13] Ms. Weston testified that on October 10, 2012, she spoke to Alain St-Arnaud of the public service Pay Centre, who indicated that she would receive a TSM based on 26 years of continuous employment. She also testified that on October 25, 2012, she emailed the Pay Centre, inquiring about what she would be entitled to under the WFA. She then specified that she believed that she would be entitled to 52 weeks of pay. She also asked for precise information as to the amount that she still owed for buying back some years of service. She did not adduce that email in evidence at the hearing because she no longer has it. Instead, it is referenced in a document that her union

representative prepared on April 8, 2013. Ms. Weston testified that the IRB took two weeks to answer her email.

[14] On October 26, 2012, Ms. Weston and other tribunal officers received an email from Kathleen Baker, an HR team leader at the IRB, asking them to indicate their interest in participating in an information session at which all available options would be explained to them. The second paragraph of that email reads as follows:

> *Before we proceed, we would like to make sure you are well informed of all the options that are available to you and their implications. Therefore, I would like to know if you would be interested in getting more information before confirming your decision. Depending of [sic] the response we get, we might set up information sessions or individual meetings in the next two weeks*

[15] The information session took place on November 5, 2012. Before it, Ms. Weston and other tribunal officers received a copy of a PowerPoint presentation outlining the available options. In a nutshell, under Option A, employees would receive a 12-month surplus priority period, during which they might receive a reasonable job offer. Under Option B, employees would receive a TSM as a cash payment calculated according to their years of service, in return for resigning. A pension penalty waiver could apply in certain cases. Under Option C, employees would receive the TSM as per Option B. They would also be reimbursed up to $11 000 for an education allowance. However, the pension waiver in Option B would not apply. Ms. Weston testified that during the information session, she asked how many weeks of TSM she would receive. She testified that Ms. Baker answered that it would be 52 weeks. On that basis, later that same day and after the information session, Ms. Weston emailed the following to Ms. Baker:

> *Subject: RE: Information Session on WFAA Options*
>
> *Hi Kathleen,*
>
> *This is a confirmation of intention to resign from the TO position in Montreal, to be declared surplus, to be covered under the WFAA and the Collective Agreement and for the employer to present me with the Options as set out therein.*
>
> *Thank you*
>
> *Honor Weston*

[16] On November 6, 2012, Nicole Devereaux, a compensation and benefits advisor at the IRB in Ottawa, Ontario, emailed Ms. Weston, addressing some of the questions that she had asked the Pay Centre on October 25, 2012. Ms. Devereaux copied her email to Ms. Baker, Michel Thériault from the IRB's compensation branch, and Pierre Fréchette, the IRB's director of compensation. The employer's counsel objected to the email being adduced in evidence because it was incomplete; the end of it had not been reproduced. Ms. Weston replied that she no longer had access to her IRB emails and that she could not provide the missing end since she no longer possessed it. Parts of it read as follows:

> *…*
>
> *We are sorry that you are not receiving a reply from the Pay Center [sic] … As we do not have your personnel file for review, we will not be able to answer some of the personal questions, but we will try to answer as many as possible. Here are some of the topics in your e-mail that we can reply to:*
>
> *Option c(a) TSM + Education Allowance: We have sent an e-mail to Treasury Board and the Pension Center [sic] requesting an interpretation. As soon as we have an answer, we will forward it to you.*
>
> *…*
>
> *Based on the years of service, you should receive 52 weeks under the Transition Support Measure as per the table of the Workforce Adjustment.*
>
> *…*

[17] On November 22, 2012, Sandra Waye-Butler, a compensation advisor from the Pay Centre, emailed Ms. Weston. Part of the email reads as follows:

> *Good Morning Mr. Weston,*
>
> *As promised find listed below an **estimate** of your TSM PAYMENT based on your retirement on January 7, 2013. I do apologize for the delay in responding to your enquiry . WFA has generated a major workload that we are attempting to process on a priority basis in a timely manner.*
>
> *Your years of continuous employment place your TSM in the 16 to 29 year range that provides for 52 weeks of pay.*
>
> *$80,560.00 / 52.176 = $ 1,544.00.00 x 52 = $ 80,288.00*
>
> *…*
>
> [*Sic* throughout]
>
> [Emphasis in the original]

[18] On November 28, 2012, Simon Coakeley, the IRB's executive director, wrote to Ms. Weston, informing her that her services as a tribunal officer would no longer be required for lack of work. He asked her to complete an attached form and to send it to Ms. Baker. The following two paragraphs of Mr. Coakeley's letter asked Ms. Weston to choose between the three options:

> *It has been determined that the Chairperson cannot provide you with a guarantee of a reasonable job offer. As a result you will have 120 calendar days from the date of this letter to consider and decide one of the three options provided for in the Work Force Adjustment Agreement. Please note that if you fail to select on [sic] option by March 28, 2013, you will be deemed to have selected Option A.*
>
> *You must make your decision known in writing to Kathleen Baker, Team Leader, Corporate Staffing, on or before March 28, 2013, by completing and returning the enclosed form. Once you have chosen an option you will not be able to change your decisions. Furthermore management will establish the departure date if you choose Options B or C.*

[19] On December 3, 2012, Ms. Weston completed the form, which was entitled, "Work Force Adjustment Option Selection Form WFAA". The manager responsible signed it on December 6, 2012. By doing so, the manager signified the acceptance of Ms. Weston's resignation for the option she had selected. The form indicated that she had selected Option "C" and that she would resign on January 25, 2013. Under that option, she would receive the TSM and an education allowance. She testified that at the time, she was considering pursuing studies in Barcelona, Spain. She also testified that she chose that option on the basis that she would receive 52 weeks of TSM.

[20] On December 5, 2012, Ms. Weston wrote to Ms. Waye-Butler, asking for some forms related to her situation. In that email, Ms. Weston referred to her 52 weeks of TSM. On December 11, 2012, Ms. Weston again emailed Ms. Waye-Butler about the amounts payable to her and again referred to her 52 weeks of TSM. In the "Transfer of Transition Support Measure Form" that Ms. Weston signed on December 17, 2012, she asked that $45 500 of the "eligible amount" and $28 811 of the "non-eligible amount", both from her TSM, be transferred to a registered retirement savings plan (RRSP). Those two amounts total $74 311.

[21] On December 18, 2012, Ms. Weston received a letter from Simon Pérusse, Regional Director, IRB, stating that her request of Option C(i), namely, a TSM and an education allowance, had been approved and that her last day of work would be January 25, 2013.

[22] On February 15, 2013, Sonya Hind, Team Lead at the Pay Centre, wrote to Ms. Weston about her termination payments. The following extracts of Ms. Hind's letter are of particular interest to this grievance:

> …
>
> *This letter is in regards to your email of February 10, 2013. A review was done of your account and this letter will clarify the amounts for [sic] each of your payments.*
>
> *Transition Support Measure (TSM) for the Program and Administrative Services collective agreement is based on continuous employment. According to Part 5 Section 20.1(b)(i) (enclosed) continuous employment includes all service prior to lay-off. This is the calculation for continuous employment for TSM purposes.*
>
> *May 5, 1975 to Sept. 9, 1986 – 11 yrs 128 days*
>
> *Jan. 5, 1987 to Jan. 25, 2013 – 26 years 20 days*
>
> *Continuous employment – 37 yrs 159 days*
>
> *Since TSM is based on complete years, your TSM entitlement is based on 37 years. In accordance with Annex B (enclosed) of the Program and Administrative Services collective agreement your payment is for 28 weeks @ $80,560 = $43,232.*
>
> …

[23] Ms. Weston testified that she was shocked when she saw Ms. Hind's letter. Had she known what it detailed, she would not have retired. At that time, she was 58 years old and could have worked many more years in the public service. She testified that she felt slapped in the face. She said that she cried for a solid year. She stated that she endured a "low-grade" depression. She also testified that she could not pursue her education plan with the revised TSM of 28 weeks. Her self-esteem was impacted negatively. She felt used for the work she had done for the IRB. She felt disrespected. Ms. Weston also testified that she could no longer afford her Montreal condo. She had to put it up for sale at a time when the market was low. She also testified that the change to the TSM she received ultimately affected her credit rating. She testified that

she did not pursue any employment opportunities after leaving the public service, except to help a friend by working as a receptionist for him for five months.

[24] In December 2012, Ms. Weston asked that most of her TSM be placed in an RRSP. At the time, she had been informed that she would receive 52 weeks of TSM. In May 2013, she wrote to Ms. Devereaux, asking to be paid cash for her revised 28 weeks of TSM rather than transferring it to an RRSP. Ms. Weston testified that her financial situation was not what she thought it would be. However, in the end, she decided to put the money in an RRSP.

[25] On February 22, 2013, Ms. Weston emailed Mr. Thériault, Ms. Devereaux, Monique Doiron from the Pay Centre, and Ms. Hind. She protested against Ms. Hind's February 15, 2013, letter. She asked the Pay Centre to respect its first commitment to pay her a TSM of $80 288. She stated that she would not have retired before age 70 had she known that the TSM would be only $43 000.

[26] On April 4, 2013, Margot A. Payne, Director of the Pay Centre, answered Ms. Weston as follows:

> …
>
> *This communication is in reference to your enquiry concerning your TSM entitlement and your indication that a decision to retire was based on an estimate that had been provided to you by the Pay Center [sic].*
>
> *Our review of your file indicates that you were provided a TSM estimate on November 22; however, we have confirmed that you had provided your Department with written notification of your intention to voluntarily leave the Public Service on November 5th following information sessions on Workforce Adjustment.*
>
> *I wish to clarify that following your termination with the Public Service and prior to issuing your payments, your file was submitted to the Pay Verification Team, as part of the regular pay process. At this time, it was determined that your service prior to your lay-off had to be included as it also formed part of continuous employment for TSM and severance pay purposes…*
>
> …

[27] Most of the items in Ms. Weston's testimony had also been submitted to the employer during the grievance process in a document dated April 8, 2013, and written by her union representative, Guy Boulanger, based on information she had provided him.

[28] Ms. Weston also adduced evidence that the employer made many mistakes in handling her case and that it provided her with false information more than once. I do not find it necessary to report on that evidence to decide her grievance, since it is not related to the TSM payable to her.

III. Summary of the arguments

A. For the grievor

[29] The grievor referred me to some clauses of Appendix D of the WFA. In Part I, it states that the employer has the responsibility to ensure that employees are treated equitably. There is an obligation of fairness. In this case, the employer did not live up to its obligation.

[30] On October 9, 2012, Ms. Weston completed a form to begin the process of possibly being declared surplus. Shortly after that, Mr. St-Arnaud told her that she was entitled to 52 weeks of TSM. On November 5, 2012, at the information session, she received the same information when she asked the question of Ms. Baker. Then, on November 22, 2012, she was informed again that she was entitled to 52 weeks of TSM, this time in an email from the Pay Centre. Furthermore, Ms. Weston stated in several emails to the Pay Centre or to employees from the compensation branch that she was entitled to 52 weeks of TSM. Nobody ever corrected her or led her to believe that her interpretation was erroneous.

[31] Ms. Weston made the decision to leave the public service based on the information that she had been provided. She had already left the public service when on February 15, 2013, she was informed that she would receive 28 weeks of TSM, rather than 52 weeks. As a result, the money available to her was reduced by almost half. She made her decision to leave based on false information provided by the employer. That was unfair and contrary to the WFA's clauses.

[32] The principle of estoppel clearly applies to Ms. Weston's grievance. A promise was made to her, which she relied on to leave the public service. She was greatly prejudiced by the fact that the employer did not keep its promise to pay her 52 weeks of TSM. That change to the employer's position was detrimental to her.

[33] As corrective action, Ms. Weston asked that I order the employer to pay her the difference between 52 weeks of TSM and the 28 weeks it already paid her. She also asked for interest on that difference.

[34] Ms. Weston referred me to R.M. Snyder, *Palmer & Snyder: Collective Agreement Arbitration in Canada*, 6th edition; and D.J.M. Brown, Q.C., D.M. Beatty, *Canadian Labour Arbitration*, 5th edition. She also referred me to the following decisions: *Defoy v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-25506 (19941025), [1994] C.P.S.S.R.B. No. 131 (QL); *Molbak v. Treasury Board (Revenue Canada, Taxation)*, PSSRB File No. 166-02-26472 (1994), [1995] C.P.S.S.R.B. No. 95 (QL); *Canada (Attorney General) v. Molbak*, [1996] F.C.J. No. 892 (QL); *Murchison v. Treasury Board (Department of Human Resources and Skills Development)*, 2010 PSLRB 93; *Lapointe v. Treasury Board (Department of Human Resources and Skills Development)*, 2011 PSLRB 57; and *Cianciarelli v. Treasury Board (Department of the Environment)*, 2017 PSLREB 32.

B. For the employer

[35] The employer recognized that this is an unfortunate situation. However, the evidence does not support the statement that Ms. Weston made her decision to leave the public service based on the information provided to her as to the TSM she would receive. That means that estoppel does not apply in this case. A clear and unequivocal promise had to have been made, which did not occur in this case.

[36] The only evidence supporting that Ms. Weston was informed that she would receive 52 weeks of TSM was the Pay Centre's email of November 22, 2012. The rest consisted of conversations. Furthermore, the email did not promise 52 weeks of TSM. Instead, it noted in bold and underlined text that 52 weeks was an estimate.

[37] There is a difference between detrimental reliance, which is required for estoppel to apply, and prejudice. The evidence does not support that detrimental reliance occurred. There is no evidence that Ms. Weston would have acted differently had she known that the TSM comprised 28 rather than 52 weeks. Before she was communicated the information on the 52 weeks of TSM, she had already indicated on October 9, 2012, in writing that she would leave the public service and that she would not apply for other positions. She reiterated that decision in writing immediately after the November 5, 2012, information session.

[38] It is clear that Ms. Weston intended to retire. She expressed that intention in writing before receiving the estimate from the Pay Centre. She did not rely on 52 weeks of TSM to make her decision. On a balance of probabilities, this story makes more sense than Ms. Weston's version. She might have been given wrong estimates, but the information she provided that led to them is not known.

[39] The employer stated that even if I allow the grievance, I do not have the power to award interest. On that point, it referred me to s. 226(2)(c) of the *Act*.

[40] The employer referred me to the following decisions: *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.); *Doucet v. Treasury Board (Canada Border Services Agency)*, 2020 FPSLREB 81; *Faryna v. Chorny*, 1951 CanLII 252; *Canada (Attorney General) v. Lâm*, 2008 FC 874; *Paquet v. Treasury Board (Department of Public Works and Government Services - Translation Bureau)*, 2016 PSLREB 30; *Pronovost v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 93; and *Rogers v. Canada Revenue Agency*, 2010 FCA 116.

IV. Reasons

[41] Before the hearing, counsel for both parties agreed not to argue as to the appropriate TSM that should have been paid to Ms. Weston. They agreed that the only issue in front of me was to establish whether the principle of estoppel applied to this case. If it did, I should allow the grievance. If it did not, the grievance should be rejected.

[42] The parties referred me to some doctrine on estoppel and to jurisprudence from the Board and its predecessors. They also referred me to some court decisions on the application of estoppel in labour relations. I carefully reviewed that doctrine and jurisprudence. My role is not to summarize it but to base my decision on the principles it outlines, which are well summarized in *Palmer & Snyder* at sections 2.67 and 2.77, which read as follows:

> ***2.67***. *Estoppel is a principle of law or justice which is applicable throughout the legal system and is frequently used in relation to the interpretation of collective agreements. Essentially, the principle prevents ("estops") a party from acting in a particular way where it would be unjust to allow it to do so. In the typical situation, a party that has made a representation to the other will be held to that representation if the other party, having relied on it, would be prejudiced if the representation was disregarded. The*

> *statement of the principle that is probably the most widely cited is the one penned by Lord Denning in Combe v. Combe, which is as follows:*
>
> > *The principle, as I understand it, is that where one party has, by his own words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly. Then, once the other party had taken him to his word and acted in it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by nay consideration, but only his word.*
>
> ***2.77.*** *The principle of detrimental reliance lies at the heart of estoppel and encompass two distinct but interrelated concepts:*
>
> > *The former requires a finding that the party seeking to establish the estoppel changed his or her course of conduct by acting or abstaining from acting in reliance upon the assumption, thereby altering his or her legal position. If the first step is met, the second requires a finding that, should the other party be allowed to abandon the assumption, detriment will be suffered by the estoppel raiser because of the change from his or her assumed position….*

[43] The jurisprudence also establishes that the promise made must be clear and unequivocal (see *Pronovost*, at para. 74) and that detrimental reliance must be proven by the party claiming that estoppel applies (see *Murchison*, at para. 44).

[44] On that basis, to determine whether estoppel applies to this case, I must first establish whether a clear and unequivocal promise was made to Ms. Weston. If so, I must then determine whether she detrimentally relied on that promise. For that to happen, I must conclude that she made the decision to leave the public service on the basis of the promise and that that decision was detrimental to her, since the employer's promise was not kept.

A. Did the employer make a clear and unequivocal promise to Ms. Weston?

[45] Ms. Weston testified that on October 10, 2012, Mr. St-Arnaud told her that she would be entitled to 52 weeks of TSM. She also testified that at the information session, Ms. Baker told her that she would be entitled to 52 weeks of TSM. Nothing leads me to believe that Ms. Weston did not speak the truth. Also, no evidence was adduced at the hearing to contradict her testimony that she was verbally provided that

information on October 10 and on November 5, 2012. The employer argued that the information that Ms. Weston supplied to Mr. St-Arnaud or to Ms. Baker, which led them to answer as they did, is not known. That is true. However, I will not conclude that she provided incorrect information. Furthermore, I assume that Mr. St-Arnaud and Ms. Baker are responsible people and that they would not provide answers to such important questions without having at their disposal the relevant information. Also, the employer could have called them as witnesses if it doubted Ms. Weston's testimony, but it did not. So, I believe Ms. Weston's testimony that on October 10 and November 5, 2012, Mr. St-Arnaud and Ms. Baker told her that she was entitled to 52 weeks of TSM.

[46] The employer objected to Ms. Devereaux's November 6, 2012, email, since it was not complete. I will accept the objection and ignore the email. However, I should add that its content does not change anything in my assessment of the entire situation.

[47] Ms. Weston received Ms. Waye-Butler's email of November 22, 2012. She wrote that her figures were an estimate and that on the basis of 16 to 29 years of continuous employment, Ms. Weston was entitled to 52 weeks of TSM, which totalled $80 288. The employer argued that that amount was an estimate, not a promise.

[48] Even though Ms. Waye-Butler provided an estimate, the employer cannot hide behind it. The estimate of about $80 000 did not turn into a final payment of $75 000, $77 000, $82 000, or some amount in that range but to a final payment of $43 000, representing a reduction of $37 000. The 52- week estimate ended up as 28 weeks, which was a reduction of 24 weeks. The estimate did not differ slightly from the final payment; rather, the employer changed how it calculated the TSM. At first, the calculation was based on Ms. Weston's 26 years of service. However, the February 15, 2013, calculation was based on 37 years of service. The issue did not arise from some imprecisions in the estimate but from a drastically different TSM calculation method. I reject the argument that the content of Ms. Waye-Butler's email should be discarded because it was an estimate. It should be considered her approximation of what Ms. Weston should have expected as a TSM. That approximation should reasonably be in the range of $80 000. Otherwise, the estimate was wrong and misleading.

[49] Further to Ms. Waye-Butler's email, Ms. Weston wrote to her two other times. Each time, she referred to her TSM comprising 52 weeks. She also indicated that in the

Transfer of Transition Support Measure Form signed on December 17, 2012, $74 311 from her TSM was be transferred to an RRSP. Nobody from the employer corrected her assumption that she would receive 52 weeks of TSM or one at least equal to $74 311.

[50] Taken together, this evidence equates to making a clear and unequivocal promise. Those working at the Pay Centre or in the IRB's Human Resources branch informed Ms. Weston verbally or in writing three times in October and November 2012 that she would receive 52 weeks of TSM. And later, when in her correspondence she referred to a TSM of 52 weeks, nobody corrected her.

B. Did Ms. Weston decide to leave the public service on the basis of the promise?

[51] The employer argued that Ms. Weston decided to retire before the Pay Centre gave her the 52-week TSM estimate. For the employer, there is no evidence that she would have acted differently had she known that she would receive 28 rather than 52 weeks of TSM. In her testimony, she stated that she would not have left with 28 weeks of TSM and that she could have continued working in the public service for many more years.

[52] The main basis for the employer's argument is the form that Ms. Weston completed on October 9, 2012, in which she expressed her wish to leave the public service. She completed it following a request addressed to affected employees that asked them to choose from three possibilities, which were wishing to apply to EC-05 positions at the IRB, wishing to apply to PM-05 positions at the IRB, or wishing to leave the public service and being declared surplus, with the three options. The form also indicated that the employer was taking that opportunity to gather information on employees' long-term plans, which was to be used for planning purposes. Ms. Weston testified that she had an idea of the amount of money that she could receive should she leave the public service. She said that she could read the WFA tables and the collective agreement.

[53] I believe that at the time, neither Ms. Weston nor the employer considered the "wishes" that Ms. Weston expressed in the form she completed on October 9, 2012, as a final choice to leave the public service.

[54] In fact, Ms. Baker wrote on October 26, 2012, to Ms. Weston and the other tribunal officers. She stated that an information session could take place to "… make

sure you are well informed of all the options that are available to you and their implications." She also wrote, "… I would like to know if you would be interested in getting more information before confirming your decision." During that session, two of the options that were explained implied leaving the public service with a TSM. However, on the contrary, the main feature of the other option (Option A) was a 12-month surplus priority period during which the employee could receive a reasonable job offer. After the information session, Ms. Weston emailed Ms. Baker, confirming her intention to resign, to be declared surplus, to be covered under the WFA and the collective agreement, and to be presented with the options "as set out therein." Then, on November 28, 2012, the IRB's executive director wrote to Ms. Weston to inform her that her services were no longer required and to ask her to consider and decide within 120 days which of the three options, A, B, or C, she chose. He asked Ms. Weston to inform Ms. Baker of her choice by completing and returning a form. He stated that once she made her choice, she would not be able to change her decision. On December 3, 2012, she completed the form and chose Option C.

[55] The evidence does not support that Ms. Weston made her final decision to leave the public service on October 9, 2012. In fact, the decision became final only two months later, on December 3, 2012. Before that date, at any step of the process, she could have chosen to stay in the public service and opted to become a surplus priority for a 12-month period (Option A). During that period, she could have received a reasonable job offer. On that day, this option was still open to her, and she had already been informed twice verbally and once in writing that she would receive 52 weeks of TSM.

[56] On a balance of probabilities, I believe Ms. Weston's testimony that she would not have made the final decision to leave the public service had she known that she would receive 28 weeks of TSM, rather than the 52 weeks she had been promised. She said that in her testimony, and it was not contradicted. She said that she was 58 years old and that she could have continued working for many years in the public service. She said that had she known, she would have continued to work. I have no reason not to believe her.

C. Was Ms. Weston's decision detrimental to her?

[57] Based on Ms. Weston's uncontradicted testimony, it is clear that the substantial reduction to the TSM had a negative psychological impact on her and on her morale.

She testified that she felt slapped in the face and that she endured a "low-grade" depression. Her self-esteem was impacted negatively. She felt used for the work she had done for the IRB, and she felt disrespected.

[58] Ms. Weston also testified that the substantial TSM reduction had a negative financial impact on her. She said that she could no longer afford her condo. She had to put it up for sale at a time when the market was low. She also testified that the TSM reduction she received ultimately affected her credit rating. She also testified that she could not pursue her education plan. I heard no evidence to the contrary.

[59] Ms. Weston made the decision to leave the public service on the basis that she was promised a TSM of $80 288. However, she received $43 232. The evidence supported that her decision had a detrimental impact on her. It negatively impacted both her morale and her financial situation.

D. Does estoppel apply to this case?

[60] The evidence supports Ms. Weston's argument that estoppel applies to her case. The employer had "promised" her that she would receive a TSM of approximately $80 288. On that basis, she decided to leave the public service. After she left, the employer changed its position and advised her that she would receive a TSM of $43 232. That change to the employer's position negatively impacted her in terms of both morale and financials.

[61] Applying to this case Lord Denning's words in *Combe v. Combe*,[1951] 1 All E.R. 767 . I conclude that by its words or conduct, the employer made Ms. Weston a promise or assurance that was intended to affect the legal relations between them and to be acted on accordingly. Then, after she took the employer at its word and acted on it, the employer could not be allowed to revert to the previous legal relations as if it had made no such promise or assurance. It made one, and it had to accept their legal relations subject to the qualification that it had introduced. Furthermore, I find that Ms. Weston suffered detriment from the employer not respecting the promise it had made to her.

[62] This case differs from the decisions submitted by the employer. In *Doucet*, the grievors argued that estoppel applied. The employer had recovered erroneously granted and unearned vacation leave credits. However, the evidence was insufficient to

support a finding that the grievors suffered any real hardship from repaying the unearned vacation leave. On that basis, the adjudicator rejected the grievances. In *Paquet*, the adjudicator concluded that estoppel did not apply to some of the erroneously granted vacation leave credits because the employer was not aware of the error and therefore did not make any promise or representation. In *Pronovost*, the employer restricted vacation leave during the summer to 3 consecutive weeks and required that 70% of employees be present in any given week. The grievor argued that estoppel applied since her requests for 4 consecutive weeks of leave had been approved every year over the past few years. The adjudicator rejected the estoppel argument since nothing in the evidence revealed that it had promised the grievor that she could take vacation leave in the future in the same manner as she had in the past.

[63] The grievor referred me to *Murchison*, *Defoy*, *Lapointe*, and *Molbak*. In *Murchison*, the employer had recovered $11 564 of paid annual leave credits. The adjudicator allowed the grievance on the basis of estoppel. He stated that detrimental reliance could be found in the fact that the grievor took the leave that she believed she was entitled to. The recovery of that amount created undue hardship for her. In *Defoy*, the employer recovered an erroneously advanced amount of $4500 that it previously granted to the grievor upon her return from a foreign posting. The adjudicator stated that estoppel applied to the case since the grievor would not have purchased a new home had it not been for the employer granting the advance. In *Lapointe*, the employer recovered an overpayment of $9666 from the grievor, which had resulted from paying him at a higher rate than he was entitled to for four years. The adjudicator concluded that the principle of estoppel applied since the employer's action was equivalent to a promise being made and that the grievor took on a major expense that he would not have otherwise taken on. In *Molbak*, the grievor was misled for almost a year by the employer, both in word and in deed, to the effect that her salary was $43 000. Later on, she was advised that her salary was $41 000. On the basis of a yearly salary of $43 000, the grievor bought a condo that she would not have bought otherwise. The adjudicator allowed the grievance on the basis of estoppel.

[64] In her argument, Ms. Weston asked to be paid the difference between the TSM promised and the TSM she received, namely, 24 (52 minus 28) weeks of pay. I will allow that part of her request. However, as the employer argued, I will not allow her claim for interest, since I do not have the power to award it under s. 226(2)(c) of the

Act. This grievance does not involve a termination, demotion, suspension, or financial penalty, for which interest may be awarded.

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

(The Order appears on the next page)

V. Order

[66] I order the employer to pay the grievor 24 weeks of pay at the salary level applicable to her in January 2013.

[67] I order the employer to make that payment within 30 calendar days of the date of this decision.

[68] I shall remain seized of this matter for a period of 90 days in the event that the parties encounter any difficulties implementing this decision.

September 22, 2020.

Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment Board