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File: 566-02-42076

Citation: **2021 FPSLREB 144**

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

JOSEPH LABOSSIERE

Applicant

and

TREASURY BOARD
(Correctional Service of Canada)

Respondent

Indexed as
Labossiere v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Corinne Blanchette, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Respondent: Alexandre Toso, counsel

Heard by videoconference,
December 17, 2021.
(Written submissions filed June 10 and November 9 and 17, 2021.)

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] This grievance arose out of the interpretation or application of the National Joint Council ("NJC") *Relocation Directive* ("the Directive"). It was referred to adjudication before the NJC's Executive Committee rendered a decision on it. Ultimately, the grievor, Joseph Labossiere, was successful before the NJC. The Treasury Board ("the employer") argues that the grievance is now moot and that it should be summarily dismissed. The grievor submits that there are still live issues to be determined at adjudication because the employer has failed to fully implement the NJC's decision.

[2] After receiving written submissions from the parties with respect to the employer's request for a summary dismissal and any legal issues still in need of adjudication, given the grievor's successful grievance before the NJC, a case management conference was held at the request of the Federal Public Sector Labour Relations and Employment Board ("the Board"). In the invitation to that conference, the parties were informed that the objective was to discuss the nature and scope of the remaining legal issue or issues, if any. At the conference, the parties made oral submissions. At the end, the employer's request to summarily dismiss the grievance was granted. The following constitutes the reasons for that decision.

II. Procedural history

[3] In March 2020, the grievor filed a grievance challenging the employer's decision to seek the reimbursement of paid relocation expenses following an employer-requested relocation. In the grievance, the grievor stated that the employer's actions were contrary to the Directive and argued that the employer was estopped from taking such a position. The Directive forms part of the collective agreement applicable to the grievor. The corrective action he sought was that he not be required to reimburse the paid relocation expenses.

[4] The grievance was referred to adjudication on September 15, 2020. At that time, the grievance was before the NJC, but it had not yet rendered a decision. On April 9, 2021, the NJC issued a one-page decision allowing the grievance. It concluded that the grievor was not treated within the intent of the Directive when the employer authorized the relocation and did not withdraw its authorization before disbursing the

funds. It also noted that the Directive does not allow for adding conditions to the requirements for authorizing a relocation. The NJC's decision concludes with the following statement: "With respect to the determination whether the relocation benefits will count as a taxable income, this is at the discretion of the Canada Revenue Agency."

[5] In June 2021, the employer informed the Board that the NJC had allowed the grievance. It submitted that the Board should exercise its discretion and summarily dismiss the grievance as it is moot. According to it, there is no longer a tangible and concrete dispute between the parties.

[6] On September 15, 2021, the grievor wrote to the Board, informing it that the NJC had allowed the grievance and that the Board could close the file once the employer provided it with a copy of the NJC's decision, which the Board received the next day. However, on September 27, 2021, in response to the Board's request for confirmation that the grievance had been withdrawn so that it could close the case file, the grievor asked that the matter remain active as he considered the impact of a new development with respect to the taxation of the relocation benefits. The Board granted the request but set a November 8, 2021 deadline for the grievor either to confirm that the grievance was withdrawn or to provide written submissions as to why the matter should not be deemed moot in light of the NJC's decision allowing the grievance.

[7] In October 2021, the grievor filed a new, distinct grievance challenging the employer's issuance of a "Statement of Remuneration Paid" ("T4") for the 2020 taxation year that treated as taxable the entirety of the relocation benefits paid to him.

[8] In November 2021, both parties provided written submissions to the Board as to whether the grievance referred to adjudication was moot. A case management conference was held on December 17, 2021.

III. Submissions on the mootness of the grievance

[9] The employer submits that the grievance is moot. It affirms that it has fully implemented the NJC's decision allowing the grievance. The NJC ordered it not to recoup the relocation benefits already paid to the grievor, and it has abided by that order. The grievor has received all the relocation benefits that were payable to him.

[10] The employer argues that it cannot be faulted for failing to do something that the NJC did not order it to do. The NJC's decision did not require it to consult the Canada Revenue Agency (CRA) on the taxable nature of the relocation benefits before issuing a T4. Although the NJC has expertise with respect to the Directive, it does not have expertise in taxation matters. That expertise lies with the CRA, including expertise with respect to interpreting s. 248(1) of the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)). That legislative provision defines eligible relocations. According to the employer, the mention of taxation in the NJC's decision is reflective of the CRA's expertise and discretion, much like section 1.3.3 of the Directive, which refers tax inquiries to the CRA and reads as follows: "1.3.3 Inquiries concerning tax should be directed to Canada Revenue Agency (CRA)."

[11] The employer also submits that the Board's labour-relations jurisdiction is limited to the subject matters set out in the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) and does not extend to taxation matters. Similarly, it argues that the Board does not have jurisdiction to determine whether a benefit is taxable. That authority rests with the CRA. The employer issued a T4 that reflected its understanding that the relocation expenses paid to the grievor are taxable. The grievor is entitled to challenge the taxable nature of those benefits with the CRA if he disagrees with the T4 issued to him. The employer also argues that the disagreement over that T4 being issued is the subject of a new, distinct grievance and that the new grievance process is the appropriate forum to address the dispute.

[12] The grievor acknowledges that he was successful in his grievance before the NJC but argues that the plain and simple language of the NJC's decision points to a live issue still to be determined, which is whether the employer failed to fully implement the NJC's decision by not consulting or obtaining guidance from the CRA before issuing a T4 that treated as taxable benefits all the relocation benefits he was paid. He argues that not all those benefits should have been taxable. He takes issue with the issuance of the T4 for 2020 (the year in which the employer closed the file) rather than for 2019 (the year in which the relocation benefits were paid to him). The employer's behaviour of issuing a T4 without considering either the taxation year or whether some of the relocation benefits should not be taxable was described as a failure of its duty to the grievor.

[13] According to the grievor, the employer clearly stated, before the NJC, its opinion that the relocation benefits would be taxable if the NJC allowed the grievance. The grievor submits that the NJC has expertise and significant experience in benefits taxation matters. He argues that the NJC mentioning the CRA in its decision constitutes a direction "requiring" the employer to consult the CRA as to the taxable nature of the benefits before issuing a T4. By issuing a T4 without first consulting the CRA, the employer failed to fully implement the NJC's decision.

[14] During the case management conference, I asked the grievor to identify the remaining legal issue or issues within the Board's jurisdiction. In response, he referenced his written communication of November 9, 2021, containing a general statement to the effect that the employer "… has not given full force and effect to what should be a final and binding decision of the NJC." That same communication includes a statement according to which the NJC "decided" that the taxation of the benefits was a matter of the CRA's discretion and that "despite [this] decision", the employer proceeded to tax all relocation benefits "… without any guidance, direction or consultation with the CRA." The grievor added that the remaining legal issues pertain to the T4 being issued for the 2020 taxation year and the identification of all relocation benefits as taxable.

[15] The grievor submits that the principles of fairness and finality in labour relations support a conclusion that grievance adjudication is the best forum in which to address his concerns with the T4's issuance. The new, distinct grievance was filed only to protect his rights. It would be unfair to require him to pursue the grievance process anew to address these outstanding issues.

IV. Reasons

[16] The grievance referred to adjudication challenged the employer's decision to request the reimbursement of the paid relocation expenses. The corrective action that the grievor sought was to not have to reimburse those benefits.

[17] The NJC allowed the grievance. Its decision provided a full answer to the grievance. The grievor acknowledges that he was successful before the NJC. Neither party takes issue with the NJC's decision. Allegedly, their disagreement relates to the implementation of that decision.

[18] The Board's mandate is to adjudicate grievances referred to arbitration, not sit in judicial review of decisions of the NJC. However, the parties' submissions focussed largely on that decision. Accordingly, I will briefly address the grievor's interpretation of the NJC's decision before turning to the grievance at issue.

[19] The grievor argues that the employer failed to implement the decision as the NJC directed it to. Although he argues that "… the plain and simple language of the NJC decision" required the employer to consult the CRA before issuing a T4 with respect to the relocation benefits, it seems that the words that the NJC used in its decision do not support such an interpretation.

[20] As previously mentioned, the grievor relies on the following excerpt of the NJC's decision: "With respect to the determination whether the relocation benefits will count as a taxable income, this is at the discretion of the Canada Revenue Agency."

[21] Apparently, in its submissions before the NJC, the employer expressed its opinion that the relocation benefits would be taxable. If the NJC wanted to require the employer to consult the CRA with respect to the taxable nature of the benefits, it could easily have used language indicative of an obligation or a duty. It did not. Nor did it use language that urged or invited the employer to consult the CRA. The excerpt at paragraph 20 seems merely indicative of the NJC's recognition that the CRA is to determine whether the relocation benefits paid to the grievor count as taxable income. The NJC did not pronounce on the benefits' taxable nature. Rather, it apparently recognized the CRA's mandate and discretion in taxation matters. Such a statement would be compatible with section 1.3.3 of the Directive, which refers taxation inquiries to the CRA.

[22] I see no ambiguity in the statement that the grievor relied upon; the language is clear. The NJC's decision did not direct the employer to consult or obtain guidance from the CRA with respect to the taxability of the relocation benefits paid to the grievor. The only thing that the employer was obliged to do was to cease its efforts aimed at recouping the paid relocation expenses.

[23] In any event, following the NJC's decision, the employer ceased its efforts to recoup the paid relocation expenses; therefore, the grievor obtained the corrective action that he had sought. Accordingly, the relocation-benefit dispute between the parties that arose from the interpretation or application of the collective agreement

and that was the subject of the grievance referred to adjudication is no longer a live issue. The grievance is now moot.

[24] Issues with the interpretation or application of the *Income Tax Act* with respect to the relocation benefits have since arisen. Those taxation issues are not captured by the grievance referred to adjudication, but they are the subject of a new, distinct grievance. Although the grievor may now find unfortunate his decision to pursue the grievance process anew with respect to this issue of the benefits' taxation, the recently initiated grievance process is an available forum for the determination of this new, distinct dispute, although it is questionable whether a reference to adjudication would be available in that respect; see s. 209(1) of the *Federal Public Sector Labour Relations Act*.

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

(The Order appears on the next page)

V. Order

[26] The request to summarily dismiss the grievance is granted.

December 23, 2021.

Amélie Lavictoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board