Date: 20230419

Files: 566-02-13424 and 13425

Citation: 2023 FPSLREB 41

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)

Employer

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

In the matter of individual grievances referred to adjudication

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

For the Grievors: Morgan Rowe, counsel

For the Employer: Amanda Bergmann, counsel

Heard by videoconference,
May 13 and 14, 2021.

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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 ("the employer") and work at the Canada Border Services Agency (CBSA) as border services officers, 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 up to only $5000.00 for his relocation from its Cascade, B.C., port of entry (POE) to its 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 up to only $5000.00 for his relocation from its Victoria, B.C., POE to its Waneta, B.C., POE ("the Waneta POE").

[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 (PSLRB) 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* ("the *Act*").

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

[7] The grievances first came up for a hearing on May 28, 2019, in Kelowna. The parties submitted an agreed statement of facts ("ASF No. 1"), and I heard limited evidence as to whether the relocation of each grievor was employer-requested or employee-requested as defined in the collective agreement and in turn the *Relocation Directive* ("the directive") of the National Joint Council (NJC), which forms part of the collective agreement. I did not hear any evidence about the specifics of each grievor's relocation. That hearing resulted in my decision in 2020 FPSLREB 65.

[8] At paragraphs 83 through 88 of that decision, I stated as follows:

> *[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.*
>
> …
>
> *[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.*

[9] This hearing dealt with issues that arose related to the implementation of 2020 FPSLREB 65, specifically with respect to the reimbursement of expenses claimed by the grievors.

[10] The parties provided me with a second agreed statement of facts ("ASF No. 2") and a joint book of documents (JBD), both in electronic and hard-copy formats. The employer provided a further book of documents that later went in on consent. Both grievors testified, and the employer called one witness. The hard-copy version of the ASF No. 2 and JBD are the more up-to-date and accurate versions of the material presented and align with the oral evidence presented and arguments advanced by the parties.

[11] One of the documents entered into evidence was a list of all Mr. Grootjes' home addresses, as noted in the employer's records. The parties requested that it be sealed, given the personal information it contains.

II. Summary of the evidence

[12] At paragraph 5 of ASF No. 2, the parties stated that in July of 2020, the grievors provided proposals and supporting documentation for their respective relocations, in furtherance of the implementation of 2020 FPSLREB 65. The employer created spreadsheets for each grievor that contain details of the expenses and, in the end, those expenses that the employer was not contesting and those it was. The total amounts contested and not contested, are set out in ASF No. 2.

[13] "CRS" is the acronym for Central Relocation Services and is defined in the directive as the Contracted Relocation Service Provider (CRSP). A CRSP is a private-sector company contracted by the federal government to administer relocation services for employees in accordance with the directive. Brookfield Global Relocation Services Ltd. ("Brookfield"), formerly known as simply Brookfield, was the designated CRSP.

[14] As of the hearing, and as of the facts that gave rise to the grievances, Jeanette Jones was the manager of customer experience at Brookfield. As of the hearing, she had been with Brookfield for about 10 years.

[15] She identified that the nine pages of documents entitled "Notepad" with respect to both grievors was an electronic communication system that Brookfield used to communicate with employees who had relocation files ("the Brookfield system"). Both employees of Brookfield and federal government employees being relocated would have access to the Notepad, which was specific to each individual employee's relocation file. Relocating employees would login through a portal. As such, both grievors had separate Notepad electronic files, of which entries were made for each. The grievors did not contest that each one's Notepad documents were business records; however, they did not accept that the information in those Notepad entries was necessarily accurate.

[16] The Notepad entries for Mr. Gresley-Jones will be identified in this decision as "the Gresley-Jones notes".

[17] Ms. Jones confirmed that she did not actively participate in the grievors' relocations. However, she did identify several names associated with specific notes as those of Brookfield employees.

III. The directive

[18] The directive sets out that the Integrated Relocation Program (IRP) is the framework that governs the relocation of employees of all federal government departments, the Canadian Forces, and the Royal Canadian Mounted Police. It outlines the provisions and benefits applicable to represented employees being relocated. It has approximately 92 pages (depending on the font size) and has, in addition to an introductory section setting out its principles and certain general definitions, an additional 13 numbered parts, each of which has several sub-sections and further sub-paragraphs. Subsection 1.2.2 sets out that it provides a personalized approach for each relocated employee based on their needs, stating that there are these two facets:

> …
>
> · *a policy formula that marries direct reimbursement of expenses, over which the employee has little control, and an individualized approach to benefits providing an opportunity for the employee*

> *to select what is best for him/her (within a given Fund) given his/her own family or unique circumstances; and*
>
> · *a contract with a CRSP who will provide the employee with professional assistance at every step of the relocation with the view of presenting the employee with every reasonable opportunity to maximize the available benefits. This includes relocation planning, marketing assistance and destination services along with several other enhanced relocation services.*
>
> …

[19] The directive provides that 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 employee and must be supported by receipts, and only in exceptional circumstances can an expense be proved by an employee certification that a receipt was either lost, accidentally destroyed, or unobtainable. Reasonable expenses are defined as those that the employer judges both appropriate and justifiable, based on the experience of what such costs should be in the circumstances and within the limits of the directive. Expenses incurred because of misinterpretation or mistakes may not necessarily be reimbursed.

[20] The directive states that the employer must advise the employee being relocated not to proceed with any relocation-related activities before an initial consultation with the CRSP and that the employer shall refer each employee to the CRSP immediately upon issuing the authorization to relocate. Departmental managers who authorize relocations must work closely with departmental relocation authorities to ensure that no employee starts a relocation without having had the contracted counselling from the CRSP. It also states that the employee shall read the directive and consult the CRSP before engaging in any relocation-related activities. It further provides that an employee shall obtain written authorization within the proper delegation framework before incurring any relocation expenses; employees proceeding with relocation-related transactions before receiving authorization or incurring expenses beyond those allowable under the directive will be personally financially responsible for the expenses.

[21] The directive sets up three separate funds, which are identified as the Core Fund, the Customized Fund, and the Personalized Fund. No one testified as to how exactly the different funds operate, and the only information about them, what is covered by them, and in what manner they are calculated, is set out in the directive.

[22] The Core Fund is described as containing core entitlements available to employees, including basic provisions covering the reimbursement of eligible expenses that are reimbursed by the employer via the CRSP. The items set out as available under this fund (and relevant to this decision) are the following:

- appraisal fees - sale of home;
- building/structural inspection (on purchase);
- house hunting trip (HHT) expenses;
- legal fees - acquisition of home;
- legal fees - disbursement;
- legal fees - sale of home;
- legal fees - acquisition of lease;
- long-term storage;
- private-sale assistance;
- real estate commission (sale); and
- shipment of household goods (HHGs) - 20 000 lbs. or 9071.94 kg.

[23] The directive further provides that while using the Core Fund is not mandatory, there is no provision under any circumstances for those items that are not used to be exchanged or assigned any monetary value that could be added to the Customized Fund. An employee who chooses not to use the Core Fund entitlements forfeits them. An example given was that if an employee opts not to go on an HHT, they forego the entitlement and will not receive a monetary value for it.

[24] The Customized Fund is described as including items that can be reimbursed up to a value from pre-budgeted amounts within the fund's entitlements. The directive states that the fund is provided to allow an employee to claim other elements of a move that are not covered under the Core Fund and that it provides flexibility to choose items that best meet the employee's relocation needs. The amount of money available in an employee's Customized Fund is determined by a funding formula and is different for each employee based upon their individual personal circumstances. This fund is for the sole purpose of enhancing a move, and unused or remaining monies shall be returned to the employer and are not to be kept by the employee. Expenses considered an enhancement to a move shall be charged against the Customized Fund unless specifically disallowed in the directive, and any expenses in excess of the amount of the Customized Fund shall be paid from the Personalized Fund. The Customized Fund cannot be used to supplement expenses covered by the Personalized Fund. Examples of what would be covered by the Customized Fund are as follows:

- adjustments or alterations to furniture or fixtures;

- additional appraisal costs;
- additional insurance (with respect to the shipment of HHGs);
- boarding pets;
- bridge financing - interest only;
- dependant care;
- dependants - travelling expenses;
- HHT - additional expenses - additional days;
- home renovation (disabled family);
- the shipment of antiques or art;
- the shipment of boats;
- the shipment of recreational vehicles (RVs);
- the shipment of trailers; and,
- the shipment of a second motor vehicle.

[25] The Personalized Fund is described as an amount of money generated from savings, incentives, and allowances as described in subsection 3.4.2 of the directive; however, it is section 3.4 that is identified as "Calculation of the Customized and Personalized Funds" and that sets out funding formulas for both funds. I heard no evidence as to how these amounts are to be calculated or what the amounts would have been or could have been with respect to either of the grievors. The evidence I did have, in addition to the directive, was the four charts, two for each grievor, which were put forward in the JBD at Tabs 3 and 4 that set out amounts, on one hand that were claimed and in dispute and on the other that appeared to be claimed, and the amount accepted by the employer as valid. The charts did set out amounts under a heading identified as either related to the Core Fund on one hand or the Customized and Personalized Funds on the other; however, the basis for the amounts in the columns related to the Customized and Personalized Funds was not explained to me by anyone.

[26] Part IV of the directive is about HHTs. It is made up of 7.5 pages composed of 20 subsections. This part sets out in great detail what is covered and how costs are calculated; however, given the position of the employer with respect to the respective claims of the grievors, I need not set out anything more about this other than the fact that the directive sets out that an employee must have authorization from their manager to proceed on an HHT.

[27] Part VIII of the directive sets out the particulars of what is covered with respect to the sale of an existing home, while Part IX addresses the particulars of what is covered with respect to the purchase of a new one. These parts, like Part IV, set out in great detail what is covered and how amounts to be covered or reimbursed shall be calculated.

[28] In relation to real estate fees and commissions, Part VIII of the directive states that "[e]mployees shall be reimbursed actual real estate commissions under the Core Fund not exceeding the rates established with the CRSP." Part VIII also provides for reimbursement to employees who sell their principal residences privately. In lieu of real estate fees, they shall be reimbursed from the Core Fund for the actual and reasonable costs of a professional appraisal, advertising, for-sale signs, and similar expenses related to the sale, the sum of which must not exceed the commission that would have been paid had the residence been sold by a licensed real estate agent.

[29] In relation to legal fees, in both Parts VIII and IX, the directive states that employees shall be reimbursed expenses incurred to complete the sale of the property, such as legal fees and disbursements, and sets out in some detail the types of fees and disbursements available. Section 9.4 contains a chart that sets out the benefits and where they are funded from. The first item set out in the chart is legal fees and disbursements and states that they are to be paid out of the Core fund. In the box for Core Fund appear "X", "-", and then "IRP rates".

[30] Part VIII of the directive provides for the reimbursement of one professional appraisal not exceeding the IRP pre-negotiated rates and a second one if desired by the employee under the Customized or Personalized Fund.

[31] Part VIII of the directive has a section entitled, "10% Home Sale Assistance". This provides as follows:

> …
>
> *Employees may be reimbursed the difference between the appraised value of their principal residence at origin and the actual selling price, if the latter is lower.*
>
> *Core Fund*
>
> • *Employees can reduce the selling price by up to 10% of the appraised value.*
>
> • *An employee can accept a lower selling price and be reimbursed the difference between the selling price and the appraised value up to 10% of the appraised value.*
>
> • *Limited to $15,000.*
>
> …
>
> ***Notes:***

> 1. *The appraised value is to be determined by means of a certified appraisal as per the provisions under the IRP contract.*
>
> 2. *If an employee wishes to accept an offer of purchase for the principal residence at origin that is less that 95% of the appraised value of the home, the employee must first obtain the approval of the Departmental National Coordinator. All such cases are to be submitted by CRSP directly to the Departmental National Coordinator for approval.*
>
> ***Example:***
>
> *Home appraised at $100,000 but is listed at $105,000. If the selling price is reduced to $90,000 because of the 10% option, prior approval must be obtained from the Departmental National Coordinator because the sale price is now below 95% of the appraised value.*
>
> [Emphasis in the original]

[32] Part IX provides for the reimbursement of fees charged by a qualified structural inspector for one building or a structural inspection before the purchase of a new principal residence. This is to be paid out of the Core Fund and is not to exceed the IRP established rates.

[33] Under the section in Part IX of the directive that covers legal fees and disbursements, it also states, "Appraisal fees necessarily incurred at the request of the lender to obtain a first or second mortgage-only if the appraisal done under the Core Fund is not acceptable to the lender." I could not find in Part IX a reference to an appraisal done under the Core Fund.

[34] Entered into evidence were copies of the "Third-Party Service Provider Agreements" between Brookfield and realtors, appraisers, home inspectors, and legal services providers. The following are the caps placed on the fees that can be charged by them and paid to them by the employer in this process (in B.C.):

- Realtors; real estate commission: 3.5 percent (%)
- Appraisers: $375.00
- Home inspection: $400.00
- Legal fees (sale of home): $375.00
- Legal fees (purchase of home): $650.00

[35] Part IX of the directive has a section, 9.18, entitled "Other Mortgage Provisions", which in turn has a sub-paragraph (9.18.c.) entitled "Subsidized Home Relocation Loan", which states this:

> *An employee may secure a second mortgage loan related to the acquisition of a principal residence at the new place of duty. An interest subsidy subject to funding availability is available to the employee as follows:*
>
> Customized/Personalized Funds
>
> • *Interest expense on a subsidized mortgage loan.*
>
> *The employee must meet the following criteria to qualify for reimbursement:*
>
> • *limitations as prescribed by CRA:*
>
> • *subsidy is restricted to a maximum of $25,000;*
>
> • *residence must be at least 40 km closer to the new work location; and*
>
> • *the residence is purchased for employee's personal habitation purposes.*

A. Facts related to Mr. Gresley-Jones

[36] As set out in 2020 FPSLREB 65, on August 30, 2013, Mr. Gresley-Jones, who at the time lived on Vancouver Island, B.C., and worked at the Victoria POE, requested a relocation to the CBSA's Okanagan and Kootenay district POEs. On September 22, 2014, the relocation was certified as an employee-requested deployment, and on October 16, 2014, he was offered a full-time deployment to the Waneta POE, effective December 1, 2014.

[37] He initially retained his home in the Victoria area ("the Victoria house") and moved to the Trail, B.C., region, purchasing a home there ("the Trail house"). He filed his grievance on January 11, 2015. It required the consent of his union, which signed it off.

[38] As set out in the JBD, Tab 4, the items that are stated to not be in dispute, with respect to Mr. Gresley-Jones, are as follows:

- Movement of HHGs: $5 794.31;
- Sale of the Victoria house: $12 000.00;
- Purchase of the Trail house: $1 093.58;
- Purchase of the Trail house: $123.51;
- Purchase of the Trail house: $179.00;
- Purchase of the Trail house: $420.00;
- Travel to Trail house: $77.89;
- Transfer allowance: $2 721.44.
- Total: $22 409.73

[39] Those items that appear to be still in dispute are as follows:

- HHT: $4076.82
- Hotel-motel room reduction: $450.00
- Travel status (nine-day HHT wage reimbursement): $2424.60
- Purchase of house (structural inspection fee): $498.75
- Shipment of HHGs: $5794.31
- Real estate commission: $5250.00
- Transport of family: $573.80
- Transportation of HHGs: $1973.58
- Difference in home loan interest rate: $4084.81
- Total: $25 126.67

[40] There is an incongruity in the material presented in that Tab 3 of the JBD and paragraph 11 of the ASF No. 2 both identify the amounts of $5794.31 and $1973.58 as transport of, or shipment of, or movement of, HHGs. The difference between the two amounts will be clarified later in this decision.

[41] Entered into evidence at Tab 8A of the JBD is an email dated July 28, 2020 ("the July 28 email"), in which Mr. Gresley-Jones sets out to the employer why he should be reimbursed certain expenses related to his relocation.

[42] Mr. Gresley-Jones testified that between August 24 and September 4, 2014, he and his spouse and children travelled by car to the vicinity of Trail. During this period, they stayed with family, visited, attended a wedding, and did some house hunting. He said that by this time, he had been told that he would be relocated from the Victoria POE to the Waneta POE. He said that he had had discussions with the Superintendent at the Waneta POE, which had a position that needed filling for November 1, 2014, who wanted him to commit to relocating there. He said that he engaged a real estate agent as it seemed prudent for him to start looking.

[43] He confirmed that he did not seek any authorization to go on an HHT. When asked why, he stated that he had not yet received his letter of offer. He said that during this period, he and his spouse viewed five properties and that the one that they eventually purchased was viewed on September 2, 2014. He further confirmed that he used vacation days instead of what would otherwise have been workdays for the trip.

[44] Entered into evidence at the initial hearing in May of 2019 was an email chain dated August 14, 2014, between Mr. Gresley-Jones and Kevin Kearney. Mr. Kearney was

the superintendent at the Nelway POE, in Salmo, B.C., which is in the CBSA's Okanagan and Kootenay district, with whom Mr. Gresley-Jones had been discussing his transfer to that district. The emails state as follows:

> [Mr. Kearney to Mr. Gresley-Jones, at 18:47:]
>
> …
>
> *Brad sent me your reviews and let me know you are still interested in coming to West Kootenay.*
>
> *I know you prefer Paterson but I don't think that opportunity will arise any time soon. You can speak more about that to Brad if you wish.*
>
> *Meanwhile I have a current vacancy. My most immediate need is at Nelway, but I may be able to make an alternative placement at Waneta.*
>
> *If you're interested in either Nelway or Waneta let me know as soon as possible. I will be presenting the Chief with some staffing plan options very early next week.*
>
> …
>
> [Mr. Gresley-Jones to Mr. Kearney, at 19:14:]
>
> …
>
> *I am definitely interested in coming to the West Kootenays. I would love the opportunity to work at Waneta. I am back in Trail from August 24th to September 5th, if you would like to meet and discuss this further. If there is a way for you to make it work and get me to Waneta, I would be very grateful. Please let me know if you need anything further from me and if you know the anticipated timeline this might happen over. Thanks for getting in touch with me. Looking forward to hearing from you.*
>
> …

[45] In cross-examination, Mr. Gresley-Jones stated that when he travelled between August 25 and September 5, 2014, he stayed with family members of his spouse and with his family. With respect to the wedding that they attended during this period, he confirmed that they would have attended it whether or not they were relocating.

[46] Also entered into evidence at the initial hearing in May of 2019 was a further email chain on October 1 and 8, 2014, between Mr. Gresley-Jones and Mr. Kearney, which states as follows:

> [Mr. Kearney to Mr. Gresley-Jones, October 1, at 13:15:]
>
> …

> *Just received word your letter of offer should be delivered by Oct. 6.*
>
> *I understand you will be allocated to our cost centre as of Nov.1*
>
> *I know that is a short window to organize a significant move. As soon as possible, please let me know what your actual plans for the move will be, including what dates you expect to arrive in the area and will be available for work. Hopefully I will be able to accommodate you [sic] preferred dates.*
>
> …
>
> [Mr. Gresley-Jones to Mr. Kearney, October 8, at 09:47:]
>
> …
>
> *I have included Lorne in this email in the hopes of catching whoever is in the office.*
>
> *I haven't received the letter yet. Do you have any information on the status of it?*
>
> *We have an offer pending on a house in Trail and several of the conditions to completion of the sale depend on me having a letter of employment for Waneta. Conditions on the sale are to be removed from the offer by the 15th of October. I am staring to feel the stress of this move.*
>
> *I am on shift today and going on holidays tomorrow and will be out of the office until October 14th. I can be reached at the office by email or at* [phone number redacted] *or on my cell at* [phone number redacted]. *Please contact me if you have an update as to when I will receive the letter of offer.*
>
> *I feel the November 1st date for starting at Waneta was reasonable when deployment was brought up in August and even into September. As it is just over 3 weeks until November 1st, that date doesn't seem very realistic now. It has been hard to take any significant actions on my end regarding the move without having a signed letter of offer. From my perspective, starting at the beginning of the new December schedule (December 8th) would be preferential. It would provide my family with the necessary time to complete this move. It would also allow me to VSSA balance here in Victoria before starting in Waneta. It would have the added benefit of having the proposed schedule start at the end of the previous schedule, minimizing balancing of hours for staff at Waneta. I do understand that there are negatives to me starting after that date. At this point in time, without the offer signed, I feel my family would be hardpressed [sic] to make the move for that date.*
>
> …

[47] In cross-examination, Mr. Gresley-Jones was brought to that email chain and specifically to his email of October 8, 2014, and his reference to being "hardpressed

[*sic*]". He agreed with that characterization with respect to the November 1 start date. He was then brought to paragraph 8 of ASF No. 1, which states as follows:

> *8. On September 11, 2014, the grievor* [Mr. Gresley-Jones] *spoke with a superintendent from the Port of Waneta, who indicated that there was a vacancy at the Port of Waneta and that a deployment would be deemed "employee-requested" under the NJC Directive.*

[48] Mr. Gresley-Jones confirmed that he knew that the letter of offer, which was dated October 16, 2014, was the confirmation of the relocation.

[49] The Gresley-Jones notes indicate that he logged into the Brookfield system as self-registered on October 23, 2014, that his registration was confirmed the next day, and that a planning session was scheduled. The Gresley-Jones notes disclose an entry of October 24, 2014, in which a Brookfield employee noted at 15:30 that Mr. Gresley-Jones wanted information with respect to his HHGs. It further noted that a form was forwarded to him to complete. It also indicated that he indicated to Brookfield that he was tentatively taking possession of the Trail house on November 29, 2014.

[50] Mr. Gresley-Jones said that he received a number of quotes from Brookfield with respect to moving him from Victoria to Trail, one being for between $4000.00 and $6000.00, another for about $9500.00, and a third, he believed, was between $11 000.00 and $12 000.00. In the end, he (or his wife) paid $5638.80 by credit card to move their HHGs to their new home in Trail. The Gresley-Jones notes reveal that there is an entry dated October 27, 2014, at 15:45, which indicates that Mr. Gresley-Jones was advised that an estimate to move the HHGs was between $4470.74 and $6000.00. The notes also indicate that at that time, Brookfield inquired of him as to whether he would use its services for the move. The Gresley-Jones notes entry on November 6, 2014, indicates that Brookfield was advised that Mr. Gresley-Jones would not use the CRSP for the move of the HHGs.

[51] Entered into evidence was a copy of a bill of lading from Atlas Canada showing a delivery date of December 2, 2014, and a net weight of 9568 lbs. When asked why he did not use the moving services provided by Brookfield (CRS), he said that they were cost-prohibitive, given the $5000.00 cap that he believed he was working with. He said that the move was supposed to take place on November 28 and 29, 2014; however, due to some issues, it was delayed a few days into December.

[52] Mr. Gresley-Jones also provided a storage rental agreement dated November 3, 2014, for the rental of a temporary storage unit in his laneway within which to pack the HHGs pending the arrival of the moving truck. The cost of the UPAK unit is initially shown as $155.51. The $5638.80 that was paid to Atlas Canada, plus the $155.51 claimed for the UPAK, totals $5794.31, which is the sum I believe is meant to be shown in ASF No. 2, which erroneously states $5793.41.

[53] Mr. Gresley-Jones said that because the move was designated as employee-requested and his expenses were capped at $5000.00, he and his spouse decided that it was not financially prudent for them to sell their home on Vancouver Island as the costs would outweigh any benefit. As such, it made more sense for them to retain that property, rent it, and purchase a new home in Trail, which is what they did.

[54] Mr. Gresley-Jones said that he was required to obtain an appraisal of the Trail house for the purpose of securing a mortgage for it and that the cost of the appraisal was $498.75, inclusive of GST. A copy of the invoice from Kootenay Home Inspections was included in the JBD. He testified that either he or his spouse paid this account in full.

[55] Mr. Gresley-Jones claimed $5250.00, itemizing it in ASF No. 2 as “Real Estate Commission”. He did not testify about this in his evidence. There is no receipt for this expenditure in the JBD. In the directive, under Part III, “Relocation Entitlements”, sub-section 3.4.1 sets out the Customized Fund. It sets out in sub-paragraph 3.4.1.1 what are described as five “Chart Elements” used in the calculation of the Customized and Personalized Funds. The first chart element involves a calculation based on the greater of $1000.00 or 35% of the real estate commission payable, based on the established appraised value of the home (where the transferee owns and lives) to a maximum of $5250.00. Mr. Gresley-Jones stated in the July 28 email that the Victoria house was appraised at $488 000.00. The real estate commission was 3.5%, which would be $17 080.00, and 35% of $17 080.00 is $5978.00.

[56] In ASF No. 2, Mr. Gresley-Jones made a claim for an undetermined amount for the “Difference in Home Loan Interest Rate” (or “Subsidized Home Relocation Loan” as referred to in ASF No. 2). This falls under subpart 9.18.c of the directive. I was advised at the hearing that the amount being claimed for this was $4025.61.

[57] In the July 28 email, Mr. Gresley-Jones said this about the new home purchase, alluding to the "Difference in Home Loan Interest Rate (re: Subsidized Home Relocation Loan)":

> ***Purchase of home***
>
> …
>
> *In addition to the above noted expenses for the purchase of the home, if this matter cannot be resolved and needs to be returned to the Adjudicator for a remedial decision, I will be seeking the interest expenses incurred on my higher mortgage costs for not having access to the $25 000 Subsidized Home Relocation loan. In the interest of resolving this grievance more quickly, however, I am prepared to waive, without prejudice, those expenses to expedite the resolution of the award.*
>
> …
>
> [Emphasis in the original]

[58] At Tab 7 of the JBD is an email chain, part of which relates to the claim by Mr. Gresley-Jones with respect to the "Difference in Home Interest Rate" or "Subsidized Home Relocation Loan". Mr. Gresley-Jones made an email inquiry on July 16, 2020, at 11:51, asking for assistance with respect to the interest rate for the Subsidized Home Relocation Loan under subpart 9.18.c of the directive. After a series of internal emails that forwarded this request, the response that was sent to Mr. Gresley-Jones on July 28, 2020, at 15:54, stated that he should go to the bank to get the archived loan agreement and the finalized sale-of-home documentation first and that the employer would follow up on it after that.

[59] Entered into evidence at Tab 8B of the JBD is a copy of a portion of an application under the B.C. *Land Title Act* ([RSBC 1996], Chapter 250), which I assume was to register the title to the Trail house as well as a mortgage on it, in which a mortgage is identified in favour of the Computershare Trust Company of Canada that shows a mortgage rate at 2.94% per year as of November of 2014.

[60] ASF No. 2, under the heading "Difference in Home Loan Interest Rate", states as follows:

> *The Grievor claims the difference in interest rate between the interest rate he has incurred on the mortgage taken out for the purchase of his new residence, and the interest rate he would have*

> *incurred if he had access to the Subsidized Home Relocation Loan under the Employer's relocation program (**JBD - Tab 8A**).*
>
> *On December 29, 2020, the Grievor submitted documentation identifying that he took out a mortgage of $85,000.00 on November 18, 2014 for the purchase of his new home. The mortgage had a 2.94% fixed interest rate (**JBD - Tab 11**).*
>
> [Emphasis in the original]

B. Facts related to Mr. Grootjes

[61] Mr. Grootjes relocated from the Cascade, B.C., POE to the Kelowna POE. He sold his home in the Grand Forks, B.C., area ("the Grand Forks house"), moved to the Kelowna region, and eventually purchased a new house there ("the Kelowna house"). Before purchasing the Kelowna house, he and his family lived in a two-bedroom rental property ("the Kelowna rental") for a time that will be more specifically described later in these reasons.

[62] Mr. Grootjes made his request for deployment to Kelowna from Grand Forks on July 2, 2013. It was certified as employee-requested on September 24, 2013. He filed his grievance on December 23, 2013. His grievance required the consent of his union, and the union signed it off.

[63] As set out in the evidence, the items that are stated to not be in dispute are as follows:

- Sale of the Grand Forks house: purchaser's real estate broker fees: $7 500.00;
- Sale of the Grand Forks house: $579.05;
- Sale of the Grand Forks house: $2 486.04;
- Sale of the Grand Forks house: $375.00;
- Purchase of the Kelowna house: $1 144.00;
- Purchase of the Kelowna house: $7 514.52;
- Transfer allowances: $201.79.
- Total: $19 800.40

[64] Those items that appear to be still in dispute as set out in ASF No. 2 and in the testimony before me are as follows:

- Transportation of HHGs: $6691.26
- Sale of the Grand Forks house (home-sale assistance): $3000.00
- Sale of the Grand Forks house (private-listing expenses): $2255.40
- Purchase of the Kelowna house (legal fees and disbursements): $110.88
- Purchase of the Kelowna house (structural inspection fee): $48.00

- Purchase of the Kelowna house (appraisal for mortgage): $400.00
- HHT: $ 2058.68
- Total: $14 564.22

[65] As set out in 2020 FPSLREB 65, on July 2, 2013, Mr. Grootjes, who at the time lived in Grand Forks, requested a relocation to the Kelowna POE as his spouse, a teacher, had secured a teaching position there. At the time, they had three young children. He testified that his spouse began working in Kelowna in August of 2013. He said that they found temporary accommodations (the Kelowna rental) and that in August of 2013, she and their three children moved into it, although they still owned the Grand Forks house and Mr. Grootjes was still working at the Carson POE in Grand Forks and the Cascade POE.

[66] No evidence was presented about when Mr. Grootjes' spouse accepted her job in Kelowna, when exactly she started working there, when she and he secured the Kelowna rental, or when she and the children moved into it. No copies of a lease, rental agreement, or receipts with respect to the payment of rent were entered into evidence with respect to the Kelowna rental.

[67] Mr. Grootjes testified that he started house hunting in August of 2013. He did not state the exact date or whether it was before or after he and his wife had secured the Kelowna rental. He said that he started house hunting then because he understood that he would be released to go to Kelowna. He said that he started working on November 4, 2013, at the Kelowna POE and that therefore, he moved there on November 2 and 3, 2013.

[68] Entered into evidence in the JBD were two emails, both from Mr. Grootjes, with respect to providing information about his relocation after the issuance of 2020 FPSLREB 65, the first dated July 26, 2020 ("the July 26 email"), and the second dated August 26, 2020. In his examination-in-chief, he was brought to these two emails and was asked if he was the author of them, if they were accurate, and if there were any clarifications that he wished to make to them. He confirmed that he had authored them, that he had an opportunity to review them, that they were accurate, and that there were only two clarifications he wished to make, the first with respect to the contact person at Brookfield, and the second with respect to finding a receipt for the structural home inspection.

[69] In cross-examination, Mr. Grootjes was brought to the July 26 email, in which he made the following statement:

> …
>
> *… We had made numerous trips looking for housing and/or temporary housing. Even after we had establish a temporary residence for my spouse/children, we continued to look for a house to purchase.*
>
> *We spent my days of rest in July and the first half of August travelling to Kelowna to look for accommodation. We (myself, wife and three children) would travel to Kelowna and stay overnight at my wife's Aunts/Uncles house. We would pay for childcare for the children to one of the Aunt's neighbor as the Aunt/Uncle both worked fulltime). In July and August we spent approximately 9 days house hunting before finding interim accommodation.*
>
> *Between Sept*[ember]-*November I would also travel back and forth on my days off so that we could continue our house hunting and seek a house to purchase. (10 days plus)*
>
> …
>
> [*Sic* throughout]

[70] Upon being shown the July 26 email, he confirmed that it is what he said and that it was different from what he said in his examination-in-chief, which was that he started house hunting in August. He further confirmed in cross-examination that when he started looking for a place to live in Kelowna, he had no written offer; nor had he asked for or received written authorization to go on an HHT. He further confirmed that after the beginning of October 2013, he spent every weekend in Kelowna if he was not working.

[71] Entered into evidence as part of the JBD was a statement of account dated July 9, 2013, in the sum of $2255.40 (inclusive of applicable taxes), from PropertyGuys.com, which the grievor testified is a company that assists people in selling their homes without the use of a real estate agent (or agency) and that charges a flat, fixed fee. This includes placing the home on the multiple listing service.

[72] Mr. Grootjes testified that at the time he was selling the Grand Forks house, he obtained an appraisal of it disclosing a value of $350 000.00 and that he had provided the appraisal to his solicitor. The appraisal was not produced to the employer as part of his claim. He said that in 2018 a flood occurred and that the solicitor's office suffered flood damage. The appraisal could not be located and was believed to have

been lost in the flood. He also said that he did not keep a copy of the appraisal and that he did not attempt to obtain one from his former solicitor between 2013 and 2018. I heard no evidence about him trying to obtain a copy from the appraiser.

[73] In cross-examination, it was put to Mr. Grootjes that in December of 2013, he filed his grievance and that he had to start collecting documents for the grievance. His response was this: "Correct, that is why I filed it (the appraisal of the Grand Forks house) with the lawyer." When it was put to him that he did not file all the documents with his lawyer with respect to the grievance, he said that he had some. When he was asked if he filed all the documents with this lawyer with respect to the grievance, he said, "No." When asked if he kept the records for the grievance himself, Mr. Grootjes said that he put together as much as he could. When asked if he kept documents from 2013, he said that he was keeping documents in a folder but then said that he did not know which documents he had to keep.

[74] Mr. Grootjes confirmed that he was represented by the union when he filed his grievance and that he knew that he could contact it and speak to it about the collective agreement. When he was asked if a lawyer helped him prepare the grievance, he said "No," and stated that he was assisted by a union official.

[75] The Grand Forks house was sold for $332 000.00. The contract of purchase and sale, dated October 27, 2013, and included in the JBD, disclosed that the original offer and acceptance price was $335 000.00, subject to certain conditions, one of which was that the buyer obtain and approve a building inspection before November 8, 2013. However, also entered into evidence was an addendum to the contract of purchase and sale, dated November 1, 2013, showing that the price was reduced to $332 000.00. Written into the addendum, which was signed by the grievor, was the following:

> …
>
> *The sellers and buyer agree that the purchase price will be reduced by $3000 (three thousand dollars) to falicilitate [sic] replacement of the roof of the subject property at the buyer's discretion. The purchase price is hereby reduced from $335,000 to $332,000.*
>
> …

[76] Mr. Grootjes testified that there was nothing wrong with the roof; however, he went along with the reduction in price, stating that he did so to facilitate the sale, which was completed on November 27, 2013.

[77] Mr. Grootjes provided to the employer (and entered into evidence as part of the JBDs) a copy of a 2021 appraisal of the Grand Forks house, showing its value in July of 2020 as $451 200.00. Additionally, this appraisal disclosed that after Mr. Grootjes sold the Grand Forks house, it was sold again in August of 2018 for $457 000.00 and in November of 2020 for $498 000.00.

[78] Mr. Grootjes admitted during cross-examination that he filed his grievance in December of 2013 and that at that time, he had access to the directive as well as union representation. In response to a question put to him by counsel for the employer about collecting documents in December of 2013 in support of his grievance, he said that he did so, which is why he filed the original appraisal for his home sale with his solicitor. He also admitted that he did not file all the documents for his grievance with this lawyer. When pushed on this topic of retaining documents with respect to the grievance, Mr. Grootjes said that he kept documents back in 2013, stating they were in a folder; however, he qualified his answer by saying that he did not know what documents he had to keep. However, in the same breath, he admitted that he could have contacted the union and that he prepared his grievance with the help of a union representative.

[79] On a date that was not made clear, Mr. Grootjes joined his spouse and their children full-time in the Kelowna rental. He said that he rented a truck and that with the assistance of friends, he packed up the contents of the Grand Forks house and transported them to Kelowna. In cross-examination, he confirmed that he and his friends moved everything over a 2-day period and that he drove the rented truck the roughly 200 km between the residences. He further confirmed that he was reimbursed for his fuel for the truck and that he did not do any of the following:

- submit for reimbursement a receipt for the truck rental;
- identify the rental company;
- produce a copy of a lease or rental agreement or a receipt for the rental of the truck; and
- file a missing-cost declaration for the rental of the truck.

[80] No credit card statement was produced to the hearing showing the rental of the truck.

[81] Mr. Grootjes confirmed in cross-examination that he did not produce any receipts for the food and drink supplied to his friends; nor did he submit a missing-cost declaration for them.

[82] He further testified that while living in the Kelowna rental, he and his family were largely living out of suitcases, and that they had some toys for the children. He said that the balance of their belongings were put into storage. In cross-examination, he identified the storage unit rental company as Space Centre Storage and said that it was still in business; however, he did not have a copy of a lease or rental agreement or a receipt for the rental of the storage unit and stated that he had not attempted to obtain any receipts. He also did not produce a copy of the company's prices for the storage unit that he rented. After counsel for the employer asked him about the rental company and if it was still around, she then said to him, "up until today, you haven't obtained receipts", to which he said that he did not know that it was eligible. When she stated to him that he made no attempt to obtain receipts for the storage unit, he said, "correct".

[83] Mr. Grootjes did produce a copy of a moving estimate from a Kamloops, B.C., moving company dated June 18, 2020, which had this breakdown, based on an estimate of 9600 lbs. of goods: packing, $2576.64; transportation, $3337.11; unpacking, $458.88; and GST, $318.63, for a total of $6691.26. Also entered into evidence was a Notepad electronic note for Mr. Grootjes dated November 21, 2013, which appears to be a post from a Brookfield employee advising Mr. Grootjes of a quote from the CRSP to move all his belongings from Grand Forks to Kelowna, in the amount of $7868.12.

[84] The evidence disclosed that Mr. Grootjes and his spouse purchased the Kelowna house by way of a foreclosure, dated January 20, 2014, with a scheduled completion date of February 18, 2014. I did not hear any evidence about when the Kelowna house was found. The documentation provided disclosed that he paid $1254.88 in legal fees and disbursements to a solicitor to complete the purchase. Entered into evidence was a copy of the order dated January 20, 2014, of the Supreme Court of British Columbia in the foreclosure action approving the sale of the Kelowna house to Mr. Grootjes and his

spouse as well as the solicitor's statement of account. The legal fees totalled $749.00, plus $89.88 in GST and PST, for a total of $838.88. Disbursements were $406.00.

[85] ASF No. 2 states that the employer's agreement with Brookfield caps the CRSP fees for legal fees for a purchase of a residence at $650.00 plus taxes. The amount being claimed is the difference between the amount paid and the service cap, or $110.88.

[86] Mr. Grootjes said that he was required to secure an appraisal of the Kelowna house for the purpose of securing a mortgage for it, which cost $400.00. He had no receipt and said that the appraiser was no longer in business. He filed a missing cost receipt declaration, which he signed on August 26, 2020. He further testified that by chance, he saw the mortgage broker at the Kelowna airport. He believed that she worked at the Canadian Air Transport Security Authority (CATSA), which is the organization that provides airport screening security in Canada. He said that he was unable to locate her after that to make inquiries about the appraisal.

[87] ASF No. 2 states that Mr. Grootjes initially claimed $625.00 for the structural inspection fee. In the July 26 email, he stated that the home inspection was completed by Pillar to Post Home Inspections ("Pillar to Post") and that he was unable to find the receipt. He went on to state that he contacted Pillar to Post with a view to obtaining a copy of the receipt. It told him that the cost of the home inspection at that time was $625.00. He then stated that he found documentation with respect to the structural inspection that was provided to the employer. Entered into evidence was a copy of what appears to be the first page of an agreement entered into between Pillar to Post and Mr. Grootjes dated January 17, 2014, for the inspection of the Kelowna house. The contract price was $440.00 plus GST, for a total of $462.00. The agreement stated that Mr. Grootjes paid the account by way of a MasterCard credit card.

[88] ASF No. 2 states that the employer's agreement with Brookfield caps the service provider fees for structural inspection services at $400.00 plus taxes. The amount being claimed is the difference between the amount paid and the service cap, or $48.00.

IV. Summary of the arguments

[89] The grievors referred me to Brown and Beatty, *Canadian Labour Arbitration*, 4th ed., at 2:1505, *Nitschmann v. Treasury Board (Public Works and Government Services Canada)*, 2007 PSLRB 25, *Horner v. Treasury Board (Department of National Defence)*, 2012 PSLRB 33, and *Brown v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 50.

[90] According to the grievors, the employer's breach of the collective agreement means that much of what would typically have occurred under the directive did not occur in this case. There could be no pre-authorization for expenses before they were incurred because entitlement to the full breadth of the directive was denied. The grievors submit that they have provided every piece of documentation asked for by the employer which still exists and can be obtained through reasonable efforts. In the circumstances of this matter, where the directive has been breached, the grievors should not have to bear the cost of that breach.

[91] The employer referred me to the *Canada Evidence Act* (R.S.C., 1985, c. C-5, s. 30), *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112, *Murphy v. Treasury Board (Department of Fisheries and Oceans)*, 2013 PSLRB 116, *Nowlan v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2021 FPSLREB 34, *Outingdyke v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 51, *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55, *Gresley-Jones v. Treasury Board (Canada Border Services Agency)*, 2020 FPSLREB 65, and *Hanna v. Treasury Board (Department of the Environment)*, 2021 FPSLREB 44.

[92] The employer submits that it has reimbursed all claimed expenses related to the grievors' relocations that are in accordance with the directive. The grievors' remaining claims are not properly reimbursable entitlements. They either arise from a misapprehension of what constitutes reimbursable entitlements under the directive; are insufficiently supported by necessary evidence; or, arise from circumstances unrelated to the grievors' relocations.

V. Reasons

[93] When this matter first came before me, the sole issue I was initially asked to decide by the parties was whether the grievors' relocations were properly classified as

employee-requested or that they should have been employer-requested. The evidence I heard related just to that issue as did the parties' respective submissions. This made ample sense; if I found for the employer that it was correct in its assessment that the relocations were employee-requested, the matter was over (subject to potential judicial review). If I held that the employer was incorrect, then I would have had to hear more evidence and attempt to determine what each employee would be entitled to from relocations that had happened five and six years earlier.

[94] Before issuing 2020 FPSLREB 65, I had heard nothing about the actual steps taken by the grievors and their families with respect to their actual respective moves. My only determination was that the employer had erred when it had classified the two relocations as employee-requested. The wording of my order is quite clear. It is that what should have happened was that once the grievors' individual relocations had been approved and they were offered and accepted deployments to their new POEs, their relocations should have proceeded in the same fashion that any other employer-requested relocation would have.

[95] Adherence to these parts of the directive by both the grievors and the employer is somewhat difficult and would have some limitations as 2020 FPSLREB 65 was rendered close to six years after Mr. Gresley-Jones relocated and almost seven years after Mr. Grootjes did. Simply put, neither party can retroactively do things that they would have done at the time that they believed they could not do or undo things that they did; for example, if they did not use a moving company (as Mr. Grootjes did not do), those specific costs were not incurred and do not exist. They have already moved, and you cannot have a do over.

[96] However, this is still a case of an alleged breach of the collective agreement. As such, the remedy must flow from a breach and must be proved by the grievors on a balance of probabilities. It is clear to me that some of the claims advanced would have predated the determination of the relocation status as contemplated by the directive, and where it is, those costs incurred by the grievors, albeit possibly related to the move, cannot be said to flow from the employer's action as found by me as a breach of the collective agreement in 2020 FPSLREB 65.

[97] I have heard and seen the evidence. Based on that information, I make the following assessments for each grievor.

A. Mr. Gresley-Jones

1. House hunting trip: sum claimed is $4076.82

[98] The request for the reimbursement of the HHT is denied.

[99] Mr. Gresley-Jones claimed expenses related to a trip he took by car between August 24 and September 4, 2014, with his spouse and two children from Victoria to the region that includes Trail, where he eventually relocated to.

[100] The reason given for the request for the relocation, on August 30, 2013, was to be closer to family; his and his spouse's families lived in the region that encompasses POEs in the CBSA's Okanagan and Kootenay district along the U.S.-Canada land border. He testified that he and his spouse made two trips from Victoria to that area per year.

[101] In his evidence before me, Mr. Gresley-Jones said that he did some house hunting while on this vacation. When he was asked in his examination-in-chief why he took his vacation between August 24 and September 4, 2014, he answered that he had been contacted by the Nelway PEO and the Paterson POE in Rossland, B.C., and that likely, a relocation would be arranged to the Waneta POE, which required someone to start in November and needed him to commit to relocating there. He said that it seemed prudent to start house hunting.

[102] But that does not ring true with what the documentary evidence disclosed. It showed that on August 14, 2014, he had a continuation of some preliminary discussions with Mr. Kearney, a superintendent in the CBSA's Okanagan and Kootenay district. This is evidenced by the email exchange between the two, in which Mr. Kearney confirms that local management reviewed his performance appraisals, informs him that the location he seemed to prefer would likely not yield an opportunity, but that Mr. Kearney had a current vacancy at the Nelway POE and that he might be able to make a placement at the Waneta POE. He then asked Mr. Gresley-Jones if he was interested in relocating to the Nelway or Waneta POE as he was to present his supervisor with some staffing options the next week.

[103] Mr. Gresley-Jones responded to Mr. Kearney that same day (August 14, 2014), telling Mr. Kearney that he was still interested in moving to Mr. Kearney's district and specifically stating that he would love the opportunity to work at the Waneta POE. He then confirmed to Mr. Kearney that he would be in Trail (which is in the CBSA's

Okanagan and Kootenay district) between August 24 and September 4, 2014, and that he would be available to discuss the matter further if Mr. Kearney wished.

[104] Clearly, a move was not a done deal; in fact, far from it. While Mr. Gresley-Jones was closer to his wish to be relocated to the CBSA's Okanagan and Kootenay district, several steps had to be done before he would be made an offer of deployment. He was aware of this because in his email of October 8, 2014, he confirmed that he was feeling the stress of the situation as an offer to deploy had not been made and he and his spouse had made a conditional offer on a house in Trail; one of the conditions was that he be made an offer of deployment. In cross-examination, he confirmed that he knew that superintendents had limited authority with respect to relocations and that in the hearing before me in May of 2019, he said that as of October of 2014, he had not taken any steps with respect to relocation, except to contact the CBSA's human resources department.

[105] I have no doubt that the trip to Trail between August 24 and September 4, 2014, was not planned as an HHT but as a vacation. In his evidence, it was clear that he and his spouse went there for a wedding. He also testified that he and his spouse typically made two trips to the Trail area every year. How was this trip any different from previous trip or trips made since August of 2013? He still wanted to relocate from Victoria, and at that time, while it appeared that there might have been a vacancy, there was no offer.

[106] Mr. Gresley-Jones' grievance is rooted in an allegation of a breach of the collective agreement. The directive is part of the collective agreement. When Mr. Gresley-Jones travelled in August and early September of 2014 to visit family and attend a wedding and do some house hunting, there was no breach of the collective agreement. The decision had not been made to deploy him to the CBSA's Okanagan and Kootenay district; nor had any decision been made on whether his yet-to-be-approved deployment would be considered employer-requested or employee-requested. As such, he certainly could not state at the hearing that the denial by the employer to reimburse him for steps he took with respect to an HHT were rooted in the employer's breach of the collective agreement.

2. Hotel-motel room reduction: sum claimed is $450.00

[107] For the same reasons set out in the previous section, this claim is denied. Mr. Gresley-Jones' grievance is rooted in an allegation of a breach of the collective agreement. The directive is part of the collective agreement. When Mr. Gresley-Jones travelled in August and early September of 2014 to visit family and attend a wedding, during which time he did some house hunting, there was no breach of the collective agreement. Therefore, he is not entitled to a hotel-motel room reduction.

3. Travel status (nine-day HHT wage reimbursement): sum claimed is $2424.60

[108] For the same reasons set out in the previous two sections, this claim is denied. Mr. Gresley-Jones' grievance is rooted in an allegation of a breach of the collective agreement. The directive is part of the collective agreement. When Mr. Gresley-Jones travelled in August and early September of 2014 to visit family and attend a wedding, during which time he did some house hunting, there was no breach of the collective agreement. Therefore, he is not entitled to have his vacation leave reimbursed and instead be paid as if he had been at work.

4. Purchase of residence (structural inspection fee): sum claimed is $498.75

[109] Mr. Gresley-Jones expended the sum of $498.75 on a structural inspection of the Trail house. Documentation was provided in the JBD. The employer is not disputing that the amount claimed was spent; it is disputing the amount above the cap set out in the directive, which is $400.00 plus GST (5%, or $20.00 on the $400.00).

[110] The fact that the move was not initially deemed an employer-requested relocation did not in some way invalidate the collective agreement and the directive. While Mr. Gresley-Jones is entitled to have the costs of a structural inspection paid back to him, the amount is capped per the directive. As such, he is not entitled to the amount in excess of what is stated in the agreement, and the claim in excess of $420.00 ($78.75) is denied.

5. Shipment of HHGs: sum claimed is $5794.31

[111] For the reasons that follow, this claim is allowed.

[112] Mr. Gresley-Jones used a moving company and produced receipts that are not doubted to be valid. They indicate that the amount paid to Atlas Canada was $5638.80.

This was within the estimate he was provided by Brookfield, and the weight of the HHGs also was within the allowable weight as covered by the directive.

[113] Mr. Gresley-Jones stated that he did not use the services of the CRSP as the amount they were provided by the employer for what was erroneously identified as an employee-requested relocation was capped at $5000.00. The actual move came after the requested relocation was approved and an offer of deployment was made. Had the employer not breached the collective agreement, the cost of the movers would have been wholly covered by the Core Fund, and Mr. Gresley-Jones would not have been out of pocket. The amount of the expenses claimed falls directly within the parameters of what likely would have been covered had it been an employer-requested relocation. As such, I see no reason he should not be reimbursed for both the Atlas Canada and UPAK amounts. In so far as these amounts have not been reimbursed by the employer, they shall be.

6. Real estate commission: sum claimed is $5250.00

[114] Mr. Gresley-Jones claimed $5250.00, itemizing it in ASF No. 2 as "Real Estate Commission". He did not testify about this in his evidence, and there is no receipt for this expenditure in the JBD. It is a notional amount that is placed into the Customized Fund. The amount ($5250.00) is calculated based on a formula in the directive, under Part III, "Relocation Entitlements", subpart 3.4, and it sets out in sub-section 3.4.1 what are described as five "Chart Elements" that are used in the calculation of the Customized and Personalized Funds. This sum is arrived at by using the calculation formula identified under that portion of sub-paragraph 3.4.1.1 that uses as its basis a value related to a real estate commission that could be payable upon the sale of the relocating employee's home.

[115] The directive states that the monies notionally in the Customized Fund are there to be spent by the relocating employee on those items not covered by the Core Fund but that are outlined in that part of the directive as items in the Customized Fund. It also states that any funds not used for items that are covered by the Customized Fund do not default to the relocating employee.

[116] Mr. Gresley-Jones' position is that given the employer's breach of the collective agreement, he did not have access to the Customized Fund. As such, he advanced a position that he should receive the monies to pay for those items that were not

covered elsewhere. In short, he believes that he should be paid the monies that would have been in the Customized Fund at the time he was relocated.

[117] I disagree. While Mr. Gresley-Jones should have had his relocation designated as employer-requested, this does not change the fact that had he had access to the Customized Fund, he was still required to use the amounts in that fund for the appropriate things. It was not a pot of money calculated and given to him to be used how he deemed fit. It was incumbent on him to come to the hearing prepared to establish those items that he expended funds on that would have been covered by the Customized Fund to enable a determination of whether or not they should be paid to him. Simply calculating the amount and claiming it does not establish on a balance of probabilities an entitlement to the amount claimed. As such, this amount is denied.

7. Transportation of family: Sum claimed is $573.80

[118] Mr. Gresley-Jones claimed $573.80, itemizing it in ASF No. 2 as "Transportation of Family". He did not testify about this in his evidence, and there is no receipt for this expenditure in the JBD. Like the amount of $5250.00, claimed under the heading of "Real Estate Commission", it is another notional amount that is placed into the Customized Fund. The amount ($573.80) is also calculated based on a formula in the directive, under Part III, "Relocation Entitlements", subpart 3.4, and set out in sub-paragraph 3.4.1 as one of the five "Chart Elements" used in the calculation of the Customized and Personalized Funds. This sum is arrived at by using the calculation formula identified under that portion of sub-paragraph 3.4.1.2 that uses as its basis a value calculated on the distance between the two locations involved in the relocation, family size, and kilometric rates.

[119] For the same reasons set out in the previous section relating to the claim for a Real Estate Commission in the sum of $5250.00, this claim is denied. Again, this sum of $573.80 is merely a notional amount that forms part of the monies available in the Customized Fund for a relocating employee to use for items set out as payable out of the Customized Fund. As set out in the previous section, it does not form a pot of money to be used by a relocating employee as they deem fit. Monies notionally in the Customized Fund that are not used by the relocating employee for the move of the items identified in the directive under the section identifying items appropriate to the Customized Fund default to the employer. This claim is denied, with the exception of the amount of $77.89.

[120] ASF No. 2 states that Mr. Gresley-Jones' claim of $77.89 for "Transportation of Pets", which is an item covered by the Customized Fund, was approved by the employer. As such, the amount of $77.89 shall be paid to him, if it has not already been paid.

8. Transportation of HHGs: sum claimed $1973.58

[121] Mr. Gresley-Jones claimed $1973.58, itemizing it in ASF No. 2 as transportation of HHGs. He did not testify about this in his evidence, and unlike the receipts for his move from Atlas Canada and UPAK, there is no receipt for this expenditure in the JBD. Like the amount of $5250.00 claimed under the heading of "Real Estate Commission", and the amount of $573.80, it is another notional amount that is placed into the Customized Fund. The amount ($1973.58) is also calculated based on a formula in the directive under Part III, "Relocation Entitlements", subpart 3.4, and set out in sub-paragraph 3.4.1 as one of the five "Chart Elements" used in the calculation of the Customized and Personalized Funds. This sum is arrived at by using the calculation formula identified under that portion of sub-paragraph 3.4.1.3 that uses as its basis a value calculated based on the amount and weight of HHGs and the size of the residence, using as that basis the number of rooms.

[122] For the same reasons set out in the previous two sections relating to the claim for real estate commission in the amount of $5250.00 and the claim for the transportation of family in the amount of $573.80, this claim is denied. This amount, like those others just identified, is merely a notional amount that forms part of the monies available in the Customized Fund for a relocating employee to use for items set out as payable out of the Customized Fund. As set out in the previous two sections, it does not form a pot of money to be used by a relocating employee as they deem fit. Monies notionally in the Customized Fund that are not used by the relocating employee for the move of the items identified in the directive under the section identifying items appropriate to the Customized Fund, default to the employer. This claim is denied.

9. Difference in home loan interest rate: sum claimed is $4084.81

[123] In ASF No. 2, an amount for this claim is not specified. During the course of the hearing, I was advised that the amount being sought was $4084.81. I heard no testimony about this from Mr. Gresley-Jones. ASF No. 2 states that the claim is based

on the difference in interest rate between the rate he would have incurred if he had had access to the Subsidized Home Relocation Loan under the directive.

[124] Sub-paragraph 9.18.c of the directive provides that an employee may obtain a second mortgage loan related to the acquisition of a principal residence at the new place of duty. It then sets out criteria that refer to limitations prescribed by the Canada Revenue Agency, that the subsidy is restricted to a maximum of $25 000.00, that the residence must be at least 40 km closer to the new work location, and that the new home is purchased for the employee's personal habitation purposes. The latter three of these criteria have clearly been established; however, I neither heard nor saw any evidence with respect to the first criteria about whether the grievor met the limitations prescribed by the Canada Revenue Agency.

[125] While the grievor submits that the amount of $4084.81 approximates the total interest he paid, again, how it met the limitations prescribed by the Canada Revenue Agency was not established. There is insufficient information, and I am not convinced on a balance of probabilities that Mr. Gresley-Jones is entitled to it. Therefore, it is denied.

B. Mr. Grootjes

1. Shipment of HHGs: sum claimed is $6691.26

[126] For the reasons that follow, this claim is denied.

[127] Mr. Grootjes did not expend $6691.26 to move from Grand Forks to Kelowna. The evidence was that with the assistance of friends, he moved his HHGs from Grand Forks to Kelowna. He said that he rented a truck, drove it, and paid for the incidentals of his friends. He did not disclose the name of the rental company; nor did he provide a receipt for cost of the truck or anything else associated with the move.

[128] What he submitted was an estimate obtained from a moving company dated in June of 2020 in the sum of $6691.26 that on its face, is based on an estimated weight of 9600 lbs. and a loading date in July of 2020. I did not hear any evidence on the basis of the price of $6691.26; for example, was the cost in 2020 the same as it would have been in 2013? Is the weight of 9600 lbs. accurate?

[129] To make things more confusing, Mr. Grootjes, according to his evidence, moved three times. At some point, in either July or August of 2013, he and his spouse secured

the Kelowna rental, which she moved into immediately with their three children as she started working in August in Kelowna. He was still working in Grand Forks, and they still had the Grand Forks house; in short, they had two residences. He was in Grand Forks only until the relocation request was actioned. At some point, the balance of Mr. Grootjes' and his spouse's HHGs were moved by him and his friends to Kelowna. The details of the move are sketchy; no precise dates or costs were provided.

[130] Mr. Grootjes and his spouse eventually moved from the Kelowna rental to the Kelowna house. Mr. Grootjes said that he had rented a storage unit for their HHGs that were not with them in the Kelowna rental. I suspect that there were costs associated with that move. I heard no evidence about those costs.

[131] The directive states that 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 employee and must be supported by receipts [as set out in the directive]." It was incumbent on Mr. Grootjes, if he expended money on movers, or on moving, to maintain some documentary evidence of invoices and payments. He did not. The sum of $6691.26 is nothing more than mere speculation and is not reflective of a true expense. Therefore, this claim is denied.

2. Sale of home (home-sale assistance): sum claimed is $3000.00

[132] For the reasons that follow, this claim is denied.

[133] In ASF No. 2, this sum is identified as representing a difference between the original offered purchase price for the Grand Forks house, $335 000.00, and the final sale price, $332 000.00. It is not the difference between an appraised price and sale price.

[134] In his evidence, Mr. Grootjes testified that he had an appraisal of the Grand Forks house for $350 000.00; however, he did not have a copy of it. He stated that the only copy had been with the solicitor who handled the home sale, which was later lost in a flood at the solicitor's office.

[135] He also submitted a copy of a 2021 appraisal of the Grand Forks house, showing its value in July of 2020 as $451 200.00. This appraisal also showed that subsequent sales of the Grand Forks house were at amounts higher than the $332 000.00 sale price that was received for the house.

[136] As already set out, the directive states that 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 employee and must be supported by receipts [as set out in the directive]." Part VIII of the directive provides for the payment to the employee of a part of the difference between an appraised value as shown in a certified appraisal and the actual selling price. The directive speaks of an employee taking 10% less than the actual certified appraised price, and then, an amount is reimbursed between the actual selling price and the appraised value, up to 10% of the appraised value. In this case, the alleged appraised value is $350 000.00; 10% of that would be $35 000.00. To be entitled to make this claim, Mr. Grootjes requires a certified appraisal. He does not have one.

[137] While his move was certified as employee-requested, this was on September 24, 2013. The offer to be relocated to Kelowna was made on October 3, 2013, and he started working there on November 4, 2013. The Grand Forks house deal closed on November 27, 2013, and he filed his grievance against the designation by the employer of an employee-requested move on December 22, 2013. He stated that he had the assistance of his union when dealing with the filing of the grievance; indeed, the grievance was filed under s. 209(1)(a) of the *Act*, which required the union to agree to represent him in the adjudication proceedings.

[138] Mr. Grootjes stated that the appraisal was with his solicitor and that it was lost in a flood in 2018. While this might have happened, I am troubled by the fact that neither he nor, more importantly, his union had a copy of this appraisal. He was represented by his union in late 2013 when he filed his grievance and when the appraisal would have been done. He and his union should have reviewed the directive and determined what had to be retained or obtained to further the pursuance of the claim through the grievance process. Part VIII is clear that for this reimbursement, a certified appraisal is required. It was incumbent on him to be familiar with what he needed, given that he knew that the employer had designated his move as employee-requested as opposed to employer-requested. He should have obtained a certified appraisal, and even if he did not, he should have kept a copy of the appraisal that he stated he gave to his lawyer. Better yet, he should have kept a copy and given a copy to his union once the grievance had been filed. He did neither. In fact, he said that he did not go looking for one until 2018, when he learned of the flood at the solicitor's office.

[139] In addition, the amount claimed ($3000.00) is the same as the difference between the sale price and the originally offered sale price to the purchaser, which was attributed to a roof issue, albeit that Mr. Grootjes denied but accepted, to facilitate the sale. In fact, in the claim form he filed with the employer, this is the justification stated with respect to the difference in the price. A claim put forward in this manner does not fall under Part VIII nor correspond with the appraised value of the home.

3. Sale of home (private-listing expenses): sum claimed is $2255.40

[140] The request for the reimbursement of the expenses for the sale of the Grand Forks house is denied.

[141] The invoice for $2255.40 from PropertyGuys, which Mr. Grootjes submitted was used to assist him and his spouse in selling the Grand Forks house, is dated July 9, 2013. While he had made his request for the relocation about a week earlier, a determination had yet to be made of how his potential relocation would be treated. While it was eventually certified by the employer to be employee-requested, I found it incorrect in 2020 FPSLREB 65.

[142] Mr. Grootjes, before any determination was made, retained PropertyGuys to assist in the sale of his home. Organizations such as PropertyGuys do many things that a real estate agent would otherwise do to assist a seller or buyer but at a fixed price. I have no doubt that had the grievor retained a real estate agent, he would have had to pay that agent's fees.

[143] The directive, at Part VIII, allows for the recouping of costs when an employee sells their home privately. It provides that in lieu of real estate fees, the actual and reasonable costs of a professional appraisal, advertising, for-sale signs, and similar expenses related to the sale will be reimbursed from the Core Fund. It further states that the sum of such expenses must not exceed the commission that would have been paid had the residence been sold by a licensed real estate agent. In short, real estate agents do not actually sell properties; owners sell them, and the directive provides for the recouping of costs associated with the sale, be it by a real estate agent or otherwise. These activities are what PropertyGuys do, for a fixed fee.

[144] The employer referred me to *Outingdyke*, in which at paragraph 49, the adjudicator stated as follows:

> *[49] At the time Ms. Outingdyke sold her home there was not a specific relocation being considered by either her or management at Bath Institution. In March of 1998, when she put her house on the market, the promise of a relocation was vague, although well meaning. It was still vague when she sold the house in May of 1998. Ms. Outingdyke was first told of the possibility of a relocation as early as November 1998. Based on the evidence heard at the hearing, it is difficult to pinpoint the actual date that she received "notification of a relocation". It might have been as early as November 1998, depending on the assurances she was provided about her relocation by Mr. Beatty; it was certainly by February 1999, when she was advised of the upcoming assignment commencing on March 3, 1999. It is clear, however, that she had not received notification of her relocation either at the time she put her house on the market, or at the time that it sold. Accordingly, this part of the grievance is dismissed.*

[145] The gist of the employer's argument is that the grievor retained PropertyGuys and paid it before having the relocation approved, be it employee-requested or employer-requested. He pre-emptively put his house on the market, with no relocation yet approved. For him to be entitled to the recovery of these costs, his actions would have had to have taken place at a point after the relocation had been approved, be it employer-requested or employee-requested. By taking action before that happened, I find that he incurred costs that could not have flowed from the employer's breach of the collective agreement and, as such, do not qualify for reimbursement.

4. Purchase of residence (legal fees and disbursements): sum claimed is $110.88

[146] As set out in the spreadsheet list of contested expenses for Mr. Grootjes in the JBD under this heading, the reason for the denial of this amount is that the $110.88 is the portion of the total legal fee amount submitted ($838.88) that is in excess of the amount allowable under the directive's cap of $728.00.

[147] Part IX of the directive states that employees shall be reimbursed associated legal fees and disbursements, including applicable taxes, which they incurred to complete the purchase of a property. It also states that employees shall be reimbursed for expenses of a legal nature necessarily incurred to obtain clear title to a property and sets out other cost disbursements that would be covered. Part IX clearly sets out that there is a cap on the amount of legal fees that will be reimbursed.

[148] Not everything associated with an employee's relocation may necessarily be covered or reimbursed or reimbursed to the full amount of the cost associated. The

directive is an extension of the collective agreement. The directive establishes a cap. The way the process is supposed to work in an employer-requested move is that the employer would involve the CRSP. Spending caps are in place, and the CRSP takes an active role, so that the costs are controlled. This is the benefit of having the CRSP. The directive also states that the employer has the responsibility to authorize a relocation and to ensure that the relocation arrangements are consistent with the provisions of the directive. As part of this clause, it states that the authorization shall be in advance and in writing and that the employer shall authorize the CRSP in writing to provide the IRP-contracted relocation services to the employee. It further states that the CRSP is not authorized to reimburse any expenses that are not covered by the directive or that are over and above the established contractual rates of the directive.

[149] Mr. Grootjes was represented by his union, and by the time he purchased the Kelowna house, he had already filed his grievance. As set out in the directive, employees have a responsibility to review the directive and understand what it means. They have a union to assist them. While it is true that the employer might have erroneously designated Mr. Grootjes' move as employee-requested, this did not relieve him of his responsibilities or somehow alter the provisions of the collective agreement and the directive. The amount remaining outstanding and claimed under this heading is something he would not have been entitled to even if the move had been employer-requested. Therefore, this claim is denied.

5. Purchase of residence (structural inspection fee): sum claimed is $48.00

[150] Initially, Mr. Grootjes said that he could not find the receipt for the structural inspection fee and submitted that it was $625.00. This was based on what was told to him by the company that carried out the inspection and that believed that amount was charged at the time. He was able to later obtain from that same company a copy of the actual agreement he entered into with it, and the true amount was $440.00 plus GST, for a total of $462.00. The position of the employer is that it is responsible only for a maximum of $400.00 plus tax, which would be $420.00. The actual difference is $42.00 and not the $48.00 indicated in the material.

[151] As set out previously, the fact that the move was not initially deemed an employer-requested relocation did not in some way invalidate the collective agreement and the directive. While Mr. Grootjes is entitled to have the costs of a structural inspection paid to him, the amount is capped per the directive. As such, he is not

entitled to the amount in excess of what is stated in the agreement. As such, the claim for $48.00 is denied.

6. Purchase of residence (appraisal for mortgage): sum claimed is $400.00

[152] Mr. Grootjes claimed the sum of $400.00 for an appraisal on the Kelowna house. In his testimony, he said that he was required to have the house appraised before he could obtain the mortgage. He stated that the mortgage broker said that it was necessary and that the mortgage broker chose the appraiser. There are no receipts or any other evidence of any payment to the appraiser. When asked about the receipts, he said that he could not locate any. He said that the mortgage broker was out of business.

[153] Part IX of the directive provides that with respect to the legal fees and disbursements on the purchase of a new residence, in addition to the legal fees, employees shall be reimbursed the appraisal fees necessarily incurred at the request of a lender to obtain a first or second mortgage but only if the appraisal done under the Core Fund is not acceptable to the lender.

[154] While the grievor stated that he could not find any receipts and that the mortgage broker is out of business, the JBD contains copies of documents from Mr. and Mrs. Grootjes' solicitor with respect to the property purchase that identify that the mortgage they took out for the property was in favour of the Computershare Trust Company of Canada. Banks and trust companies usually maintain files with respect to the monies they lend and the mortgages they hold. Mr. Grootjes made no mention of speaking to his mortgage company or of obtaining information from it. Had the mortgage company required an appraisal, it should have been set out in its documentation, which is something he should have retained or perhaps his lawyer would have retained; almost certainly, the mortgage company would have retained it.

[155] I am not convinced on a balance of probabilities that the appraisal was required. As such, I am not prepared to allow this claim.

7. HHT: sum claimed is $2058.68

[156] Mr. Grootjes made his request for a relocation to the Kelowna POE on July 2, 2013.

[157] His evidence at the hearing in May of 2019 was that he did so because his spouse had been offered a teaching position in Kelowna. When he testified before me in May of 2021, he indicated that he had started house hunting in August of 2013. When asked in his examination-in-chief why he did so at that point, he said that he told the employer that his spouse was taking a new job in Kelowna and that management indicated to him that moving there would not be a problem. He said that he was told that his relocation was approved but that management did not want to put it in writing.

[158] In his evidence in May of 2019, he also said that his spouse and their children moved there in August of 2013 and that she started working there at that time. At paragraph 16 of ASF No. 1, it states as follows: "On July 2, 2013, the grievor submitted a request for a deployment from the Port of Cascade to the Kelowna Airport. He requested this deployment as his wife had been relocated as part of her career and he wished to keep his family unit together …."

[159] There is a slight difference in the way the evidence about Mr. Grootjes' spouse's job was conveyed to me. In his oral testimony in May of 2019, he suggested that he put in the request to be relocated because his spouse "had been offered a job in Kelowna", while paragraph 16 of ASF No. 1 states that she "… had been relocated as part of her career …". While that slight difference did not necessarily have any material relevance on the face of the limited facts brought forward during the May 2019 hearing and the narrow issue I had to decide at that time, now it has bearing because it appears that Mr. Grootjes' spouse might have already had accepted her job before he made his request to relocate, let alone a determination being made on his relocation.

[160] As is set out with respect to Mr. Gresley-Jones, Mr. Grootjes' grievance is also rooted in the employer's alleged breach of the collective agreement. The alleged breach was that his relocation was certified by the employer as employee-requested and not employer-requested. Mr. Grootjes' requested deployment and relocation to the Kelowna POE was certified as an employee-requested relocation on September 24, 2013, and on September 30, 2013, an email was sent that set his deployment date as November 4, 2013. The offer of deployment was made to Mr. Grootjes on October 3, 2013.

[161] As part of ASF No. 2 and documents entered into evidence on consent was the July 26 email, in which he said that he (and his spouse) made the following statement about his HHT:

> …
>
> *…We had made numerous trips looking for housing and/or temporary housing.…*
>
> *We spent my days of rest in July and the first half of August travelling to Kelowna to look for accommodation. We (myself, my wife and three children) would travel to Kelowna and stay overnight at my wife's Aunts/Uncles house. We would pay for childcare for the children to one of the Aunt's neighbor as the Aunt/Uncle both worked fulltime). In July and August we spent approximately 9 days house hunting before finding interim accommodation.*
>
> *Between Sept*[ember]-*November I would also travel back and forth on my days off so that we could continue our house hunting and seek a house to purchase. (10 days plus)*
>
> …
>
> [*Sic* throughout]

[162] In his testimony in 2021, his counsel asked him about the documentation he had submitted as part of his claim, specifically the July 26 email, and asked him if he was the author of them, if they were accurate, and if there was anything he wished to change or clarify. He confirmed that he had written them, that they were accurate, and that there was nothing in them that he wished to change or clarify. In his examination-in-chief, he testified that he started his HHTs in August; however, he said that his wife and children had already moved into the Kelowna rental by mid-August as his wife had started her new teaching job by then. In cross-examination, he confirmed that he had received neither a written offer nor any authorization to go on an HHT at that time. He also confirmed that as of October of 2013, he spent every weekend in Kelowna if he was not working.

[163] Based on the limited evidence before me, it is possible that as of his July 2, 2013, request to relocate, his spouse had not only already been offered her job in Kelowna, given that she started working there in August and that she and the three children had moved there and were living there in August, but also, she had already accepted her job in Kelowna, given the wording of paragraph 16 of ASF No. 1, which states that he had requested the deployment that day because his spouse had been

relocated. Given those facts, I have no doubt that Mr. Grootjes and his wife would have done some HHTs before finding the Kelowna rental.

[164] If Mr. Grootjes kept any records or receipts for these trips in July or early August, they were not produced. By August of 2013, he had two residences, as he was still in Grand Forks, and the rest of his family was in Kelowna. I do not doubt that he travelled from Grand Forks to Kelowna in July and perhaps August of 2013 and that he did so because despite what might have happened with his move, his wife had taken a job in Kelowna, and a move was to happen.

[165] As previously stated, the burden of proof with respect to cases involving a collective agreement breach is with the bargaining agent and grievor and is on a balance of probabilities. The evidence presented in this case was insufficient for me to make any determination of what, if anything, is owed to Mr. Grootjes. As such, this claim is denied.

VI. Sealing of a document

[166] In *Basic v. Canadian Association of Professional Employees*, 2012 PSLRB 120 at paras. 9 to 11, the PSLRB stated as follows:

> *[9] The sealing of documents and records filed in judicial and quasi-judicial hearings is inconsistent with the fundamental principle enshrined in our system of justice that hearings are public and accessible. The Supreme Court of Canada has ruled that public access to exhibits and other documents filed in legal proceedings is a constitutionally protected right under the "freedom of expression" provisions of the* Canadian Charter of Rights and Freedoms*; for example, see* Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480;* Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835;* R. v. Mentuck, *2001 SCC 76,* Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII).*
>
> *[10] However, occasions arise where freedom of expression and the principle of open and public access to judicial and quasi-judicial hearings must be balanced against other important rights, including the right to a fair hearing. While courts and administrative tribunals have the discretion to grant requests for confidentiality orders, publication bans and the sealing of exhibits, it is circumscribed by the requirement to balance these competing rights and interests. The Supreme Court of Canada articulated the sum of the considerations that should come into play when considering requests to limit accessibility to judicial proceedings or to the documents filed in such proceedings, in decisions such as*

> Dagenais *and* Mentuck. *These decisions gave rise to what is now known as the* Dagenais/Mentuck *test.*
>
> *[11] The* Dagenais/Mentuck *test was developed in the context of requests for publication bans in criminal proceedings. In* Sierra Club of Canada, *the Supreme Court of Canada refined the test in response to a request for a confidentiality order in the context of a civil proceeding. As adapted, the test is as follows:*
>
> …
>
> *1. such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and*
>
> *2. the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.*
>
> …

[167] The Supreme Court of Canada reformulated the applicable legal analysis in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38, so as to require the party seeking a confidentiality order to establish that (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[168] Entered into evidence was a list of the employer's record of Mr. Grootjes' different home addresses during his CBSA employment. The page is marked as page 10 of Exhibit E-2. As this list contains private and personal information related to him and his family, I believe an order is necessary to prevent these identifying aspects of the grievor's life from becoming public. Ultimately, this information was of no consequence to the hearing and it meets the test set out in *Basic* and *Sherman Estate*. While the parties requested that this information be sealed, I think it is sufficient to order that page 10 of Exhibit E-2 be redacted to remove Mr. Grootjes' home addresses.

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

(The Order appears on the next page)

VII. Order

[170] Page 10 of Exhibit E-2 is ordered redacted to remove Mr. Grootjes' home addresses.

[171] Mr. Gresley-Jones is entitled to be paid the sum of $5872.20 as set out in these reasons for the costs associated with Atlas Canada ($5638.80), UPAK ($155.51), and the shipment of pets ($77.89).

[172] Mr. Grootjes is not entitled to the payment of any of the further amounts that he claimed.

April 19, 2023.

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