

**Date:** 20230928

**File:** 566-02-40331

**Citation:** 2023 FPSLREB 90

*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

**GERALD WOODILL**

Grievor

and

**TREASURY BOARD  
(Department of National Defence)**

Employer

Indexed as

*Woodill v. Treasury Board (Department of National Defence)*

In the matter of individual grievances referred to adjudication

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

**For the Grievor:** Cheryl Owens-Carr and Kim Veller, Professional Institute of the Public Service of Canada

**For the Employer:** Adam C. Feldman, counsel

---

Heard by videoconference,  
June 6 and 7, 2023.

**REASONS FOR DECISION**

---

**I. Individual grievances referred to adjudication**

[1] Gerald Woodill (“the grievor”) filed two grievances against the Department of National Defence (“DND” or “the employer”) because he considered that he had been treated unfairly with respect to the relocation measures that applied to him when he was posted outside Canada. The two grievances were referred to the Federal Public Sector Labour Relations and Employment Board (“the Board”) at the same time and placed in the same file. This decision deals with both grievances.

[2] The grievor is part of a bargaining unit represented by the Professional Institute of the Public Service of Canada (“the bargaining agent”). The bargaining agent and the Treasury Board, which is the legal employer (which has delegated its authority to DND), are parties to a collective agreement covering research employees (“the collective agreement”).

[3] Foreign Service Directives (FSDs) are negotiated instruments that are co-developed by the National Joint Council (NJC), which is an organization that includes the Treasury Board and federal public sector bargaining agents. By agreement between the signing parties, they are incorporated into the collective agreement.

[4] The grievor disputed the application of some FSD provisions to his situation. The employer denied the grievances, and as is the practice for grievances involving NJC directives, the grievances were referred to the Foreign Service Directives Committee and then to the Executive Committee of the NJC, which reached an impasse in interpreting the FSDs at issue. The matter was then referred to the Board for adjudication.

[5] Two issues are to be determined: whether the grievor is entitled to compensation for the loss of equity he incurred when he sold his principal residence after being posted outside Canada, and whether the employer should have extended the period that allowed him to benefit from a shelter cost waiver.

[6] I have no doubt that the conflict related to these issues caused the grievor much distress and that it considerably soured the great satisfaction he derived from his employment. Unfortunately, I cannot find that the employer has violated the collective

agreement by denying the benefits that he sought, and for the reasons that follow, the grievances are denied.

## **II. Summary of the evidence**

[7] The facts are not in dispute. The parties provided an agreed statement of facts. The grievor testified, and the employer called two witnesses: Martin Gangur, Manager, NJC Travel and Relocation Directives, and Robert Ford, DND Foreign Service Advisor. This summary is drawn from all these sources.

[8] The grievor was a senior defence scientist at DND for approximately 20 years. He loved his job and found it stimulating and exciting.

[9] The grievor worked with the Centre for Operational Research and Analysis at Defence Research and Development Canada. This group is composed of defence scientists who work as a team with the Canadian Armed Forces in seven locations, six in Canada and one in the United States, in Colorado Springs. One of the conditions of employment for a senior defence scientist is to be willing to move from team to team, in the different locations, to contribute scientific knowledge to all branches of the military as well as to take part in learning and mentoring opportunities.

[10] In 2013, the grievor was working in Kingston, Ontario, and had been since 2010. He and his wife had bought a house in Gananoque, Ontario, which is a pleasant small town outside Kingston. He would soon be expected to move to another team, and the employer asked him to list his choices by order of preference. He requested three different locations, the preferred one being Halifax, Nova Scotia.

[11] Sometime in August of 2013, the grievor saw an advertised process to staff a senior defence scientist position in Washington, D.C., in the United States. According to him, it was the dream position that he had never dared hope for. He had understood that people were chosen for this much-coveted position and was surprised that it was being advertised as open to interested candidates. He applied and completed the test and interview process. Much to his delight, he learned in January 2014 that he had been selected.

[12] The grievor explained that until he received definitive orders from the employer, the position was not guaranteed. Therefore, the employer's direction was to not engage the funds required for the eventual move until the official confirmation arrived.

[13] The grievor received his orders on April 11, 2014. He immediately set about selling his home in Gananoque, Ontario. He stated that, which Mr. Ford confirmed, once the move to a posting outside Canada was set in motion, a great deal of paperwork was required. In addition to all the arrangements to be made for the house sale, he was very busy with all the requirements to fulfil before he left for Washington.

[14] The grievor moved to Washington in June 2014. Before that, the employer had paid for an exploration trip there to find suitable accommodation for his three-year posting period.

[15] During his stay in Washington, the grievor found himself in a dual-accommodation situation as he was living in Washington but his house in Gananoque remained unsold. Because of a clause in his mortgage contract, he could not rent the house. Therefore, he was responsible for all the attendant expenses, such as taxes, upkeep, and insurance. This dual-accommodation situation is at the heart of the two issues raised in the grievances. I will summarize each issue starting with the applicable FSDs.

[16] It is important to state that the FSDs begin with an introduction that stresses the guiding principles to interpreting them. One is entitled “Comparability”, and the relevant wording is as follows: “**Comparability** - insofar as is possible and practicable employees serving abroad should be placed in neither a more nor a less favourable situation than they would be in serving in Canada.”

#### **A. Home equity loss**

[17] FSD 16 is titled “Assistance for a Principal Residence” and details the costs that the employer is prepared to cover to assist employees posted abroad. The relevant sections read as follows:

...

*The employer’s policy is to make employees more mobile by helping them with expenses related to the acquisition, management and disposal of a principal residence in the headquarters city.*

*The employer is prepared to assist with the following costs related to a principal residence, as outlined in this directive:*

*(a) expenses/costs associated with permanent accommodation resulting from relocation;*

*(b) a waiver of shelter cost where an employee is subject to dual accommodation/shelter costs while on posting abroad;*

*(c) costs associated with the sale and/or purchase of a principal residence.*

...

[18] FSD 16 covers several situations, not all of which are applicable to the grievor.

[19] One of the situations that the FSD does not cover but that is addressed in the NJC's *Relocation Directive* for moves within Canada is home equity assistance, which is defined as follows in that directive:

...

*8.2 Home Equity Assistance (HEA)*

*8.2.1 Employees who sell their home at a loss may be reimbursed the difference between the original purchase price and the sale price as follows:*

*Basic Core Fund*

*(a) 80% of the loss, to a maximum of \$15,000;*

*Core Customized Fund*

*(b) in excess of the Basic Core entitlement.*

...

[20] Mr. Ford testified that as soon as the house was put up for sale, he told the grievor that the FSDs contain no reimbursement for a loss of equity on the sale of a principal residence.

[21] As soon as the Washington posting was confirmed, the grievor set about selling his home in Gananoque. He obtained an appraisal on May 28, 2014, which stated a market value of \$236 000.

[22] The house was put up for sale, but it attracted no offers. The grievor reduced the price and received two offers in 2014, but both failed because the buyers could not secure financing.

[23] The house was finally sold in June 2015 at a price of \$201 500.

[24] The grievor sought to have the employer compensate him for the loss of equity, but it refused because nothing in the FSDs covered that loss.

[25] Mr. Gangur explained that compensating for a loss of equity on the sale of a principal residence is not part of the FSDs, in contrast to the NJC's *Relocation Directive* for moves within Canada.

[26] When asked about the comparability principle in the FSDs, Mr. Gangur answered that the NJC directives (within Canada) and the FSDs have to be considered separate entities. The FSDs have other provisions to ensure that persons posted outside Canada are in neither a more- or a less-favourable situation than persons remaining in Canada.

## **B. Shelter cost waiver**

[27] Accommodation in a foreign posting can be an expensive proposition. Recognizing that fact, the employer pays part of the rent for accommodation. The amount allowed for rent is based on the employee's classification. In the grievor's case, given his classification, he was entitled to up to USD\$3900 monthly.

[28] Employees contribute to the rent according to a fixed formula, based on their salaries. In the grievor's case, the shelter cost (the employee's contribution) was established at CAD\$1200 monthly.

[29] FSD 16 provides for a waiver of the shelter cost when an employee is in a dual-accommodation situation; that is, the employee has started living in the foreign posting but still has home ownership costs. The relevant provisions read as follows:

...

### *16.4 Principal Residence Vacant During Posting*

*16.4.1 Following confirmation of assignment to a post and again on cross-posting, the deputy head may waive the payment of shelter cost in dual-accommodation cost situations where the employee is subject to shelter cost at post and:*

*(a) has home ownership costs but no rental income from a tenant because:*

*(i) as a result of short notice of posting by the employer, there has not been time to rent or sell the principal residence prior to leaving the headquarters city, and the residence is vacant ....*

...

*16.4.2 Waiver of shelter cost under subsections 16.3.1 and 16.4.1 is limited to the period during which the employee is subject to two sets of accommodation costs (dual-accommodation). It shall not normally exceed a total of nine months for each posting, including any posting extension.*

*16.4.3 Where, because of short notice given by the employer, an employee is in a “dual-accommodation cost” situation during the initial period of a posting or cross-posting, waiver of shelter cost shall not normally extend beyond the last day of the ninth month following the month in which the confirmation of posting or cross-posting is received.*

...

*16.4.5 Exceptions to the nine-month limit will not normally be considered. However, a further maximum period of three months of assistance may be considered by the appropriate foreign service interdepartmental co-ordinating committee in:*

*(a) exceptional circumstances as a result of factors outside the employee’s control, where the principal residence must be maintained beyond nine months during the initial period of posting or cross-posting; or*

*(b) truly exceptional circumstances, such as an employer-requested posting extension which places the employee in a situation where it is not possible to rent the principal residence and it remains vacant.*

*16.4.6 Section 16.4 is not intended to provide financial assistance to an employee who chooses not to lease the principal residence in the headquarters city ....*

...

[30] Mr. Gangur testified at the hearing that “exceptional circumstances” means such things as natural disasters or occurrences completely outside the employee’s control.

[31] In June 2014, the grievor informed Mr. Ford that he had not sold his house in Gananoque and that he was in a dual-accommodation situation. He submitted a request for a shelter cost waiver. On June 20, 2014, the DND Foreign Service Program approved the request from June 1, 2014, to February 28, 2015, or until his house sold, whichever came first. At the hearing, Mr. Ford explained that the nine-month waiver was granted routinely.

[32] In October 2014, the grievor wrote to Mr. Ford, requesting an extension of the shelter cost waiver as his house was still not sold. At the hearing, the grievor explained that offers had failed because of a lack of financing and that he had had little hope of selling the house during the winter. Gananoque is very much a summer destination as it is a gateway to the Thousand Islands; the population decreases significantly in the winter months.

[33] Mr. Ford answered the grievor and explained that the shelter cost waiver could be extended only in exceptional circumstances, in accordance with the relevant FSD provision. Mr. Ford's office did not have the authority to grant the extension. Rather, the grievor had to apply (through the DND Foreign Service Program office) to the Foreign Service Interdepartmental Co-ordinating Committee, Working Group B (which was charged with interpreting FSDs for all departments with employees posted outside Canada), for approval.

[34] On December 23, 2014, H  l  ne Chouinard (manager of the DND Foreign Service Program) told the grievor that her office would make the request to Working Group B. On January 20, 2015, Mr. Ford presented the grievor's case to Working Group B. The request was denied in the following terms:

...

... Working Group B denies the extension of the shelter waiver as the employee has not demonstrated exceptional circumstances which are beyond the reasonable control of the employee as the employee has made a personal choice to sell and not rent the property. In addition, the extension of the shelter waiver is not approved in advance of the property being vacant.

[35] On February 17, 2015, the grievor responded to Working Group B, stating that he could not change the terms of his mortgage (which prevented renting the property), he had reduced the price of his house below the appraisal, and he had received two offers that had both failed for want of financing. The buyers' inability to secure financing was beyond his control.

[36] On March 24, 2015, Mr. Ford again presented the grievor's case to Working Group B, with the additional information. The request was again denied, with the following comment: "The employee's decision to opt for a mortgage which prevents him from finding a tenant for the home was a personal decision which is within the employee's control."

[37] On June 29, 2015, the grievor advised Mr. Ford that he had sold his house. Once again, he sought the extension of the shelter cost waiver, this time from March 25, 2015, to June 17, 2015. Mr. Ford resubmitted the case to Working Group B on August 25, 2015. At the hearing, Mr. Ford testified that it was exceptional to go back three



times to Working Group B with the same issue. The request was again denied, this time in the following terms:

...

*... Working Group B has reviewed the case and denies the request to extend the shelter waiver for an additional three months as exceptional circumstances as a result of factors outside the employee's control have not been demonstrated as specified in FSD 16.4.5 (a). The provisions of FSD 16.4 apply when as a result of short notice of posting by the employer, there has not been time to rent or sell the principal residence prior to leaving the headquarters city and the residence is vacant. The fact that the employee could not rent the residence was due to reasons within the employee's control given the personal decision made in acquiring the mortgage.*

[38] The grievor testified that when he had signed the mortgage contract with his bank, he was made aware of the no-rental clause, but that he had paid it no heed. At the time, it was not a consideration. Moreover, he was not enthusiastic about being an absentee landlord, as he put it. Two of his colleagues in Washington had rented their Canadian residences during their stays abroad. One had had no problems with his tenant, but the other had yet to receive any rent. It was not very encouraging, according to the grievor.

[39] Dual-accommodation provisions are also found in the NJC's *Relocation Directive* and are for a maximum of 180 days.

[40] Mr. Ford testified to the several allowances that the grievor had been entitled to under the FSDs. The most significant ones are described after this paragraph. They are not found in the *Relocation Directive*, which applies to moves inside Canada.

[41] As stated earlier, the employer provides shelter assistance based on the employee's position. The grievor was entitled to an allowance paid by the federal government on rented accommodation of up to USD\$3900 per month. He was expected to contribute CAD\$1200 per month (except while the shelter cost waiver applied).

[42] The grievor was also entitled, under FSD 56, to annual post allowances (a \$9454 post allowance plus a \$2694 post-living allowance).

[43] The grievor was considerably stressed by his financial difficulties and the employer's incomprehension. He stated that had it not been for the financial difficulties he encountered in Washington, he would have continued working for DND as a senior defence scientist. After returning to Canada, he retired earlier than he had planned to.

[44] The grievor estimated his loss at about \$40 000. The employer's evidence was that the sum of the FSD allowances he received over the three-year posting period amounted to about \$40 000.

### **III. Summary of the arguments**

#### **A. For the grievor**

[45] The grievor submitted that he assumed a considerable financial burden to serve his country in Washington. In return, the employer treated him with disrespect.

[46] From the time his Washington assignment was confirmed in April 2014, until his deployment in June 2014, the grievor had only two short months to deal with all the details pertaining to his move. Mr. Ford testified to the fact that there is a great deal to organize when moving to a foreign post.

[47] The grievor requested a three-month extension on the shelter cost waiver because of the difficulties he had encountered selling his house, despite his best efforts, including reducing the sale price. The employer refused, stating that they were not "exceptional circumstances"; yet they were, as defined by the relevant FSD, beyond the grievor's control. Discretion should have been exercised to extend the waiver.

[48] As for the loss of equity on the house sale, the FSDs' guiding principle should be applied, namely, comparability. How can it be that the loss of equity would have been compensated had the grievor moved to Halifax, as he had first intended, but not when he moved to Washington?

[49] The fact that the Foreign Service Directives Committee and the Executive Committee reached an impasse shows that the interpretation of the FSD is not so clear-cut; it should be resolved in favour of the grievor.

**B. For the employer**

[50] Comparability as a principle does not mean that the FSDs have to match the NJC's *Relocation Directive*. Rather, taking an employee's situation as a whole, he or she should not be in a worse situation in a foreign posting compared to being relocated in Canada. The allowances granted to employees working outside Canada are meant precisely to compensate and ensure a comparable lifestyle.

[51] The grievor chose a certain mortgage that precluded renting his house. That was within his control. He chose to sell the house, which again was within his control. The employer's allowances and measures, such as the shelter cost waiver, are meant to ease the transition; the employer cannot be responsible for every loss an employee incurs.

[52] The employer and bargaining agents have established directives for relocation within Canada and for foreign service postings. The directives are different since they are meant to cover different realities. Relocation within Canada is generally a one-time move, while foreign postings may be a recurring reality for certain employees.

[53] Adopting different directives was the parties' choice and was a negotiated solution that is now part of the collective agreement.

[54] The employer cited *Kramer v. Treasury Board (Department of Foreign Affairs and International Trade)*, 2010 PSLRB 116, as a relevant decision for this case.

[55] Mr. Kramer was a foreign service officer posted in New York City, in the United States. He incurred significant expenses for his son's orthodontic treatment. He had already reached the maximum for reimbursement through the Public Service Dental Care Plan in Canada. He did not claim the full reimbursement of the orthodontic treatment in New York but rather the difference between what he would have paid in Canada for the same treatment and what he paid in New York.

[56] The employer denied the claim, and an adjudicator denied the grievance. Mr. Kramer had incurred costs for expenses that would not have been reimbursable under the Public Service Dental Care Plan, and therefore, the health care FSD did not cover the additional costs. The FSD's wording had to be understood as covering expenses beyond what the Public Service Dental Care Plan would reimburse, and the implication

was that at least some of the expenses could be covered by the Plan. The exclusion from the Plan meant that the expenses could not be covered.

#### **IV. Analysis**

[57] The grievor raised two distinct issues, which I will deal with separately.

##### **A. Home equity loss**

[58] The grievor's comparability argument, which is that he should be entitled to compensation for the equity loss on the sale of his house as he would be had he stayed in Canada, is compelling on first view. However, it is not sufficient to overcome the obstacles to allowing that grievance.

[59] First, and most importantly, home equity loss is simply not covered by any FSD, as opposed to the clear language found in the *Relocation Directive* that applies domestically. The parties chose to provide other provisions to ensure that employees posted outside Canada are compensated for the reality of relocation; compensation for home equity loss is not one of them.

[60] Second, comparability does not allow an adjudicator to modify collective agreement language, as stated as follows in s. 229 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2): "An adjudicator's or the Board's decision may not have the effect of requiring the amendment of a collective agreement or an arbitral award."

[61] As in *Kramer*, a significant loss is not necessarily covered by an FSD, even on the principle of comparability. The coverage conditions must also be found in the FSD's language.

##### **B. Shelter cost waiver**

[62] The shelter cost waiver is granted as a matter of course for the first nine months when departures are somewhat hasty, as it was for the grievor. He received confirmation in April 2014 that his posting would begin in June 2014. It would have been unrealistic to expect that he would have been able to avoid a dual-accommodation situation so quickly, which seems recognized by the relative ease with which the waiver is normally granted for the first nine months, as Mr. Ford confirmed.

[63] Beyond that term, the employer grants the waiver on a discretionary basis. It denied the request on the basis of a lack of exceptional circumstances. The decision seemed harsh in the grievor's eyes, but it cannot be termed unreasonable. He could not rent his house because of a mortgage clause but stated that he chose that mortgage for its financial advantages. In any event, he would not have wanted to rent his house, but that would have been a personal choice for which the employer could not be made responsible.

[64] Working Group B made an assessment of the situation, which the employer endorsed. The term "exceptional circumstances" was interpreted as circumstances truly out of the employee's control. From the grievor's perspective, he could not control when his house would be sold. From the employer's perspective, he had chosen a course of action (selling rather than renting). He had chosen a mortgage agreement that included a non-rental clause.

[65] Working Group B and the employer made a strict interpretation, but again, it was not unreasonable. Adding an element of compassion and understanding would have made things smoother, but I cannot impose that requirement.

[66] To conclude, again, I wish to state that I understand how disappointed the grievor was by what he termed the employer's indifference to his plight. Unfortunately, that is not sufficient to find in his favour.

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

*(The Order appears on the next page)*

**V. Order**

[68] The grievances are denied.

September 28, 2023.

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