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Citation: 2024 FPSLREB 126

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

GREGORY NICHOLL

Grievor

and

TREASURY BOARD
(Department of Transport)

Employer

Indexed as
Nicholl v. Treasury Board (Department of Transport)

In the matter of an individual grievance referred to adjudication

Before: David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Jennifer Duff, counsel

For the Employer: Soojee Hahn, counsel

Heard via videoconference,
April 18 and 19, 2024,
and following written submissions,
filed April 26 and May 3 and 10, 2024.

REASONS FOR DECISION

I. Introduction

[1] Gregory Nicholl (“the grievor”) is a civil aviation safety inspector who works at the Department of Transport (“the department”), commonly known as Transport Canada.

[2] Civil aviation safety inspectors are experienced pilots who perform a variety of inspection roles related to airline and airport operations, along with pilot training and certification.

[3] In the fall of 2020, while working for the department in Ontario, the grievor agreed to accept an indeterminate appointment in its Atlantic Region (“the Atlantic”), on the understanding that he would be entitled to relocation expenses under the *Relocation Directive* (“the *Directive*”) of the National Joint Council (NJC).

[4] The *Directive* formed part of the collective agreement between the Treasury Board (“the employer”) and the grievor’s bargaining agent, the Canadian Federal Pilots Association (“the CFPA” or “the bargaining agent”), which expired on January 25, 2023 (“the collective agreement”). At the time the relocation occurred, the *Directive* had an effective date of April 1, 2009. A new version came into effect on January 1, 2021 (“the *2021 Relocation Directive*”).

[5] On September 21, 2020, the grievor accepted the appointment on the understanding that he would report to a manager in the department’s Moncton, New Brunswick, regional office but that he would live in the Halifax, Nova Scotia, area. As the evidence will show, the regional managers involved in his appointment also understood that that would be the employment arrangement.

[6] Following his acceptance of the position, the grievor began making the arrangements necessary to relocate from Ontario to Halifax. During this process, he was in communication with relocation advisors working for the department. After a number of discussions via email, on October 13, 2020, an advisor informed him that his relocation expenses would be paid only if he moved to Moncton or that area. In response, he informed the relocation advisor that he could not accept relocation assistance under those conditions. As a result of this correspondence, the relocation advisor informed the grievor that his relocation file would be closed.

[7] The grievor retained the receipts of his relocation expenses and made a reimbursement claim on May 12, 2021. When the employer denied it, on May 14, 2021, he filed this grievance.

[8] The department denied the grievance at both the first and second levels both on its merits and because it was filed outside the applicable time limits; that is, it was untimely.

[9] The final level in the grievance process for the *Directive* is the NJC Executive Committee, and it rendered its decision on August 4, 2022, stating that it had reached an impasse on the issue of timeliness. Its decision said that it did not debate the merits of the grievance.

[10] The grievance was referred to adjudication before the Federal Public Sector Labour Relations and Employment Board ("the Board") on September 9, 2022. (In this decision, "the Board" also refers to its predecessors.)

[11] Following the reference to adjudication, the employer took the position that the Board is without jurisdiction to render a decision on the grievance because it was untimely.

[12] I find that the Board must decide these four issues:

- Was the grievance untimely?
- Did the employer fail to properly notify the Board of its position that the grievance was untimely?
- Should the Board grant an extension to file the grievance, in the interest of fairness?
- Is the grievor entitled to receive reimbursement for expenses under the *Directive*?

[13] The grievor testified for himself. These two witnesses were called by the employer:

- Michael Munro, who at the time of the grievor's appointment was the department's associate director of operations in the Atlantic. Mr. Munro reported to the regional director, Stacey Mason, who signed the grievor's letter

of offer. At the time of the hearing, Mr. Munro was the director of national operations for civil aviation.

- Frédérick Sanscartier, who in the fall of 2021 was the supervisor of the department's relocation advisors.

[14] Accepted into evidence were two books of documents, one submitted by the grievor and the other by the employer, and both were entered on consent.

[15] I have structured this decision around the four issues before the Board. A summary of the relevant evidence is provided under each heading, as well as the parties' arguments, which were made via written submissions following the hearing. I have rendered my decision on each issue in turn.

[16] For the reasons that follow, I find that the grievance was untimely. I also find that the employer did not fail to properly notify the Board of its objection. However, I have also concluded that it is in the interest of fairness to grant the grievor an extension of time to file his grievance. Finally, and most significantly, I find that the grievor is entitled to the reimbursement of his relocation expenses under the *Directive*.

II. The grievance was untimely

A. Summary of the evidence

[17] The grievor testified that he joined the department in 2014, after 25 years of experience as a commercial pilot. In the summer of 2020, he was working as a civil aviation safety inspector out of the Lester B. Pearson International Airport in Toronto, Ontario. At that time, he lived about an hour north of Toronto in the village of Beeton.

[18] That summer, through colleagues, the grievor heard that there would be an opening for an inspector at his group and level in the Atlantic. He spoke to the team lead, Justin MacDonald, and expressed his interest in the position. He testified that he told Mr. MacDonald and his director Mr. Munro that if he was the successful candidate, he would want to live in Halifax, for family reasons. He testified that both of them agreed with that arrangement.

[19] The grievor applied to the position and was the successful candidate.

[20] The grievor testified that it was understood that he would report to the department's office in Moncton but that he would live in Halifax. He testified that he

understood that if and when he had to physically report to the Moncton office, he would have to travel there on his own time and at his own expense.

[21] This was also confirmed by Mr. Munro, who was initially the hiring manager for the appointment. He testified that he understood that the grievor would live in Halifax and work remotely for the Moncton office. He testified that it was of no consequence whether the grievor lived in Halifax or Moncton, as the grievor would provide services across the Atlantic Region. He testified that he had had the money for the relocation expenses in his budget. He also testified that the department expected lower travel costs with the grievor working out of Halifax, in comparison to him living in Moncton and starting his travel from there.

[22] The grievor received a letter of offer signed by Mr. Mason, the regional director and Mr. Munro's superior, dated September 21, 2020. In the heading, the location was listed as "Moncton, NB." The grievor had been expecting the letter and signed it the same day. The official start date was October 19, 2020.

[23] Among its many provisions, the letter stated that the department "will provide relocation assistance", in accordance with the provisions of the *Directive*. The letter advised the grievor that he had to contact a departmental relocation advisor as soon as possible, to register for the relocation program.

[24] The grievor testified that he had already initiated contact with a departmental relocation advisor before receiving the letter, as he was trying to be proactive. He said that he had told her that the plan was that he would live in Halifax. On September 21, 2020, the day he signed the letter of offer, he emailed a copy of the signed letter to the relocation advisor and told her that he wished to sign up for the relocation program.

[25] I will pause briefly to note that under the *Directive*, one of the roles of the departmental relocation advisor is to help the employee set up an account with the "Contracted Relocation Service Provider (CRSP)", which is a private-sector company. At the time, the CRSP was a company called "BGRS" (formerly Brookfield). The CRSP's role is to manage the relocation process with the employee and to reimburse his or her expenses. The only significant part of the relocation process not administered by the CRSP is the relocation of household effects; that service is provided by the Central Removal Service of the Department of Public Works and Government Services Canada.

[26] On September 22, 2020, the relocation advisor emailed the grievor and said that she had to consult the Treasury Board Secretariat, to request a clarification. The grievor testified that he understood that she would ask about his eligibility for relocation expenses for the move to Halifax.

[27] I will pause again to note that like other NJC directives, the *Directive* is "co-developed" between the Treasury Board (and other participating employers) and those bargaining agents, including the CFPA, who agree to be bound by it in their collective agreements. Under the auspices of the NJC, from time to time, the Treasury Board and the participating bargaining agents negotiate changes to the provisions of the *Directive* through a committee called the Relocation Committee. That committee also reviews grievances referred to the NJC and makes recommendations to the NJC Executive Committee on them.

[28] Mr. Sanscartier testified that when his team of relocation advisors required assistance interpreting the *Directive*, it would consult the staff of the Treasury Board Secretariat who represent the employer in the NJC process.

[29] On October 1, 2020, the Treasury Board's response was provided to the grievor and Mr. Mason through the departmental relocation advisor. The response said that the *Directive* applies in situations in which an employee must be relocated to a new place of duty but not when moving for personal reasons, adding, "As there appears to be no operational need to relocate the appointee to Halifax, your department would not be able to authorize a relocation from Toronto to Halifax …". The Treasury Board advisor wrote the response.

[30] Mr. Mason wrote back that same day, explaining that the grievor was a fully qualified inspector who would work from home, given the COVID-19 restrictions. He said that the grievor would not be required to be in the office for training and that when he was not in the Moncton office, he would be under a telework arrangement. He disputed the Treasury Board advisor's statement that the move to Halifax was for personal reasons and that there was "no operational need" for the relocation to Halifax. He stated that the grievor "… is required to be relocated to a place of his choosing that allows him the ability to report to his place of duty, Moncton NB, as and when required by management."

[31] The grievor testified that during this time frame, in preparation for the move, his wife provided a notice of resignation from her employer (an Ontario school board), and they withdrew their children from school. He continued to discuss with the relocation advisors what his entitlements might be under the *Directive* for the trip to the Atlantic, for a house-hunting trip, and for the movement of his goods. He also asked the advisor how close he would have to reside to Moncton. She reached out to the Treasury Board, which said that he would have to live within a "reasonable daily commuting area" of his place of duty.

[32] On October 6, 2020, the relocation advisor emailed the grievor, stating that the only relocation expenses to be authorized were for a move from Toronto to Moncton. The email stated that his relocation file on the CRSP's website would be cancelled if he proceeded with a move to Halifax and reminded him not to begin relocation activities and incur expenses before his file was authorized, as those expenses might not be reimbursed.

[33] Also on October 6, 2020, the grievor reached out to the president of his bargaining agent for assistance about his intention to move to Halifax and asked him to contact Mr. Mason.

[34] After some further correspondence, on October 13, 2020, the relocation advisor advised the grievor that the only relocation that would be authorized would be from Toronto to Moncton and that if he wished to move to Halifax for personal reasons, he would have to do so at his own expense.

[35] The grievor stated as follows in his response later that day:

> …
>
> *The terms and conditions that you have indicated that I must meet in order to be provided with relocation assistance in accordance with the Relocation Directive are untenable for me and my family. I am unable to accept your offer of relocation assistance under these circumstances. I have no choice but to personally absorb the moving costs in the interim and file a grievance for reimbursement at a later date.*
>
> …

[36] The grievor copied his bargaining agent on that email.

[37] The relocation advisor responded later that day, informing the grievor that she was cancelling his relocation file on the CRSP's website. She also copied his bargaining agent.

[38] Asked why he did not file a grievance immediately, the grievor testified that he was in the midst of moving across the country during the height of the COVID-19 pandemic. He was expected to report to work as of October 19, 2020. He had to get to Halifax, go through the quarantine process, and look for a home. He testified that he hoped that Mr. Mason and Mr. Munro would find a reasonable solution at a higher level. He testified that he believed that he had to make an organized package of receipts before filing a grievance.

[39] As already noted, the grievor assembled his receipts and made a relocation claim on May 12, 2021. That same day, a relocation advisor informed him that his relocation could not be authorized because it was not to Moncton. She told him that should he wish to pursue a grievance, he should contact his local union representative. On May 14, 2021, he filed this grievance.

B. Analysis and reasons

[40] The employer took the position that the grievance was filed outside the required time limits set out in subsection 15.1.6 of the NJC *By-Laws*, which sets a 25-day time limit to file a grievance and reads as follows:

15.1.6 An aggrieved employee, or group of employees, shall submit the grievance to the first level of the procedure, in the manner prescribed in subsection 15.1.7, not later than the 25th working day after the date on which the employee is notified orally or in writing or on which the employee first becomes aware of the action or circumstance giving rise to the grievance.	*15.1.6 Le fonctionnaire ou le groupe de fonctionnaires s'estimant lésé doit présenter le grief au premier palier de la procédure, de la façon prescrite au paragraphe 15.1.7, dans un délai de 25 jours ouvrables suivant la date à laquelle il est avisé oralement ou par écrit ou celle à laquelle il a connaissance du geste ou des circonstances donnant lieu au grief.*

[41] The employer argued that several times between October 1 and 13, 2020, the grievor was informed that only a relocation to the Moncton area would be authorized under the *Directive* and that a move to the Halifax area would not be. His reply of October 13, 2020, indicated he understood this decision because he stated that he

would file a grievance at a later date. He copied his bargaining agent on the email. The relocation advisor then informed the grievor that the relocation file on the CRSP's website would be closed, and she copied the grievor's bargaining agent.

[42] Despite being clearly notified in writing that his relocation file would be closed, the grievor and his bargaining agent chose not to file a grievance at the first level until seven months later, on May 14, 2021. The grievance was filed late, and the Board does not have jurisdiction to decide it, the employer argued.

[43] The grievor argued that the grievance was timely. Given the conflicting views of the relocation advisors and regional management on his move, it was reasonable for him to conclude that the matter had not been conclusively decided. Under subsection 2.13.1 of the *Directive*, there is a one-year time limit to receive reimbursement. The grievor made his claim within that time frame, and as soon as the claim was denied, he filed the grievance.

[44] The grievor argued that an employer's decision must be definitive to trigger the time limits for filing a grievance; see *Chalmers v. Treasury Board (Department of Fisheries and Oceans)*, 2021 FPSLREB 63. The fact that his regional managers supported his relocation and were willing to make representations on his behalf led him to conclude the employer's decision was not clear and definitive until May 12, 2021, when the submission of his incurred expenses was refused. As such, filing the grievance on May 14, 2021, was timely, the grievor argued.

[45] In my assessment, the grievor filed his grievance outside the 25-day time limit set out in the NJC *By-Laws*. I have calculated that those 25 working days would have ended on November 18, 2020; his grievance was filed on May 14, 2021.

[46] I appreciate that the grievor was trying to simultaneously arrange his move and make the multiple changes required in his life, while trying to work through the required steps in the relocation process. However, from September 21 through October 13, he was involved in multiple conversations and email exchanges with the relocation advisors about whether he could claim relocation expenses for a move to Halifax. The departmental relocation advisors sought rulings from the Treasury Board Secretariat on several occasions and passed on their interpretations to the grievor.

[47] In *Chalmers*, the grievor waited to file a grievance until her department received a definitive answer from the Treasury Board about her situation. The Board found it reasonable that the grievor waited until she received that definitive answer before filing her grievance and found the grievance timely on that basis; see paragraphs 30 and 31.

[48] In this case, the grievor had a clear and definitive answer on October 13, 2020, not only that his move to Halifax was not considered approved for expenses under the *Directive* but also that his CRSP relocation file was closed. He had already been advised that he was required to have a file open with the CRSP before incurring expenses. He knew or ought to have known that he had to have that file open to make relocation expense claims.

[49] The core issue in this grievance is the employer's decision that the grievor's move to Halifax would not be compensated under the *Directive*. By October 13, 2020, it was clear that that was the position of both the departmental relocation representatives and their counterparts at the Treasury Board. The grievor knew or ought to have known by that date that the employer's decision on that point was final. Under subsection 15.1.6 of the NJC *By-Laws*, he had 25 working days from then to file a grievance or perhaps to seek the employer's agreement to extend the deadline or to formally agree to resolve the dispute through alternative means. By waiting to file a grievance until May 14, 2021, his grievance was untimely.

[50] I will acknowledge that the employer's communications with the grievor about his right to file a grievance were somewhat ambiguous. When on October 13, 2020, he told the relocation advisor that he would file a grievance at a later date, she did not inform him that he had 25 working days to do it or suggest that he contact his bargaining agent. When the grievor submitted his relocation receipts on May 12, 2021, the relocation advisor responded by telling him that if he wished to pursue a grievance, he should contact his bargaining agent representative.

[51] The employer's ambiguous communications about the grievor's right to file a grievance do not alter my assessment that the grievance was untimely. This is largely a factual determination, as opposed to a discretionary determination, such as the request for an extension of time. The employer did not **misinform** the grievor about his rights. Ultimately, his bargaining agent should have advised him of the deadline to

file a grievance. He reached out to his bargaining agent for support as early as October 6, 2020. The bargaining agent's president was copied on the email exchange of October 13, 2020. The issue was crystallized by then, and the employer's position was clear and in writing: a relocation to Halifax would not be compensated. The CFPA may be a small bargaining agent, but it is nevertheless sophisticated, and it participates in developing directives and processing grievances through the NJC's process. It should have advised the grievor that the deadline to file a grievance was within the 25 working days following October 13, 2020, but did not.

III. The employer's objection is valid

A. Summary of the evidence

[52] In addition to the evidence already summarized, I rely on the following additional points of evidence.

[53] The employer denied the grievance at the first level on June 11, 2021. In its written denial, it took the position that the grievance was untimely because it was not filed within the 25-day time limit set out in the NJC *By-Laws*. It noted that the grievor was informed that his relocation file was being closed on October 13, 2020. The reply also discussed the merits of the grievance and dismissed it on that basis, too.

[54] The employer denied the grievance at the second level on September 21, 2021. That written reply also denied the grievance as untimely, for the same reasons as those laid out at the first level. However, this time, the employer specifically quoted from subsection 15.1.6 of the NJC *By-Laws*. That reply also discussed the merits of the grievance and dismissed it on that basis, too.

[55] The grievor transmitted the grievance to the final level on September 29, 2021, and on October 18, 2021, the employer forwarded the grievance to the NJC, along with its replies at the first and second levels.

[56] On January 7, 2022, the NJC asked the grievor's bargaining agent for written submissions on the employer's timeliness objection. On January 21, 2022, the CFPA provided its position to the NJC via a seven-page brief.

[57] On August 4, 2022, the NJC Executive Committee rendered its decision on the grievance. It stated as follows:

…

> *The Executive Committee considered the department and bargaining agent arguments concerning timeliness and could not reach agreement on the issue of timeliness. As such, the Executive Committee reached an impasse on the issue of timeliness and therefore agreed that there was no need to debate the issue of merits of the case.*

…

[58] The grievor referred the grievance to adjudication on September 9, 2022. The referral was acknowledged by the Board on November 16, 2022.

[59] On December 2, 2022, an employer analyst acknowledged the referral. In his email to the Board, the analyst wrote this: "I would also like to bring to the Board's attention, that there is an objection with respect to timeliness referenced in the attached material." Attached to the email were four documents: the employer's replies at the first and second levels, the NJC's invitation to the CFPA to provide its submissions on the timeliness objection, and the NJC Executive Committee's decision of August 4, 2022.

B. Analysis and reasons

[60] The grievor argued that the employer was precluded from raising its timeliness objection because it did not make it in accordance with s. 95 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"), which reads as follows:

Deadline for raising objections	***Délai pour soulever une objection***
95 (1) *A party may, no later than 30 days after being provided with a copy of the notice of the reference to adjudication,*	***95 (1)*** *Toute partie peut, au plus tard trente jours après avoir reçu copie de l'avis de renvoi du grief à l'arbitrage :*
(a) *raise an objection on the grounds that the time limit prescribed in this Part or provided for in a collective agreement for the presentation of a grievance at a level of the grievance process has not been met; or*	***a)*** *soulever une objection au motif que le délai prévu par la présente partie ou par une convention collective pour la présentation d'un grief à un palier de la procédure applicable au grief n'a pas été respecté;*
(b) *raise an objection on the grounds that the time limit prescribed in this*	***b)*** *soulever une objection au motif que le délai prévu par la présente*

Part or provided for in a collective agreement for the reference to adjudication has not been met.	*partie ou par une convention collective pour le renvoi du grief à l'arbitrage n'a pas été respecté.*
Objection may not be raised	***Circonstance où une objection ne peut être soulevée***
(2) *The objection referred to in paragraph (1)(a) may be raised only if the grievance was rejected at the level at which the time limit was not met and at all subsequent levels of the grievance process for that reason.*	***(2)*** *L'objection visée à l'alinéa (1)a) ne peut être soulevée que si le grief a été rejeté au palier pour lequel le délai n'a pas été respecté et à tout palier subséquent de la procédure applicable au grief en raison de ce non-respect.*
Objection raised	***Objection soulevée***
(3) *If the party raises an objection referred to in subsection (1), it must provide a statement in writing giving details regarding its objection to the Board.*	***(3)*** *La partie qui soulève une objection en vertu du paragraphe (1) fournit par écrit à la Commission une explication de celle-ci.*

[61] The grievor argued that the employer's email of December 2, 2022, failed to meet the requirements of s. 95(3) of the *Regulations*. While the employer attached documents indicating that it had made similar objections throughout the grievance process, it did not provide a written explanation of the basis for its objection to the Board, he argued.

[62] The Board may rule on a jurisdiction objection related to timeliness only if the objecting party has met the requirements of s. 95, the grievor argued. The language in s. 95 is mandatory, not discretionary, and the Board has a positive obligation to ensure that the requirements are met; see *McWilliams v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 58 at para. 16, *Cawley v. Treasury Board (Department of Fisheries and Oceans)*, 2013 PSLRB 135 at para. 48, and *Deputy Head (Public Health Agency of Canada) v. Sharaf*, 2009 PSLRB 115 at para. 21.

[63] The employer did not provide any explanation for its failure to respect the requirements of s. 95 or to seek an extension of the timeline to make an objection. Therefore, the Board should find that the employer waived its right to raise a timeliness objection, the grievor argued.

[64] The employer argued that its email to the Board met the requirements of s. 95 of the *Regulations*. Attached to the email indicating that a timeliness objection was

being raised were four documents: the grievance responses at levels 1 and 2, the letter from the NJC to the grievor's bargaining agent requesting its submissions on the timeliness objection, and the final-level grievance response from the NJC Executive Committee.

[65] While I believe that the employer's objection to the Board's jurisdiction could have provided a more fulsome explanation of its objection, I do not believe that it failed to adhere to the requirements of s. 95 of the *Regulations*. The objection was made in writing. It referenced the attached materials. The rejection of the grievance at the first level made it clear that the employer had done so as it was late when it was first filed because it was outside the limits established in the NJC *By-Laws*. That rejection was repeated with even more specific terms at the second level.

[66] The case law cited by the grievor does not assist him. In *McWilliams*, the employer failed to object to the grievance as untimely at each level, as required by s. 95(2). In *Cawley*, the employer failed to object to the grievance as untimely at each level and did not make its objection known to the Board within 30 days, as required by s. 95(1). In *Sharaf*, the Board declined to allow the employer's request for an extension of the s. 95 timeline because the employer did not provide a clear, cogent, and compelling reason for its failure to meet it. None of those cases help me determine whether the employer's explanation fell short of the s. 95(3) requirement that the employer "… provide a statement in writing giving details regarding its objection to the Board."

[67] I believe that the purpose behind s. 95(3) of the *Regulations* is that the Board, and the other party to a grievance, can know from the start the reasons behind a timeliness objection and can respond accordingly.

[68] A quick read of the attachments to the employer's email of December 2, 2022, made the reasons for its objection abundantly clear to me. The objection was made because the employer told the grievor that he had been informed that his relocation would not be authorized on October 13, 2020, and the grievance was filed well after the 25-day deadline set out in the NJC *By-Laws*. The objection was made at each level. I understood clearly why the employer made its timeliness objection.

[69] As for the purpose of ensuring that the grievor and his bargaining agent understood why the objection was being made, the evidence demonstrates that they

did, well before the reference to adjudication was made. The NJC invited the grievor to make submissions to it on the timeliness issue. Entered into evidence were the bargaining agent's submissions to the NJC from January 2022. They were extensive and provided the grievor's reasoning for filing the grievance on May 14, 2021.

[70] After those submissions were made, the NJC Executive Committee rendered a decision stating that it had reached an impasse. Not only were the grievor and his bargaining agent clearly aware of the issues at stake, but also, they were arguably at least partially successful with their arguments because the NJC Executive Committee reached an impasse on the issue of the grievance's timeliness.

[71] In short, I find that the employer did not waive its right to make a timeliness objection under s. 95 of the *Regulations*.

IV. It is in the interest of fairness to grant an extension of time to file the grievance

[72] The grievor argued that in the event that the Board finds that the grievance was untimely and that the employer's objection to the Board is valid, it should grant him an extension of the timeline to file his grievance.

[73] The Board's ability to extend a grievance timeline is set out at s. 61 of the *Regulations*, which reads as follows:

61 *Despite anything in this Part, the time prescribed by this Part or provided for in a grievance procedure contained in a collective agreement for the doing of any act, the presentation of a grievance at any level of the grievance process, the referral of a grievance to adjudication or the providing or filing of any notice, reply or document may be extended, either before or after the expiry of that time,*	***61*** *Malgré les autres dispositions de la présente partie, tout délai, prévu par celle-ci ou par une procédure de grief énoncée dans une convention collective, pour l'accomplissement d'un acte, la présentation d'un grief à un palier de la procédure applicable aux griefs, le renvoi d'un grief à l'arbitrage ou la remise ou le dépôt d'un avis, d'une réponse ou d'un document peut être prorogé avant ou après son expiration :*
(a) *by agreement between the parties; or*	***a)*** *soit par une entente entre les parties;*
(b) *in the interest of fairness, on the application of a party, by the Board or an adjudicator, as the case may be.*	***b)*** *soit par la Commission ou l'arbitre de grief, selon le cas, à la demande d'une partie, par souci d'équité.*

[74] The employer argued that it would not be in the interest of fairness for the Board to extend the grievor's timeline to file his grievance.

[75] The parties agreed that the Board should assess this issue using the five criteria set out in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1 at para. 75. The *Schenkman* criteria are flexible, and the overarching concern is that of fairness.

[76] Recently, the Board restated the *Schenkman* criteria as questions in *Van de Ven v. Treasury Board (Canada Border Services Agency)*, 2023 FPSLREB 60 at para. 75, as follows:

> *[75] …*
>
> > *In assessing whether it is in the interest of fairness to grant an application for the extension of a timeline in the grievance process, the Board will consider the following questions:*
> >
> > *1) Are there clear, cogent, and compelling reasons for the delay?*
> >
> > *2) How long was the delay, and at what stage of the grievance process did it occur?*
> >
> > *3) Did the grievor exercise due diligence?*
> >
> > *4) Who would suffer the worst prejudice, the employer if the extension were granted, or the employee if it were not granted?*
> >
> > *5) Would the extension serve no useful purpose because the grievance has no chance of success or is frivolous or vexatious?*

[77] I find that these questions can be answered on the basis of the evidence that has already been summarized, which I will not repeat. Under each question, I will analyze the parties' arguments and provide my assessment.

A. Are there clear, cogent, and compelling reasons for the delay?

[78] The grievor argued that he received contradictory information from the employer. There was ongoing intent from Mr. Munro and other managers to support the relocation. Mr. Munro testified that management understood that an approved move to the Halifax area was a condition of him accepting the position and that the relocation was intended and budgeted. The relocation advisors provided a different interpretation, as they did not look beyond the letter of offer or consider the input of

the grievor and Mr. Mason as to the nature of the work that the grievor would perform. The relocation advisors continually said that the Treasury Board's response was final, but they committed on each occasion to go back to the Treasury Board for further clarification. The contradictory responses are a clear, cogent, and compelling reason for the delay, the grievor argued.

[79] Argued in relation to the second criteria (the length of the delay), but also relevant to the reasons for the delay, the grievor stated that it took several months after his move to Nova Scotia for him to complete his move and finalize his expenses. During that time, he unexpectedly underwent urgent surgery and was faced with the serious health issues experienced by a close family member.

[80] The employer argued that there were no clear, cogent, or compelling reasons for the delay and that in the absence of such reasons, the other four criteria are of little relevance; see, among several cases cited, *Brassard v. Treasury Board (Department of Public Works and Government Services)*, 2013 PSLRB 102 at para. 26.

[81] It argued that the employer's position on the proposed relocation was clear and consistent, not contradictory. The hiring managers told the grievor that he would have to contact the relocation team to determine his eligibility for relocation, and they never promised that his relocation would be covered. It argued that there was no agreement to engage in informal resolution discussions or to suspend time limits, and in the absence of that, the grievor's hope for an informal resolution did not relieve him of his obligation to meet the timelines of the formal grievance process; see, for example, *Popov v. Canadian Space Agency*, 2018 FPSLREB 49 at para. 67. Even if ongoing discussions were taking place, the Board has not accepted them as a compelling reason for a delay; see *Osborne v. Treasury Board (Department of Fisheries and Oceans)*, 2024 FPSLREB 5 at para. 49, and *Tuplin v. Canada Revenue Agency*, 2021 FPSLREB 29 at para. 56.

[82] The employer argued that even a grievor's medical condition, in the absence of an incapacity, does not prevent the grievor from understanding the time limit to file a grievance; see *Grouchy v. Deputy Head (Department of Fisheries and Oceans)*, 2009 PSLRB 92 at para. 48, and *Popov*, at para. 64.

[83] Two reasons given by the grievor, taken individually, do not in themselves constitute a clear, cogent, and compelling reason for the delay. I do not find the

grievor's hope that his direct manager would somehow resolve the situation, in and of itself, a particularly clear, cogent, and compelling reason for the delay filing a grievance. I agree with the employer that on its own, a hope for an informal resolution is not a clear, cogent, and compelling reason for a delay (per *Popov* and *Osborne*). I also agree that in *Grouchy* and *Popov*, the Board did not accept a grievor's illness or that of a family member as a clear, cogent, and compelling reason for the delay.

[84] The grievor did a better job explaining his reasons for not filing a grievance until May 14, 2021, in the submissions that the CFPA made to the NJC. He clearly noted his belief that he had to determine the totality of his expenses before filing a grievance. In addition, he noted that he did not want to sour his relationship with his new managers by filing a grievance and that he was concerned that filing one would put an end to their efforts to resolve the situation. On top of the move, his submissions reported that he experienced sudden health issues, as did some of his family members, and that his parents were aging. Several of these elements were also reflected in his testimony at the hearing.

[85] To me, the most clear, cogent, and compelling reason for the delay filing the grievance arose during the grievor's testimony. He testified that he believed that to file a grievance, he had to assemble one organized package of receipts. That testimony was consistent with the content of his email to the departmental relocation advisor on October 13, 2020, which stated this: "I have no choice but to personally absorb the moving costs in the interim and file a grievance for reimbursement at a later date."

[86] I find that the grievor was mistaken in thinking that he had to wait until he had all his receipts together before filing a grievance. As I have already found, by October 13, 2020, he had clearly been informed that his relocation to Halifax would not be supported by his employer, and he knew or ought to have known by that point that he required an active account open with the CRSP to submit a claim. As I have already found, a grievance filed within 25 working days of that date would have been timely.

[87] Furthermore, the grievor's mistake about what was required to file a grievance took place when he was in the midst of moving across the country during the height of COVID-19 restrictions. He and his family drove from Ontario to Halifax between October 22 and 24, 2020. When he arrived, he had to quarantine because of the interprovincial COVID-19 restrictions. He had to look for and begin the purchase of a

new home. He and his family had to start settling into a new community. He had to begin a new job. All that took place between October 13 and November 18, 2020, the date by which he ought to have filed a grievance. The evidence is that during that time frame, neither the CFPA nor the employer informed the grievor that his belief was mistaken that he had to assemble his receipts before filing a grievance.

[88] In my assessment, it is in the cumulative impact of all these facts (the complexity and pace of the move, the grievor's hope that his new managers could resolve the situation, and the family's health issues), that the grievor's mistaken belief that he should wait until he had all his receipts in order before filing a grievance add up to a clear, cogent, and compelling reason for the delay in filing it. I will note that the grievor relied on similar reasoning when he argued that his grievance was timely; however, I think this reasoning more appropriately supports a request for an extension of time than it does a finding of timeliness. As I previously mentioned, the timeliness determination is largely factual, whereas what constitutes a clear, cogent, and compelling reason for the delay depends on the circumstances and should be informed by the notion of fairness.

[89] It is also important to note that the employer had no reason to be surprised when the grievor eventually did file his grievance on May 14, 2021; on October 13, 2020, he clearly notified it that he intended to file one.

[90] Overall, I find that the grievor met the first of the *Schenkman* criteria.

B. How long was the delay, and at what stage of the grievance process did it occur?

[91] I calculate the delay filing the grievance as approximately six months (from November 18, 2020, to May 14, 2021). The delay was at the original grievance filing, which is arguably a more prejudicial time from the employer's point of view than say a delay transmitting a grievance from one level to another; see *Van de Ven*, at para. 80.

[92] The grievor argued that the delay was not unreasonable given the move and the health issues he and his family experienced.

[93] The employer argued that the delay filing the grievance was significant. After being informed that his relocation file was being closed, on October 13, 2020, it took the grievor 7 months to file his grievance, it said. The employers and bargaining agents of the NJC have agreed to establish a 25-day deadline for filing grievances about NJC

directives, it argued. Extending the timeline to 7 months would undermine the principle that labour relations disputes should be resolved in a timely manner; see *Grouchy*, at para. 46.

[94] I do not find the delay of six months excessive. Very lengthy delays filing a grievance are not conducive to effective labour relations, particularly if the delay means that one party or the other is caught by surprise, well after the events have passed into the annals of time. That is not so in this case. The grievor clearly indicated in his email to the relocation advisors that he intended to file a grievance, on October 13, 2020. His local managers knew that he continued to seek their involvement, and the CFPA sought to engage them in finding a solution.

C. Did the grievor exercise due diligence?

[95] The grievor argued that he remained diligent in pursuing the issue with regional management and that he was aware that Mr. Mason continued to advocate on his behalf well after he had commenced in the new position.

[96] The employer argued that the grievor knew that he was a member of the CFPA and that he had begun to engage it in early October. He could have reached out to it to discuss filing a grievance. He is responsible for inquiring and finding out about the rules governing the grievance process; see *Grouchy*, at para. 51.

[97] The employer argued that the one-year time limit under subsection 2.13.1 of the *Directive* to submit receipts did not apply to the grievor because the limit dates "… from the date of registration with the CRSP." The grievor never completed his registration with the CRSP, it said, because he was not moving to Moncton.

[98] As I have already found, the grievor was mistaken in his belief that the appropriate time to file a grievance was after he had collected all his relocation receipts and made a claim to the employer. However, within that mistake, I find that he acted diligently. He assembled his receipts. He submitted them within a time frame of seven months of when he began in his new position. When the relocation advisor denied his claim, on May 12, 2021, it took the grievor just two days to file the grievance that he had already warned he would file back on October 13, 2020.

D. Who would suffer the worst prejudice, the employer if the extension were granted, or the employee if it were not granted?

[99] The grievor argued that there is no prejudice to the employer in having this matter proceed. It was aware that he disputed its refusal to provide him relocation assistance to Halifax and that he intended to submit his expense claims and file a grievance at a later date. The relocation had been planned and budgeted for. On the other hand, the grievor incurred significant expenses moving his family and effects from Ontario to Nova Scotia. The injustice to him by not having the grievance heard far outweighs any possible prejudice to the employer, he argued.

[100] The employer argued that it would be prejudiced by an extension because there are good labour relations reasons for imposing time limits, as the Board stated in *Mark v. Canadian Food Inspection Agency*, 2007 PSLRB 34 at para. 24, as follows:

> *24 Moreover, there are good labour relations reasons for imposing time limits. First, the grievance and adjudication processes are intended to provide a final and binding method of resolving disputes that arise during the course of the collective agreement. Second, time limits contribute to labour relations stability by providing closure on the employer's business decisions with the consequence of avoiding, for either the bargaining agent or the employer, constant or long-term exposure to workplace incidents.*

[101] I am not convinced that the employer would suffer prejudice were an extension of time granted to file the grievor's grievance. Had he filed the grievance before November 18, 2020, the only issue before the Board would be whether he ought to be authorized to receive relocation expenses under the *Directive*. If he is granted an extension to file his grievance until May 14, 2021, the ultimate issue before the Board is the same as it would have been had the grievance been filed in a timely fashion.

[102] The Board's ruling in *Mark* makes more sense to me in the context of a grievance in which the employer's potential exposure to costs grows as a result of the delay filing a grievance, for example when an employee who is terminated waits a year before filing a grievance, yet seeks reinstatement or compensation in lieu of it back to the termination date. In such a situation, the employer could be prejudiced by the extension of a grievance deadline, as its exposure if the grievance were allowed might have grown.

[103] That is not so in this case. The grievor's relocation expenses did not expand as a result of the delay filing the grievance and will not expand as a result of the timeline being extended.

E. Would the extension serve no useful purpose because the grievance has no chance of success or is frivolous or vexatious?

[104] In *Schenkman*, the fifth criterion is stated as "… the chance of success of the grievance." In *Van de Ven*, I reviewed several decisions in which the Board found that the fifth criterion was difficult to apply. Therefore, I found it more appropriate to reformulate the fifth criterion as whether the extension would serve no useful purpose because the grievance has no chance of success or is frivolous or vexatious; see paragraph 74.

[105] In this case, the employer's argument was that the *Directive* does not apply to an unauthorized move. This argument goes to the heart of the merits of the case. There is no basis to reject the grievor's request to extend the timeline because there is no chance of success, and I do not find the matter either frivolous or vexatious.

F. Conclusion

[106] The overriding principle in s. 61 of the *Regulations* is that the Board grant extensions of grievance time limits "in the interest of fairness". The criteria set out in *Schenkman*, as modified slightly in *Van de Ven*, assist the Board in assessing whether it is fair, on a case-by-case basis, to extend a time limit.

[107] On balance, in this case I find that the grievor has met the criteria established in *Schenkman*. Under the powers provided in s. 61 of the *Regulations*, I grant him an extension of time to file his grievance until May 14, 2021.

V. The grievor ought to have been authorized for a relocation under the *Directive*

[108] I turn now to the merits of the grievance. I will begin with a summary of the **additional** evidence relevant to the merits, which should be read in conjunction with the summaries already provided. I will then summarize each parties' arguments before providing my reasons for decision.

A. Summary of additional evidence

[109] The grievor testified that as soon as he became aware of the potential vacancy in the Atlantic, he was upfront that he was interested in taking it if he could perform it from Halifax. He said that he made that known to the team lead with whom he discussed the opportunity, Mr. MacDonald. He testified that he also discussed the opening with Mr. Munro, asked him how the hiring process would work, and let him know that he was looking for a position that would allow him to live in Halifax. He testified that he let Mr. Munro know that he had aging parents living in Halifax and other family reasons for living there. He testified that there was never any question about where he would live. He testified that he understood that he would be able to represent the department and do his job from Halifax. He testified that Mr. Munro said that there would be no trouble with him working from Halifax as long as he could report to Moncton in person at his own expense if required.

[110] The grievor testified that he understood from his conversations with the managers involved in his hiring that he would be entitled to relocation assistance under the *Directive*, including leave with pay, the movement of his effects, the sale of his Ontario property, and the purchase of a new home in Halifax. He testified that he understood the letter of offer as confirmation that his relocation expenses were approved by Mr. Mason.

[111] The grievor testified that after he sought the assistance of Mr. Munro and Mr. Mason to resolve the issue with the relocation advisors, he felt like they were being stopped from giving him something that they had agreed to.

[112] The grievor testified that his geographical area of authority includes all the Atlantic provinces. In his job, he performs a number of duties. He inspects and certifies aviation companies and facilities. He oversees pilot training, including sometimes “testing the testers”. He carries out flight inspections involving pilots — either scheduled or reactive — sitting in the cockpit, ensuring that regulations and procedures are followed. He testified that he is one of the main people doing this work in the Atlantic.

[113] He testified that typically, he starts his duties from home. He travels directly from there to a place of work in the community, although sometimes, he travels using a federal government car that is checked out of the department’s detachment in

Dartmouth, N.S. He testified that there have been three other civilian aviation inspectors also working from Halifax and attached to the Dartmouth detachment but that one of them recently retired.

[114] He testified that his travel does not originate out of Moncton; it is either from his home or from the department's Dartmouth detachment.

[115] The grievor said that he has always reported to one of two civilian aviation team leads who are based in Moncton and that the same is true of the other inspectors working from Dartmouth.

[116] The grievor testified that when he initially took the position in the Atlantic, he did not have a formal telework agreement in place. At that time, no office was open, and interprovincial borders were closed. He said that he was not permitted to travel at all and that there was no need for a telework agreement. He testified that he now does have a telework agreement in place, but he did not recall when it was put in place.

[117] I note that neither party put a telework agreement document before me; however, in the employer's second-level response to the grievance dated September 21, 2021, it noted that a valid telework agreement had, by then, been put in place.

[118] The grievor testified that under the current mandate for federal employees to work from the office two days a week, he reports to the department's office in Dartmouth.

[119] The grievor testified that in the three-and-a-half years since he moved to Halifax, he has never once been required to report directly to the Moncton office. He has never been to that office.

[120] Mr. Munro testified that he became aware via Mr. MacDonald that the grievor was interested in the vacant position in the Atlantic. He said that the department needed qualified flight inspectors. He was interested in hiring the grievor because he wanted a fully trained inspector on staff in the region. He said that he understood either directly or through Mr. MacDonald that the grievor was interested in living in Halifax. He testified that he agreed with that plan and that his intent was for the grievor to move there. He testified that the arrangement was that the grievor would work remotely for the Moncton office.

[121] Mr. Munro testified that the department used to have inspectors working out of the Halifax airport but that it has closed that location. At the time of the grievor's hiring, it was in the process of centralizing its operations in Moncton. He testified that the remaining Dartmouth office was focused on the marine inspection part of the department's mandate. The department did not intend to maintain Dartmouth as the reporting location for aviation inspectors, even though some continued to work there. He testified that it anticipated running only some aviation-related testing out of the Dartmouth location.

[122] Mr. Munro testified that nevertheless, he intended that the grievor would live in Halifax and do his work from there.

[123] Mr. Munro also testified that had the grievor moved to Moncton, most of his travel for work would have been routed through Toronto, Montreal, or Halifax. Few of the department's stakeholders are based in Moncton, he said. Operationally, it was of no consequence to him to have the grievor located in Halifax. In fact, he testified that he anticipated saving money on work-related travel by having the grievor located in Halifax.

[124] Mr. Munro was asked why the letter of offer specified Moncton as the location of the position that the grievor was being offered. He testified that it was because the department was trying to bring everyone under one roof, for reporting purposes. He said that he told the grievor that he would be free to live in Halifax and that if he was required to attend in Moncton, he would have to pay for the travel himself.

[125] When asked about what discussions he had with the grievor on relocation assistance, Mr. Munro testified that his intent was to deploy the grievor to Halifax and to pay for his relocation. That said, he said that the decisions about the grievor's eligibility decision laid with the relocation team. He testified that early in his career, he was counselled that anyone making a promise in aviation is lying. As such, he would have spoken only to his intent and would have said that it was not his decision in the end, he testified.

[126] Mr. Munro was asked why management did not change the letter of offer to clarify the location of the position after it realized that the move to Halifax was not being supported by the relocation advisors. He said that sometimes, a letter of offer must be changed for start dates or if issues arise with security checks. He said that it

would be unusual to amend a letter of offer to change the location of a position but was not aware that that option was proposed or considered.

[127] Asked in cross-examination if he understood that the grievor had to live in Halifax as a condition of taking the job, Mr. Munro answered, "Absolutely."

[128] Mr. Munro testified that the relocation costs were covered in his budget and that he had no reason to believe that the plan would not be followed but that the relocation office makes the decisions. He testified that Mr. Mason handled discussions with the relocation office after it informed the grievor that his relocation to Halifax would not be supported. He said that there was a level of frustration on the management side about the situation but that all it could do was communicate its intent. Ultimately, the decision laid with the relocation team.

[129] I will also note that after the relocation advisors initially told the grievor that his move to Halifax would not be supported, he asked them to more precisely define how close he had to live to Moncton to receive assistance. For example, on October 5, 2020, he asked them "…How far is too far? Or: How close is close enough? If I purchased a home in Riverview, Coverdale, Middleton, Sackville, or Truro, NS – would they be close enough?"

[130] On October 6, 2020, the relocation advisors informed the grievor that the intent of the *Directive* is that the employee live within a "… reasonable daily commuting area to the place of duty."

[131] It was not clear from the testimony or the documents accepted into evidence that the grievor was ever provided with a precise answer to what a reasonable daily commuting area from Moncton would have been.

[132] Mr. Sanscartier testified that subsection 3.2.11 of the NJC's *Travel Directive* states that an employee shall not normally be required to drive more than 250 km after having worked a full day and that the relocation staff applied that as a guideline for determining that Halifax is too far from Moncton to qualify for relocation assistance.

[133] Mr. Sanscartier was also asked about a change to the definition of "relocation" when the *2021 Relocation Directive* came into effect on January 1, 2021. He said that the new definition would not change the ruling. He said the location of the principal

residence should still match the letter of offer. He said that the department would not allow a relocation to Calgary, Alberta, for an employee who is supposed to work in Vancouver, British Columbia.

[134] When asked if he was aware that the grievor's area of work responsibility is the entire Atlantic Region, Mr. Sanscartier testified that it is up to management to decide where the work location should be.

B. The grievor's arguments

[135] The grievor argued that the employer improperly denied him relocation assistance under the *Directive*, which is part of his collective agreement. He said that the department's relocation staff failed to follow the plain wording of the *Directive*, failed to consider his actual circumstances beyond what was written in his letter of offer, and applied arbitrary and irrelevant factors to deny him relocation assistance.

[136] The employer should have been guided by the principles set out in the *Directive* such as trust, flexibility, respect, and the application of modern relocation practices, he argued. It applied irrelevant considerations, such as the *Travel Directive*. By failing to follow through on regional management's intent to provide relocation assistance to Halifax and by later denying the grievor's reimbursement request, the employer applied overly restrictive and incorrect definitions of "relocation" and "place of duty", he argued.

[137] When making their determination, the relocation staff considered only the content of the letter of offer, which stated that the position the grievor was being appointed to was in Moncton. By doing so, they ignored the clear definition in the *Directive* of "place of duty", which requires the employer to consider either the location to which an employee reports or the location from which the employee ordinarily performs their work. There was no question that the grievor would at all times ordinarily perform his work from his home in the Halifax area, he argued. In fact, he has not once been required to report to the Moncton office in the years since his appointment to the position.

[138] While it is clear that both the employer and the employee have responsibilities under the *Directive*, the employee's responsibilities flow from those of the employer, the grievor argued. The employer has the responsibility of authorizing expenses in

accordance with the *Directive*, and when the employer fails to fulfil its responsibilities, a grievor cannot be faulted for not following their responsibilities; see *Nowlan v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2021 FPSLREB 34 ("*Nowlan 1*") at para. 57, upheld on this point in *Nowlan v. Canada (Attorney General)*, 2022 FCA 83 ("*Nowlan 2*").

[139] It was also unreasonable for the relocation staff to use the *Travel Directive* as the basis for their decision that Halifax was too far from Moncton to qualify for relocation assistance under the *Directive*, the grievor argued. Relocation staff never provided him with a clear answer as to the maximum distance he could live from Moncton to qualify for assistance, he argued. The *Directive* does not provide restrictions on how far the employee's new residence is from the new location, other than at subsection 1.4.5, which requires the new residence to be at least 40 km closer to the new place of work than the previous residence, he argued. The NJC Executive Committee has granted a grievance in which the grievor had moved approximately 200 km from the workplace he reported to; see its decision numbered 41.4.117, entitled "NJC Relocation Directive — Eligibility", and dated November 8, 2017.

C. The employer's arguments

[140] The employer argued that the grievor did not meet his burden of demonstrating that it violated the *Directive* and therefore the collective agreement. Doing so required the grievor to prove on the balance of probabilities that his interpretation of the *Directive* was appropriate, with clear and cogent evidence; see *Public Service Alliance of Canada v. Treasury Board (Department of Veterans Affairs)*, 2013 PSLRB 165 at para. 67.

[141] In this case, the grievor's letter of offer specified that the work location of his new position was Moncton, the employer argued. His desire to move to Halifax was not eligible for the reimbursement of expenses under the *Directive*. The *Directive* is a strict policy and not a permissive guideline, it argued; see subsection 1.2.3. The employer is responsible for ensuring that public funds are used appropriately and consistently with the provisions of the *Directive*; see subsection 2.1.1.

[142] The employer argued that in the *Directive*, the place of duty is a single permanent location that it determines. It determines whether the place of duty is the place where the employee performs the work or where he or she reports to work, it

argued. In this case, the employer determined that the place of duty was where the grievor was expected to report to: Moncton, N.B.

[143] According to the grievor's testimony, ordinarily, civilian aviation inspectors perform their work all over the Atlantic. They fly to various parts of the region to perform it. There is no single permanent location at or from which they ordinarily perform their work, the employer argued. The inspectors all have the one designated reporting location of Moncton, regardless of what part of the Atlantic they are responsible for or reside in. Clearly, Moncton was the location to which the grievor was expected to report, according to the testimonies of the grievor and Mr. Munro and the letter of offer.

[144] The employer did not establish the Halifax airport as the reporting location because that office was closed, and only some existing employees were moved to temporarily work out of the marine office in Dartmouth, it argued. That is why the reporting location was specified as Moncton.

[145] The grievor never received written authorization from the employer to relocate to the Halifax area, the employer argued. That written authorization is required by the *Directive* before an employee incurs any expenses or makes any claims; see subsections 2.2.2.2 and 2.2.2.7. The grievor's failure to obtain that written authorization disqualified him from participating in the *Directive*; see subsection 2.2.2.2. The *Directive* emphasizes that expenses resulting from a misinterpretation or mistakes will not necessarily be reimbursable and could result in relocation problems and additional personal costs; see subsections 2.2.2.7 and 2.2.2.8.

[146] The grievor had signed a contract to sell his home in Beeton in July 2020 before he received the letter of offer in September 2020, the employer noted. In any case, he would not be eligible for reimbursement for costs related to that sale because it was not the result of a relocation by the employer, it argued; see subsection 2.2.2.3.

[147] According to his testimony, the grievor desired to live in the Halifax area for personal reasons, the employer argued. While Mr. Munro budgeted for the relocation, it was clear from his testimony that he would not have **promised** that expenses would be paid. The letter of offer made it clear that relocation expenses were subject to approval under the *Directive* and that the grievor would have to have those expenses authorized through the department's relocation team.

[148] The employer argued that subsection 1.2.7 of the *Directive* refers to the *Travel Directive*, and therefore, it was reasonable for it to apply the rule that a safe commuting distance was 250 km per day. Following from that, and the requirement to drive both before and after work, a safe commuting distance from Moncton would be 125 km. The grievor's residence in Nova Scotia is 271 km from the Moncton office and therefore outside a safe, driveable distance between his place of duty and residence, it said.

[149] The grievor was not entitled to make whatever personal arrangement he felt necessary and then seek reimbursement for his expenses without written authorization, the employer argued; see *Walzak v. Treasury Board (Department of Health)*, 2015 PSLREB 84 at para. 50. The grievor could not incur relocation expenses without proper authorization and then expect to be compensated from public funds, the employer concluded.

D. Reasons

[150] The *Directive* is far more complex than a single clause within a collective agreement. At close to 100 pages, with dozens of sections and subsections, it is longer than some collective agreements. The responsibilities of employers, employees, and the CRSP alone number nearly 25 subsections; the list of eligible and non-eligible expenses goes on for dozens of pages.

[151] In this case, at the first and second levels of the grievance process, after rejecting the grievance as untimely, the employer rejected it on its merits because it said that the grievor had not received written authorization to move to the Halifax area. The first-level response stated that without that written authorization, the grievor should not have incurred expenses and that he is personally financially responsible for such expenses, referencing subsection 2.2.2.2. The response at level two emphasized that the grievor had moved to Halifax for personal reasons, not operational reasons, and for those reasons, the employer did not provide the written authorization required under the *Directive*.

[152] There is no doubt that the grievor did not have written authorization to relocate to Halifax. The relocation advisors informed him in writing that they would support his move to the Moncton area, although it is not clear whether they ever provided him with a specific description of exactly how close to Moncton he would have to reside.

They informed him in writing that a move to Halifax would not be authorized. When the grievor said that he could not accept a relocation on those terms, the employer informed him that it was closing his CRSP relocation file. Despite that, he collected his receipts, assembled them into a package, and made a claim directly to the employer, rather than through the CRSP. Strictly speaking, on the basis of the provisions cited by the employer in its arguments, it was correct in rejecting the grievance.

[153] However, as was the case in *Nowlan 1*, I must consider the grievor's argument that his responsibilities flowed from the employer's responsibilities. He argued that the employer was wrong to not provide him with written authorization to move to Halifax and that it was wrong to close his CRSP file. All his failures under the *Directive* flowed from its failure, he argued, and the grievance cannot fail solely on the basis of his inability to adhere to his responsibilities; see *Nowlan 1*, at paras. 57, 64, 68 and 69, and *Nowlan 2*, at paras. 34 and 43.

[154] Therefore, the essential question that must be answered is whether the employer **ought** to have authorized the grievor's move to Halifax. Stated another way, the essential question is whether the employer was wrong when it determined that the grievor's move to Halifax did not meet the requirements of the *Directive*.

[155] In the *Directive*, "relocation" is defined as follows:

> ***Relocation*** *(*réinstallation*) - the authorized move of an employee from one place of duty to another or the authorized move of an employee from the employee's place of residence to the employee's first place of duty upon appointment to a position in the public service.*
>
> ***Réinstallation*** *(*relocation*) - Déménagement autorisé d'un fonctionnaire d'un lieu de travail à un autre ou d'une personne nommée à un poste dans la fonction publique de son lieu de résidence à son premier lieu de travail.*
>
> [Emphasis in the original]

[156] In turn, "place of duty" is defined as follows:

> ***Place of duty*** *(*lieu de travail*) - the single permanent location determined by the employer at or from which an employee ordinarily performs the work of his or her position or reports to ….*
>
> ***Lieu de travail*** *(*place of duty*) - Endroit, déterminé par l'employeur, où le fonctionnaire exerce ordinairement ses fonctions ou dont il relève.*

[Emphasis in the original]

[157] The *Directive* that came into force on April 1, 2009, was in effect when the grievor accepted the position and began his relocation. At the time the grievance was filed, the *2021 Directive* was in effect. The *2021 Relocation Directive* contains a different definition of "relocation", as follows:

Relocation *(*réinstallation*) - the authorized move of an employee from one workplace to another. The move consists of the relocation from the principal residence occupied while working at the old workplace, to the new principal residence that will be occupied while working at the new workplace. For greater clarity, the employee must relocate to a new principal residence to be eligible for the reimbursement of relocation expenses.*	***Réinstallation*** *(*relocation*) - déménagement autorisé d'un fonctionnaire d'un lieu de travail à un autre. Le déménagement correspond à la réinstallation à partir de la résidence principale occupée pendant l'emploi à l'ancien lieu de travail à la nouvelle résidence principale qui sera occupée pendant l'emploi au nouveau lieu de travail. Il est entendu que le fonctionnaire doit être réinstallé dans une nouvelle résidence principale pour être admissible au remboursement des frais de réinstallation.*

[Emphasis in the original]

[158] The revised definition of "relocation" in the *2021 Relocation Directive* references "workplace", which is defined as follows:

Workplace/Place of duty *(*lieu de travail*)*	***Lieu de travail*** *(*workplace/place of duty*)*
a) ***Permanent/Regular*** *(*permanent/régulier*) - the single permanent location determined by the employer at, or from which, an employee ordinarily performs the work of his or her position or reports to ….*	*a)* ***Permanent/régulier*** *(*permanent/regular*) - endroit permanent particulier, déterminé par l'employeur, auquel ou à partir duquel, le fonctionnaire exerce habituellement les fonctions liées à son poste ou dont il relève.*

[Emphasis in the original]

[159] Under either set of definitions, the grievor was authorized to move from one place of duty to another. In August of 2020, he was working out of the Pearson International Airport in Toronto; he was the successful candidate for the position

located in the Atlantic and, as reflected in writing in his letter of offer, reporting to the Moncton office.

[160] To be clear, the parties made their arguments in relation to the *Directive* in effect at the time of the move, not the *2021 Relocation Directive*, and I have applied the version in effect at the time of the move.

[161] Although Moncton is undisputedly the location to which the grievor reports, the clear, consistent, and common testimony of both him and Mr. Munro is that Moncton was **not** the location "… at, or **from which**, [the] employee ordinarily performs the work of his … position …" [emphasis added]. Both he and Mr. Munro testified that when the offer of employment was made, they both understood that the grievor would live in Halifax. Both testified that initially, given the COVID-19 restrictions, the grievor was to work from home; however, once travel resumed, it was understood that he would travel to meet with departmental clients from his home or from the Dartmouth office. Particularly striking was Mr. Munro's testimony that the department benefitted operationally from having the grievor based in Halifax because he was closer to many of the clients, and his travel costs were lower than they would have been had he lived in Moncton.

[162] Moncton was **not** the location "from which" the employer planned for the grievor to ordinarily work. The plan — testified to by both the grievor and Mr. Munro — was for the grievor to work from Halifax. With the benefit of the passage of time, it is clear from the evidence that that is how the grievor has performed the job for more than three-and-a-half years (from the time of the move to the date of the hearing). His uncontradicted testimony was that he has never been to the Moncton office. Under the employer's current return-to-the-office mandate, the grievor physically goes to work in the Dartmouth office, along with two or three of his fellow civil aviation inspectors.

[163] Moncton was never intended to be the location from which the grievor worked. It has never been the location from which he works.

[164] It is not abundantly clear from the *Directive* why there are two possible definitions for "place of duty", i.e., "… from which, an employee ordinarily performs the work of his or her position **or** reports to …" [emphasis added]. According to the well-established rules of contract interpretation, each word in a collective agreement

has to mean something. In this definition, the word "or" gives the employer two choices when it determines a place of duty.

[165] In this case, the department's regional management clearly made an agreement with the grievor that he would work out of Halifax. They believed that his relocation would be approved through the departmental relocation advisors. However, the letter of offer stated the location as Moncton. The departmental relocation advisors and their advisors at the Treasury Board Secretariat relied on that word in the letter of offer when they determined that they would not support the grievor's move to Halifax. In effect, they chose to select the location that the grievor "reports to" as the place of duty.

[166] The evidence demonstrates that the relocation advisors at the Treasury Board Secretariat based their decision on the following statement in their email of October 1, 2020: "As there appears to be no operational need to relocate the appointee to Halifax, your department would not be able to authorize a relocation from Toronto to Halifax …".

[167] The evidence also demonstrates that the same day, Mr. Mason replied and said that the conclusion there was no operational need to relocate the grievor to Halifax was wrong. Although that email does describe Moncton as the grievor's place of duty, it states that the grievor is required to be relocated "to a place of his choosing" that allows him to travel to Moncton as and when required by management.

[168] It does not appear to me that the department's relocation advisors ever seriously considered what the department's regional managers had agreed to with the grievor in terms of how he would perform his duties. They saw the word "Moncton" in the letter of offer, and once they checked that box, they did not waver in their assessment of where the grievor's place of duty would be. They did not find a way of assisting regional management and the grievor to find a solution that recognized their clear and unambiguous agreement that the grievor was intended to ordinarily perform his duties out of Halifax.

[169] Mr. Munro and Mr. Mason perhaps could have made their intentions clearer if they had simply stated in the letter of offer the location of the position as "Halifax, reporting to Moncton". Having listened to Mr. Munro's detailed and full corroboration of the grievor's testimony about the content of their discussions, this was clearly the

parties' understanding when the grievor applied for the position, accepted it, and began his move to Halifax. Moreover, it is clearly how the grievor has been performing the work in the years since his move, up to the date of the hearing.

[170] On the facts before me, I conclude that the department's relocation advisors incorrectly identified the grievor's place of duty as Moncton. They ought to have identified his place of duty as Halifax, the location **from which** he was expected to normally perform his duties. As such, the employer erred when it closed his relocation file with the CRSP on October 13, 2020.

[171] Neither party argued why the *Directive* gives the employer the choice of selecting the option of using "or reports to" as the option for determining the place of duty, instead of the option of "… the single permanent location … from which an employee ordinarily performs the work …". I presume that the second option exists to cover those situations in which the ordinary place of work is somewhat ambiguous. This is made clear somewhat because in the *Directive*, the definition goes on to address one particular unique work situation, which is that of Ships' Crews.

[172] Because the *Directive* includes room for discretion, I believe that it is appropriate to consider and apply the overarching principles that form its opening paragraphs, which read as follows:

Principles	***Principes***
The following principles were developed jointly by the Bargaining Agents' representatives and the Employer side representatives to the National Joint Council (NJC). These principles are the cornerstone of managing government relocations and shall guide all employees and managers in achieving fair, reasonable and modern relocation practices across the public service.	*Les principes énoncés ci-après ont été élaborés par les représentants des agents négociateurs de concert avec les représentants de la partie patronale du Conseil national mixte (CNM). Ces principes constituent la pierre angulaire de la gestion des réinstallations du gouvernement et devraient aider tous les membres du personnel et de la direction à établir des pratiques de réinstallation justes, raisonnables et modernes dans toute la fonction publique.*
Trust *- increase the amount of discretion and latitude for employees and managers to act in a fair and reasonable manner.*	***Confiance*** *- accroître le pouvoir et la latitude des employés et des gestionnaires d'agir d'une manière juste et raisonnable.*

Flexibility *- create an environment where management decisions respect the duty to accommodate, best respond to employees' needs and interests, and consider operational requirements in the determination of relocation arrangements.*	***Souplesse*** *- créer un environnement dans lequel les décisions de gestion respectent l'obligation d'adaptation, répondent au mieux aux besoins et aux préférences des employés et tiennent compte des nécessités du service dans l'organisation des préparatifs de réinstallation.*
Respect *- create a sensitive, supportive relocation environment and processes which respect employees' needs.*	***Respect*** *- créer un environnement sensible aux besoins des employés et des processus favorables aux réinstallations.*
Valuing people *- recognize employees in a professional manner while supporting employees, their families, their health and safety in the relocation context.*	***Valorisation des gens*** *- reconnaître les employés d'une manière professionnelle tout en soutenant les employés, leurs familles, leur santé et la sécurité dans les situations de réinstallations.*
Transparency *- ensure consistent, fair and equitable application of the Directive and its practices.*	***Transparence*** *- assurer l'application cohérente, juste et équitable de la directive et de ses pratiques.*
Modern relocation practices *- introduce relocation management practices that support the principles and are in keeping with relocation industry trends and realities; develop and implement an appropriate relocation accountability framework and structure.*	***Pratiques de réinstallation modernes*** *- adopter des pratiques de gestion des réinstallations qui soutiennent les principes et tiennent compte des tendances et des réalités de l'industrie des réinstallations; élaborer et mettre en oeuvre le cadre et la structure appropriés de responsabilisation des réinstallations.*

[173] Applying those principles to the grievor's situation, I find that the employer's relocation advisors did not operate in a flexible manner. In the context of this relocation, they did not fully "consider [the] operational requirements" of the position and did not "best respond to [the grievor's] needs". They also did not provide him and his regional managers with the "discretion and latitude" to make the relocation arrangements that they intended to make. The regional managers in the department intended that the grievor would receive support for his relocation to Halifax; they clearly had in mind a solution that balanced benefits to him (assistance with his move) with the benefits to the department (hiring a fully trained inspector into an important, high-level position, and the benefits of having him work out of Halifax to provide

services across the region at a lower cost than had he moved to Moncton). I do not find that they adequately valued and assessed the grievor's needs and those of his family.

[174] I do agree that the employer needs to "… ensure consistent, fair and equitable application …" of the *Directive*, as stated in the fifth principle. Per *Walzak*, employees are not entitled to simply interpret the *Directive* on their own. Using that principle, and other provisions of the *Directive*, the employer would have the right to reject a relocation to a location that had been chosen for purely personal reasons. However, on the facts of this case, the grievor's move to Halifax was not for purely personal reasons. It provided mutual benefits to him and the employer.

[175] Beyond the application of the *Directive*'s principles, the selection of Halifax as the grievor's place of duty is also consistent with subsection 1.2.1, which reads as follows:

1.2.1 It is the policy of the government that in any relocation, the aim shall be to relocate an employee in the most efficient fashion, at the most reasonable cost to the public while having a minimum detrimental effect on the employee and his/her family and on departmental operations.	*1.2.1 Dans toute réinstallation, la politique du gouvernement est qu'il faut viser à réinstaller le fonctionnaire de la façon la plus efficace possible, c'est-à-dire en veillant à ce que le coût soit le plus raisonnable possible pour l'État et à ce que le processus engendre le moins possible de conséquences négatives pour le fonctionnaire, sa famille et les activités du ministère.*

[176] Again, the grievor's move to Halifax represented a choice that provided benefits to both him and the operation of the department.

[177] Under subsection 1.4.2 of the *Directive*, the employer is obligated to authorize relocation expenses that fall within the scope of the *Directive*; see *Nowlan 1*, at para. 60, *Nowlan 2*, at para. 31, and *Gagnon v. Treasury Board (Correctional Service of Canada)*, 2017 FPSLREB 48 at paras. 36 to 38. The employer did not have the discretion to simply withhold providing the written authorization referenced at subsection 2.2.2.2 and therefore deprive the grievor of his ability to claim relocation expenses.

[178] Once again, the grievor's failure to fulfil his responsibilities under the *Directive* flowed from the employer's error, and the grievance cannot fail solely on the basis of

his inability to adhere to his responsibilities under the *Directive*; see *Nowlan 1*, at paras. 57, 64, 68, and 69, and *Nowlan 2*, at paras. 34 and 43.

[179] I have not relied on the grievor's argument that his letter of offer promised that he would receive relocation assistance and that therefore, the grievance should be allowed. The letter was clear that he would receive relocation assistance in accordance with the *Directive* and that he had to contact the departmental relocation advisors to arrange it. In any case, the grievor did not argue detrimental reliance.

[180] Given my conclusion that the employer should have recognized Halifax as the grievor's new place of duty, there is no need for me to weigh into an assessment of the calculation of what a reasonable commuting distance from Moncton might have been and whether his residence in Halifax falls outside that.

VI. Conclusion and remedies

[181] At the outset of this decision, I set out the four issues that the Board had to decide to determine this grievance.

[182] The first issue was whether the grievance was timely, and I have found that it was not. I hope that decision sends this message to the grievor and his bargaining agent: the timelines in the grievance process matter. In this case, the grievor had 25 working days to file a grievance from when he was aware of the dispute giving rise to it. He was clearly aware by October 13, 2020, and I have calculated that he had until November 18, 2020, to file his grievance. His grievance might well have failed on that basis.

[183] The second issue was whether the employer failed to adhere to the requirements of s. 95(3) of the *Regulations* when it made its timeliness objection known to the Board. While a more fulsome explanation could have been provided, I found that the reasons for employer's objection had been clearly set out in its grievance replies, that those reasons were easily evident to the Board, and that the evidence demonstrated that the grievor and his bargaining agent were fully aware of the reasons for the objection.

[184] The third issue was whether it is in the interest of fairness for the grievor to be granted an extension to file his grievance under s. 61 of the *Regulations*. I have concluded that it is.

[185] The final question was whether the grievance should be granted on its merits.

[186] I find it unfortunate that the NJC Executive Committee chose not to address the merits of the grievance during its deliberations. Its final-level reply addressed only the timeliness issue. Consistent with its overall mandate to co-develop certain workplace terms and conditions of employment, the NJC has a unique process for resolving grievances that allows it to determine whether employees have been treated within the intent of its directives. The parties and the Board might have benefited from an answer from the NJC on the merits of the grievance.

[187] That said, the Board is mandated to decide the grievance based on an interpretation of the collective agreement, which includes the *Directive*.

[188] I have found that the employer incorrectly determined that Moncton was the grievor's place of duty under the *Directive*. The facts of the case demonstrate that his place of duty was Halifax. He should have been given written authorization to relocate to Halifax, and his access to the reimbursement of his relocation expenses should have flowed from that.

[189] In my view, it is somewhat unfortunate that the employer and the grievor were unable to work out an easier solution to accomplish what clearly both he and regional management desired, such as an amendment to the letter of offer to address the issues raised by relocation advisors.

[190] In my view, the appropriate remedy in this case is for the employer to reimburse the grievor for the relocation expenses he would have been entitled to, had the employer appropriately recognized his new place of duty as Halifax.

[191] Given the number of issues addressed at the hearing and in the written arguments, I informed the parties that I would not hear detailed testimony or evidence with respect to the grievor's actual expenses during the days set aside for the hearing. I informed them that in the event that the grievance was granted, I would give them time to reach agreement on which expenses are eligible for reimbursement under the *Directive*, and that I would remain seized of the dispute if they could not reach an agreement. My order follows this direction.

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

(The Order appears on the next page)

VII. Order

[193] The employer's objection that the grievance was untimely is allowed.

[194] Under the provisions of s. 61 of the *Regulations*, I grant the grievor an extension of time to file his grievance until May 14, 2021.

[195] The grievance is allowed.

[196] I direct that the parties determine which relocation expenses incurred by the grievor in his move from Ontario to Halifax, N.S., were eligible for reimbursement under the *Directive* and that the employer compensate him for those expenses within 120 days from the date of this decision.

[197] The Board will remain seized of any disputes as to the determination of the grievor's eligible relocation expenses, provided that they are brought to the Board's attention within 120 days from the date of this decision.

September 11, 2024.

David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board