Date: 20250409

File: 566-02-38384

Citation: 2025 FPSLREB 34

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

MARK TIGLMANN

Grievor

and

TREASURY BOARD
(Department of Fisheries and Oceans)

Respondent

Indexed as
Tiglmann v. Treasury Board (Department of Fisheries and Oceans)

In the matter of an individual grievance referred to adjudication

Before: Audrey Lizotte, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Zachary Rodgers, counsel

For the Respondent: Simon Ferrand, counsel

Heard by videoconference,
November 9, 10, 28, and 29, 2023, and January 3 and 4, 2024,
and on the basis of written submissions,
filed February 16 and April 5 and 26, 2024.

REASONS FOR DECISION

I. Introduction

[1] The Nootka lightstation ("the lightstation") has provided continual service to the maritime community since 1911 for safe navigation along the west coast of Vancouver Island in British Columbia. The lightstation is located on San Rafael Island ("the island") which is a very small island connected to the larger Nootka Island by a strip of land that is only traversable at low tide. As of the events at issue in this decision, it was staffed year-round with a principal lightkeeper (PLK) and an assistant lightkeeper (ALK).

[2] In January 2006, Mark Tiglmann ("the grievor") became the lightstation's ALK for the Department of Fisheries and Oceans ("the employer'') and lived on the island with his spouse in what was then referred to as "the ALK's house". The house is located approximately 30 to 50 feet from the PLK's house, which is the only other house on the island. Upon the PLK's retirement in 2009, the grievor assumed that role, and his spouse became the ALK. As they were a couple, one of the two houses became vacant. As will be explained in this decision, the grievor believed he had an ownership interest in that vacant dwelling.

[3] The dispute that led to this grievance arose from the respondent's decision to use the vacant dwelling to house staff ("the IRB crews") from the Canadian Coast Guard Inshore Rescue Boat Program ("the IRB program"), who perform coast-guard duties during the high-volume boating months, which are roughly from June to August each year.

[4] The grievance, dated April 21, 2016, was referred to the Federal Public Sector Labour Relations and Employment Board ("the Board") on May 10, 2018. For ease of reading, the term "Board" in this decision refers to the current Board and any of its predecessors.

[5] The grievance sought compensation of $20 per IRB crew member for each night that they stayed at the lightstation during the summer months of 2010 to 2016, although compensation for 2016 was withdrawn during the hearing. It also requested that the grievor be made whole.

[6] The collective agreement between the Treasury Board and the Public Service Alliance of Canada ("the bargaining agent") for the Operational Services Group that expired on August 4, 2018, and its predecessor that expired on August 4, 2014 (collectively referred to as "the collective agreement"), contain group-specific appendices for some of the operational groups. Those for the lightkeepers are found in Appendix F. The terms of the collective agreement that the grievor relied on remained unchanged throughout the relevant period.

[7] The collective agreement did not refer to a right to be paid $20 per night for overnight guests at a lightstation. Rather, it provided that the parties agreed "… to the principle of charging visitors on travel status for meals and overnight accommodation supplied by the [l]ightkeeper" and that they would "… consult on the matter of rates to be charged."

[8] The respondent denied the grievor's compensation request on the basis that the IRB crews were not on travel status. He did not contest their travel status. However, per the grievance, the sum of $20 per night was based on "the usual practice" and on a document that the respondent had prepared, entitled *Identifier 028*, which purported to establish those rates.

[9] During and shorty before the hearing, the grievor's representative made several arguments that according to the respondent had not previously been made. He referred to collective agreement provisions that had not been previously identified and argued that the parties' past practice was enshrined in the collective agreement, that management had used its residual management rights unreasonably, that the grievor was entitled to relief under the doctrine of unjust enrichment or *quantum meruit*, that the grievor had been discriminated against on the basis of family status, and that the grievor was entitled to additional damages not stated in his grievance.

[10] The respondent raised numerous preliminary objections. Relying on *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.), it claimed that the grievor's new arguments represented new grievances and therefore should be dismissed. Alternatively, it claimed that the new grievances were untimely. It also argued that the grievor lacked standing to file the grievance and that the Board does not have the jurisdiction to apply the doctrine of *quantum meruit* on a standalone basis or to review the exercise of the respondent's management rights.

[11] The respondent did not object to the grievance's timeliness. However, it argued that since the grievance was ongoing in nature, any remedy should be limited to the 25 days before it was filed.

[12] For the reasons that follow, the grievance is denied.

II. Summary of the relevant evidence

[13] The grievor testified on his behalf. The respondent called Paul Barrett, Nathan Webb, and Steve James.

[14] Mr. Barrett was the supervisor of lightstation operations from 2015 to 2017. He supervised 27 PLKs located at several lightstations and was the grievor's direct supervisor when the grievance was filed. Mr. Barrett replaced Glenna Evans in her role. She was not called to testify; however, she is referenced in the evidence, as she was the grievor's supervisor during the relevant period of 2010 to 2015.

[15] Mr. Webb worked within the Canadian Coast Guard's operations and was the officer in charge of the IRB program from 2011 to 2017. He and the grievor had no reporting relationship; however, they interacted a few times as a result of the IRB crews' presences at the lightstation.

[16] Mr. James was a production manager with the respondent's Maritime Infrastructure Division from 2013 to 2019. He was responsible for overseeing infrastructure maintenance projects. His team, made up of general labourers and skilled tradespeople, was responsible for maintaining and repairing both fixed and floating navigational aids. He testified to the housing accommodations provided at lightstations during those projects.

A. The lightstation

[17] The lightstation is 1 of approximately 26 staffed lightstations on the Canadian west coast. It encompasses a number of structures, including two residential dwellings at the top of the island and a boating dock at the bottom. Connecting them is a trolley to bring goods up and down the hill, which the lightkeepers operate.

[18] It is also a national historic site, a native reserve, and a view point on a hiking trail. Each summer, the island receives hundreds of visitors, who arrive by boat tour or by land.

B. The grievor's work history and responsibilities as a lightkeeper

[19] The grievor started as a relief lightkeeper in 2003. In January 2006, he became the ALK at the lightstation and lived on the island year-round with his spouse, who was a relief lightkeeper in the area. They resided in one of the two available houses. The PLK occupied the other house until his retirement in January 2009. At that point, the grievor became the PLK, and his spouse became the ALK. This caused one of the two houses to become vacant.

[20] He testified that when the PLK retired, they were supposed to move into his house, but that it did not make sense to move, so the PLK's house became the ALK's house.

[21] He stated that he purchased the furniture from the departing PLK and furnished the rest of the dwelling with beds, to make sure that their relief keepers had a place to stay. A bill of sale was entered into evidence in support. However, both Mr. James and Mr. Barrett testified that they were not aware of it.

[22] Mr. Barrett stated that it was the respondent's responsibility, not the PLK's, to furnish the spare house. On cross-examination, he agreed with the statement made by the grievor's counsel that had the grievor furnished the house, it would probably have been more consistent with it being the ALK's house. However, in redirect examination, he stated that he did not believe that placing furniture in a spare dwelling makes it an ALK's dwelling.

[23] The witnesses agreed that dwellings at lightstations are not formally identified as PLK or ALK dwellings and that sometimes, there has been a third dwelling, called the "crew" or "spare" house. Mr. Barrett testified that one of the lightstations had only one house, which the PLK and ALK were required to share.

[24] The grievor testified that he worked independently and that he took care of things on his own. He communicated with his superiors mostly by email or telephone. He saw his supervisor approximately once per year, or more often if he needed to take some leave. Mr. Barrett confirmed that the lightkeepers worked independently.

[25] In terms of his duties, the grievor said that he was responsible for issuing weather reports for mariners every three hours and for other scientific observations and reports. He was also responsible for the general maintenance and upkeep of the

premises, such as painting and washing buildings, gardening, mowing grass, shovelling snow, changing the oil in the generators, and operating the trolley.

[26] He said that he and his spouse worked on 12-hour shift rotations and that they were the lightstation's eyes and ears. They monitored the radio 24-7 and occasionally dealt with mayday calls. He stated that they went above and beyond the call of duty. It was obvious from his testimony that he took great pride in his work and that he treated the lightstation as if it were his own.

C. The IRB program

[27] Mr. Webb testified that he was in charge of the IRB program, which consisted of four temporary Coast Guard stations that were set up to manage the increased boating traffic during the summer months. Each temporary station housed two rotating three-person crews made up of a coxswain and two summer students. The coxswains reported directly to him. Those IRB crews rotated every two weeks. The Nootka IRB crews were the only ones co-located with a lightstation. All other IRB crews were located in rented, privately owned premises.

[28] He stated that the IRB crews were subject to Appendix G of the collective agreement, which is specific to ships' crews. While stationed at the lightstation, the IRB crews were not considered on travel status.

[29] The IRB crews were responsible for cleaning their accommodations. At the end of the season, the last IRB crew was responsible for leaving the location in the same condition as it was found. It was the coxswain's responsibility to ensure that that was done. Several documents were entered into evidence that confirmed the IRB crews' cleaning responsibilities. Each IRB crew received a copy of those instructions during their training, and a checklist was to be completed at the end of each two-week rotation, to confirm that it had been done.

D. The IRB crews' presences at the lightstation before 2010

[30] The grievor testified that the IRB crews stayed at the lightstation during two summer seasons before he arrived in 2006. During those seasons, the ALK was relocated to a nearby lightstation at Estevan Point. He stated that he obtained assurances before taking the ALK position that he and his spouse would not be relocated from the island during the summer season to accommodate the IRB program.

E. The IRB crews' presences from 2010 to 2015

[31] In 2010, the respondent decided to use the vacant dwelling at the lightstation to house its IRB crews during the summer months. The grievor testified that John Palliser, then the manager responsible for the IRB program and Mr. Webb's predecessor, came to the lightstation to inform him of that decision. The grievor stated that he agreed with it since he was a businessperson and the decision made sense to him. He stated that Mr. Palliser noticed that the dock was not appropriate for the IRB crews and promised to replace it and to refurbish the second house with new furniture. However, the dock was not repaired, and it became an issue of discontent from that point on. The grievor stated that it was repaired only after he left in 2016.

[32] Mr. Webb stated that before the IRB crews' arrival in 2010, the respondent furnished the house with beds, dressers, linen, and pots and pans and replaced the couches as they were worn out. It subsequently replaced the washer, dryer, and fridge. At the end of each season, the IRB crews would leave all their linen, dishes, and furniture behind so that contractors or tradespeople could use them during the IRB program's off season.

[33] In terms of instructions or guidance on how to deal with the IRB crews, the grievor testified that he received none other than being told that he had nothing to do with the IRB program.

[34] The grievor testified that after Mr. Palliser's retirement in 2011 or 2012, he saw Mr. Webb once per year, at the beginning of the season, for a site inspection. He stated that Mr. Webb would take inventory of the furniture and verify whether the internet and computers were working. The grievor shared his internet and cable-television services with the IRB crews during the summer seasons, and the respondent reimbursed him half the cost. On cross-examination, he agreed that he was not required to share those services but that he chose to.

[35] A significant amount of evidence was provided about the day-to-day living and working relationship between the grievor, his spouse, and the IRB crews. I have not reproduced it, as it is not relevant to my determinations in this case. Suffice it to say that the grievor spoke to the relationship being generally positive; however, it soured at the end of the 2015 season, when the IRB crews left the house in a state of uncleanliness that he viewed as unacceptable.

[36] He also spoke to the extra duties required of him, such as having to take a day every two weeks to bring the IRB crews' belongings up and down the hill on the trolley during the shift changeovers, which Mr. Barrett disputed. He said that it would probably have taken only an hour of the grievor's time. However, he also acknowledged that he had no direct knowledge of it and that he spoke based only on his general experience. He stated that the trolley duties were the only additional ones required of the lightkeepers to accommodate the IRB program.

[37] However, Mr. Barrett added that the presence of the IRB crews did represent a loss of privacy for the lightkeepers in this case, as the island is small. If an IRB crew were tasked in the middle of the night, it would no doubt have disturbed the lightkeepers, due to the noise.

[38] Mr. Webb also testified that the relationship had always been cordial and that he did not have any indication of a problem before the end of 2015.

F. *Identifier 028*

[39] *Identifier 028* was entered into evidence. It was dated May 3, 2016. However, the witnesses agreed that it must have existed before then. The superintendents for the Marine Aids Program and Maritime Civil Infrastructure signed it. No one could speak to what, if any, changes were made to it on or before May 3, 2016.

[40] It referred to clause 5.05 of Appendix F of the collective agreement and provided as follows:

> …
>
> *4. In Accordance with the Operational Services collective agreement Appendix F Section 5.05 "The Employer and the Alliance agree to the principal of charging visitors on travel status for meals and overnight accommodation provided by the lightkeeper. Both parties will consult on the matter of rates to be charged."*
>
> *Through consultation, the rates to be paid to the lightstation personnel for the maintenance and upkeep of spare dwellings when there have been guests overnight has been established at:*
>
> - *$10.00 per night per person in the spare dwelling*
> - *$20.00 per night in the lightkeepers dwelling*
>
> *a. Payment shall be made to Lightkeepers prior to the Visitor departure from the Lightstation*

5. All individuals who use the spare house are required to pay the $10.00 per night with the exceptions of relief lightkeepers. Relief lightkeepers will be responsible for all of the maintenance and upkeep of the spare dwelling while they occupy it.

6. Lightstation personal will be expected to provide the following maintenance in the spare dwellings:

a. Dwelling inspected prior to visitor arrival and prepared for occupancy- clean and aired out

b. Fresh linens for beds at the beginning of stay and each 5 days of occupancy.

c. Floors swept and washed (every other day)

d. Bathroom cleaned (every other day)

e. Oven cleaned at the end of each stay

f. Fridge cleaned at the end of the stay.

i. if ITS crews are returning to the lightstation to complete a job, freezer items, dry goods and condiments may be left behind and will not be thrown away.

g. Windows will be washed at the end of each stay

h. Mattress will be flipped at the end of each stay

7. The following is expected of the individuals that use the dwelling:

a. Ensure that MNS is advised of their arrival date so that Lightkeepers are able to prepare dwelling

b. Individuals are responsible for doing their own dishes.

c. Individuals are responsible for their own personal laundry

d. Beds will be stripped and linens ready to be washed by the lightkeeper. Clean linens will be provided, for individuals to remake their own beds.

e. Garbage and recyclable items will be separated and bagged for the lightkeeper to dispose of.

f. The dwelling will be maintained in a clean tidy manner during a stay and left in a clean tidy manner prior to departure.

i. If items are left on the floor on the day the lightkeeper is coming in to clean they will not be picked up they will sweep or vacuum around individual's personal items.

g. In accordance with Federal Government "No Smoking Policy", the spare dwellings will be non smoking and there will be no animals staying in the residence.

8. It is expected that any deficiencies as to the condition of the dwellings or compliance with the individual responsibilities noted

> *in this procedure shall be discussed on Station and resolved to the satisfaction of both parties in a professional manner. Should however, suitable corrective action cannot be determined; the issues shall be forwarded to the respective supervisors for follow up and prompt resolution.*
>
> …
>
> [*Sic* throughout]

G. The grievor's initial payment request

[41] On May 28, 2015, the grievor emailed Ms. Evans, Mr. Barrett's predecessor. He informed her that it had come to his attention that he should charge the IRB crews while they stayed at the lightstation "… as per identifier 028 of the policy manual", as it stated that "[a]ll individuals" had to pay the nightly rental. He testified that his bargaining agent and several other lightkeepers had brought it to his attention.

[42] On cross-examination, the grievor stated that he tried to obtain compensation earlier than May 28, 2015; however, Ms. Evans was not able to do anything about it. He also stated that no one, including his bargaining agent, told him that he should file a grievance.

[43] In an email of June 4, 2015, Ms. Evans responded. She denied his request. She stated, "Lightstation dwellings are Crown Provided Accommodation and therefore, management reserves the right to assign the accommodations accordingly." She added, "The fee is not a rental but considered a stipend and is intended to compensate lightkeepers for [*sic*] requirement to do all of the cleaning of the dwelling as per the attached lightstation procedure." She stated that since he was not responsible for doing the cleaning, he could not charge the daily rate per person.

[44] Although the email referred to an attachment (i.e., the lightstation procedure), it was not entered into evidence. However, it is reasonable to assume that she was referring to *Identifier 028*, as it was entitled, "Lightstation Procedures Manual", and detailing the cleaning duties expected of a lightkeeper in exchange for the nightly fee.

[45] The grievor responded on June 7, 2015, indicating his disagreement. He stated that his opinion was that the spare dwelling was his spouse's, as the ALK, and that an ALK house was necessary in the event that he had to be absent and a relief keeper was sent to the island. He stated that while he and his spouse did not do the daily cleaning

for the IRB crews, they did a deep clean before an IRB crew arrived and after it left. In terms of the amount of time spent cleaning the second house, he testified that it depended on different things and that sometimes, it could be several days, if the IRB crew left a horrible mess. However, he stated that generally, it took one day to give the place a good clean.

[46] Referring to his job description, the grievor testified that the work required to deal with the IRB crews was not part of a lightkeeper's duties and that he was the only lightkeeper who had to deal with it.

[47] In the June 7, 2015, email, the grievor also stated that since the property was no longer considered the ALK's house, he and his spouse would remove all their furniture from it and would no longer provide internet and cable-television services to the IRB crews. He testified that he disconnected the internet service and that the respondent replaced it the very next day.

[48] On November 19, 2015, the grievor's spouse emailed Ms. Evans, to inform her that she would move back into the ALK's house after their holidays. However, the grievor testified that after that, they decided not to since it would have made matters worse.

[49] On November 28, 2015, the grievor emailed Ms. Evans, to provide additional information for the respondent to consider at a meeting set for the following week between Ms. Evans, Mr. Webb, and other management representatives. The grievor wrote that he had been told many times that he did not have to do anything for the IRB crews, as they were a separate entity. However, he and his spouse performed a deep clean before each IRB crew's arrival and departure each season. He reiterated that he was asking for "… the $10 per night per person that is given to everyone else with visitors on [*sic*] station."

[50] The grievor testified that he only vaguely recalled that email. He stated that he thought that it had to do with the time in 2015 when an IRB crew left the house in an absolute mess. On cross-examination, he stated that he then called his supervisor and was told that the respondent would send a cleaning crew, to clean it up. He stated that that did not make sense to him since sending that cleaning crew would have cost $20 000. He stated that he and his spouse decided to clean it up. He added that they had to since a relief lightkeeper was to arrive the next day. When asked whether it was the

same mess that he had indicated required three days of cleaning, he replied that he started cleaning the night before and that the next day, he and his spouse got together and finished cleaning it.

[51] Mr. Webb stated that he was not made aware of the mess at that time but that he would have sent the IRB crew back to clean it up, had he known about it. He stated that he learned of it only on September 29, 2016, when he was copied on an email from the grievor's bargaining agent that spoke of it. He stated that because it was not informed, the IRB crew was not provided an opportunity to make it right.

H. The grievor's decision to file a grievance

[52] On April 21, 2016, the grievor filed this grievance. He testified that he did so after Mr. Barrett visited the lightstation. He stated that he told Mr. Barrett that he apologized but that he had a ton of issues that had to be resolved. He then walked him around the island and showed him all the issues. He stated that in response, Mr. Barrett told him that he would have to file a grievance.

[53] Mr. Barrett corroborated that he went to the lightstation. He stated that also present were Mr. Webb, one of the coxswains for that season, and a bargaining agent representative. He stated that they all met with the grievor and that he brought them around the island and shared all his concerns. Mr. Barrett stated that the grievor was visibly upset, smoked heavily, spoke loudly, and appeared stressed. He stated that the grievor's main concern was the loss of privacy since he and his spouse were used to the quiet and had to get up at 3:00 a.m., so he wanted to ensure that the IRB crews were mindful of that and addressed the noise levels. Mr. Barrett stated that he believed that that was a legitimate concern.

[54] Mr. Barrett was referred to a report that an investigator prepared on September 18, 2017, which looked into the issues that the grievor raised. It states that the meeting took place on April 17, 2016, and that the grievor informed Mr. Barrett of his ill health and that he would likely go on sick leave if the IRB crews returned to the lightstation for the 2016 summer season. Mr. Barrett confirmed that the report accurately reflected the facts as he remembered them.

[55] The grievor entered into evidence a chronology of events written by his spouse. It is dated May 25, 2016, and provides a contemporaneous account of some of the

events that occurred. It states that he decided to file the grievance upon returning from his holiday since he had concluded that it was the only way to find a resolution to the situation. It also states that Mr. Barrett visited the lightstation on April 17, 2016.

[56] The grievor testified that the accepted norm referred to in his grievance was that if someone stayed in an ALK's house, they paid $10 per night, and if they stayed in a PLK's house, they paid $20 per night. When asked how he knew of those amounts, he replied that it was through reading *Identifier 028* and because his bargaining agent pointed it out to him.

[57] In cross-examination, Mr. Barrett confirmed that the content of the grievance reflected the points that the grievor raised during his visit with him.

I. The past practice

[58] The grievor testified that he charged $20 per night several times over the years when other visitors, who were not IRB crews, stayed at the lightstation. He stated that he did not seek permission; he just did it. He stated that he did not do the daily cleaning since most of them did not want him going through their belongings, so it was generally done at the end of their stays.

[59] As for examples, he stated that a maintenance crew of contractors arrived for four months in 2014 or 2015 as part of a large project to remove asbestos from the lighthouse. He stated that he provided them with fresh linen every week and that he offered to sweep their floors every day but that they did not want it.

[60] When asked what he did to verify whether that crew was on travel status, the grievor responded that he had never heard of that requirement before. He stated that the Coast Guard had dreamed up the requirement after the fact. To his understanding, everyone who came to his lightstation was travelling.

[61] Mr. James corroborated that his maintenance crews stayed at lightstations while working on infrastructure projects. He testified that per the National Joint Council's *Travel Directive*, they were considered on travel status while working on those projects, as they were more than 16 km from their workplaces.

[62] He stated that they paid $10 per night if they stayed in a spare dwelling, or $20 per night if they had to share an accommodation with a lightkeeper by staying in a

spare bedroom. He also described other times when the ALK would move into the PLK's house, to free up the second house; they would also pay $20 per night. He stated that the payment was made to the PLK but that he did not know if it was subsequently shared with the ALK.

[63] Mr. James stated that sometimes, a lightkeeper could be sent to a nearby hotel, to make space for a maintenance crew.

[64] Mr. Barrett testified that in 2015, 11 of the lightstations had similar PLK-ALK couples, which created the same situation of having spare dwellings that maintenance crews could use, rather than having to stay with a lightkeeper.

[65] Mr. James testified that the longest that one of his maintenance crews stayed in a house was usually two weeks; however, rarely, it could be three weeks. He said that they would bundle many small projects together, to make the trips more efficient. Mr. Barrett corroborated that maintenance crews would usually stay only for short periods. Their presence at lightstations was fairly routine. Sometimes, specialized crews were required, so contractors would also stay at the lightstations. They would pay $10 per night. He was not aware of their travel status but stated that it was likely indicated in their contracts. No such contracts were entered into evidence.

[66] Mr. James testified that his maintenance crews stayed in the lightstation's spare dwelling during the IRB program's off season and that they paid the grievor. He stated that they should have paid $10 per night and said that if they were charged $20 per night, then that was wrong.

[67] Mr. James and Mr. Barrett testified that the maintenance crews made payments under clause 5.05 and under the rates set out in *Identifier 028*. Both agreed that that did not apply to the IRB crews, as they were not on travel status while at the lightstation and were expected to do their own cleaning.

J. The events that followed the grievance

[68] On May 3, 2016, Mr. Barrett and Mr. Webb entered into a memorandum of understanding ("the MOU") to clarify the responsibilities of the grievor and the IRB crews at the lightstation. Their respective superintendents cosigned it. The MOU purported to address the concerns that the grievor identified in his November 28, 2015, email to Ms. Evans. In terms of compensation, it provided that each IRB crew

would pay $10 per night per person ($140 per tour per person) for accommodation and cleaning, payable at the end of each IRB crew rotation. It specified that the cleaning and servicing duties of the secondary dwelling were those listed in *Identifier 028*.

[69] During his testimony, the grievor was unclear as to whether he had received a copy of the MOU; however, Mr. Barrett testified that he provided the grievor with a copy after it was signed.

[70] During his cross-examination, the grievor was asked whether he recalled that his bargaining agent had disagreed with it. He replied that he had not seen it but that his bargaining agent had told him that he and his spouse were being turned into maids.

[71] Both Mr. Barrett and Mr. Webb testified that the MOU was an attempt to address the concerns that the grievor had raised. However, later, their respective management informed them that they had overstepped their authority and that they were not authorized to sign the MOU, as it was contrary to the collective agreement. As a result, it was never applied. That was also reflected in the investigation report dated September 18, 2017.

[72] Mr. Barrett stated that the MOU was written at the same time as *Identifier 028*. He stated that the authors referred to it in their MOU since management had approved *Identifier 028*. He stated that the reason that they included the payment of $10 per day in the MOU was to be nice and to address the issues that were present. He stated that the other big change was to make the lightkeepers responsible for cleaning since otherwise, it was the IRC crews' role.

[73] In cross-examination, Mr. Barrett agreed that *Identifier 028* likely existed before April 2016. He stated that he was not aware of the changes that were made to it on May 3, 2016, or why the changes were dated the same date as the MOU. He stated that he did not have any input into any amendment to *Identifier 028* as it pertained to a lightstation policy and that he is not a part of that organization.

[74] Mr. Barrett stated that due to his naiveté, he did not include the bargaining agent in the MOU's preparation, and that at that time, he did not consider the impact that it would have on all the other stations across the country. He stated that they had been focused only on trying to make everyone happy at the lightstation.

[75] Mr. Barrett stated that he could not recall when he was told that the MOU would not be implemented. He assumed that it was at some point before the start of the IRB program's season. He stated that since it was never implemented, there is also no document retracting it.

[76] The grievor stated that the respondent believed that he was against having the IRB crews stay at the lightstation. Mr. Barrett confirmed that that was his understanding in 2016. However, the grievor testified that that was not so. He said that that is when all the mudslinging began and it became a toxic workplace for him and his spouse. When asked on cross-examination whether he had considered making a complaint under the respondent's anti-harassment policy, he replied that he had not even wanted to file this grievance but that nothing was being resolved, and Mr. Barrett told him that he should file one.

[77] On May 20, 2016, the grievor and his spouse went on medical leave. He testified that the stress and anxiety became unbearable, so they left.

[78] A redacted copy of an administrative review report was entered into evidence on the parties' consent. According to it, in late June 2016, the director of the Coast Guard Programs Branch decided that an administrative review was required, to look into the concerns that the grievor and his bargaining agent had raised about the issues at the lightstation.

[79] The grievor confirmed being aware of it. When asked what his involvement had been, he replied with this: "Zero. I had a half-hour interview. That was it."

[80] The grievor and his spouse never returned to the lightstation and have since retired.

K. The grievance replies

[81] In an undated second-level response, the grievance was denied on the basis that the collective agreement supported compensation only when visitors were on travel status. The response stated that since the IRB crews were not on travel status, no compensation was warranted. It added this:

…

> *… However, I do recognize that clarity is required to manage the co-existence of the IRB crew and yourself while they are deployed*

> *at the light station [sic]. I recommend that explicitly clear direction be provided by management to you and IRB crews on the topic of services and the overall workplace environment. The direction provided and the mechanisms to enforce this direction should be utilized without contravening or changing existing collective agreement language or applicable policies.*
>
> …

[82] A third-level hearing was held on October 27, 2017. In the final-level reply dated April 3, 2018, the respondent reiterated its position that no compensation was owing, as the IRB crews were not on travel status. It added the following: "When the IRB [crews] are deployed at Nootka Light station [*sic*], they are not entitled to nor do they claim any expenses under the Travel Directive. Their lodging, a departmentally owned building, and meals are covered by [the respondent]."

III. Summary of the arguments

A. The grievor's submissions

[83] The grievor seeks compensation of $20 per day, per person, for each day that the IRB crews occupied the lightstation from 2010 to 2015. In addition, he seeks compensation under ss. 53(2)(e) and 53(3) of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*) in the amounts of $10 000 for pain and suffering and $10 000 for wilful and reckless discrimination. A number of arguments were raised to support those claims. The following summarizes those arguments.

1. Claim that Appendix F and a past practice were breached

[84] The grievor submitted that the respondent violated Appendix F. He argued that a past practice existed that required paying lightkeepers for overnight stays at lightstations for all visitors other than relief keepers. He submitted that that practice was enshrined in the collective agreement and that I have jurisdiction to enforce it.

[85] The grievor based his argument on the principles that collective agreements should be interpreted "… in their entire context, in their grammatical and ordinary sense, and harmoniously with the scheme of the agreement, its object, and the parties' intention" (see *Communication, Energy and Paperworkers Union, Local 777 v. Imperial Oil Strathcona Refinery*, [2004] A.G.A.A. No. 44 (QL), cited in *Genest v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 31 at para. 51). When searching for the

parties' intention, the cardinal rule is that the parties are assumed to have meant what they said.

[86] If the words are capable of bearing two constructions, the more reasonable one, which produces a fair result, should prevail, and an adjudicator cannot add or eliminate words to or from a collective agreement (see *Allen v. National Research Council of Canada*, 2016 PSLREB 76).

[87] The grievor relied on clause 5.05 and Annex C of Appendix F. He acknowledged that clause 5.05 referred to "visitors on travel status"; however, he pointed to Annex C's guarantee of maintaining past practices of accommodation and services. He argued that it was necessary to consider *Identifier 028*, which required payment from all visitors, to interpret clause 5.05 and Annex C.

[88] He argued that the lightkeeper's dwelling is an integral part of their compensation. This was evidenced by how rotational keepers were treated; they were paid roughly 90% of the annual salary of a year-round lightkeeper despite working only 50% of the time and receiving no permanent dwelling. He argued that that suggested that being provided a home was a significant compensatory benefit.

[89] Interpreted in that light, the grievor submitted that clause 5.05 and Annex C stood for the proposition that lightkeepers had a possessory interest in their dwellings and were entitled to charge visitors for using them. The respondent also had a property interest in the dwelling, as its owner. Clause 5.05 set out a consultation process to establish the rates to charge visitors on travel status, to balance the lightkeepers' right to control the use of their dwellings, versus the respondent's interest in limiting the costs associated with doing so when it housed other employees in them (i.e., visitors on travel status).

[90] The grievor stated that the language of Appendix F supported that by using possessive language, such as "the Lightkeeper's dwelling".

[91] *Identifier 028* enshrined the past practice. The grievor argued that any uncertainty as to its contents before May 3, 2016, should not be taken to benefit the respondent because it did not dispute its existence or its application before that date.

[92] The grievor referred to the use of the terms "spare dwelling" or "lightkeepers [*sic*] dwelling" in paragraphs 4 and 5 of *Identifier 028*. He argued that when

interpreting a document, it is preferable to read two of its provisions in harmony and to give meaning to all of the words in them rather than apply an interpretation that puts them into conflict (see *Clough v. Canada Revenue Agency*, 2015 PSLREB 48 at para. 59). Those provisions are in harmony if one accepts that a dwelling could be both a spare dwelling and a lightkeeper's dwelling in the situation that he described of two lightkeepers living together. In those circumstances, a dwelling could both belong to a lightkeeper as part of their compensation package and be spare (i.e., vacant), thus allowing for visitors to use it.

[93] That interpretation was also consistent with the testimony that lightstation dwellings were not designated as either PLK, ALK, or spare dwellings. An interpretation that allowed for a dwelling to be both a lightkeeper's dwelling and a spare dwelling was more consistent with the parties' actual practice.

[94] The grievor pointed to the wording of paragraph 5 of *Identifier 028*, which stated, "**All** individuals who use the spare house are required to pay the $10.00 per night", with only one exception — the relief keepers. It did not say "all individuals on travel status". He argued that nothing in paragraph 4 limited the application of paragraph 5.

[95] The grievor relied on the testimony that contractors, who were not employees, paid for the use of the spare dwelling as a demonstration that being on travel status was not a condition precedent to the lightkeepers' right to charge an occupancy fee. As such, based on the plain meaning of the collective agreement and *Identifier 028* and the established past practice, the question of whether the IRB crews were on travel status is not determinative or even relevant to the dispute.

[96] The grievor submitted that providing the cleaning services listed in *Identifier 028* was not a condition precedent to payment. He submitted that its paragraphs 6 and 7 were statements of the respondent's expectations. The failure to meet those expectations were remedied through the imposition of discipline, not through withholding payment unilaterally.

[97] That interpretation of paragraphs 6 and 7 was also more consistent with the parties' past-practice evidence, since the grievor testified that most visitors did not expect him and his spouse to have to do the daily cleaning.

[98] The grievor submitted that *Identifier 028*, read in concert with the evidence heard in this case, supported a consistent past practice of all visitors, except relief lightkeepers, paying lightkeepers for their accommodation in a spare dwelling. This past practice was incorporated into the collective agreement by Annex C, which provided the catch-all enforcement mechanism for all issues related to providing lightkeepers with housing.

[99] Annex C could also be analogized as codifying a strong estoppel against the respondent with respect to a compensation matter. It was an integral term that protected one of the lightkeepers' core employment benefits. In this case, aside from the lightstation, no other example was provided of a situation in which lightkeepers were not paid for the use of a lightstation dwelling. The respondent was required to maintain its practice. The grievor argued that the unfairness of changing this practice without notice to the bargaining agent was evident in the fact that the bargaining agent consistently negotiated Annex C into the collective agreement without any notice that the employer was asserting that *Identifier 028* applied only when other employees were on travel status.

[100] Examples of decisions upholding past practices are *Lévesque v. Treasury Board (Fisheries and Oceans: Canadian Coast Guard)*, Board file no. 166-02-27426 (19970718); and *Ontario Power Generation Inc. v. Society of United Professionals*, 2018 CanLII 90219 (ON LA) at para. 21.

[101] The grievor stated that he treated the lightstation's second dwelling in a manner consistent with having a possessory interest in it by furnishing it and providing it with internet and cable television. When other crews stayed there, he charged them the *Identifier 028* rate of $20. Only the IRB crews stayed without compensation, due to his agreement with Mr. Palliser on improvements to the lightstation.

2. Claim that a balancing-of-interests approach should be applied to grant compensation

[102] The grievor argued that the balancing-of-interests approach favours his interpretation of *Identifier 028*.

[103] For this, he relied on *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55 ("*AJC*"), in which the Supreme Court of Canada (SCC) reaffirmed the

balancing-of-interests approach to assessing unilateral employer policies. At paragraph 24, the SCC provided the following:

> *24 …*
>
> *Determining reasonableness requires labour arbitrators to apply their labour relations expertise, consider all of the surrounding circumstances, and determine whether the employer's policy strikes a reasonable balance. Assessing the reasonableness of an employer's policy can include assessing such things as the nature of the employer's interests, any less intrusive means available to address the employer's concerns, and the policy's impact on employees.*

[104] In this case, the grievor explained that the IRB crews' presences seriously impacted his family's private life. Similar to *AJC*, the employer gained the benefit of not having to rent premises for the operation of its IRB program at the lightstation, while the grievor's working and living conditions were affected negatively. He received no additional benefit from the respondent in exchange for the increased work and intrusion into his private life. He argued that less-intrusive options were available to the respondent, but once it chose to send the IRB crews to the lightstation, it owed him compensation for that intrusion.

[105] The grievor argued that the balancing-of-interests approach could be used to invalidate the respondent's policy of preventing him from seeking compensation for the IRB crews' use of the spare dwelling. That meant that even if there was no collective agreement right to demand compensation, it was unreasonable to make that change to his working conditions, without corresponding compensation.

3. Claim of unjust enrichment as an alternative basis for compensation

[106] The grievor submitted that the respondent should not have been allowed to realize savings by using a policy that extracted additional work from him and that impinged on his private life. He argued that unjust enrichment is an equitable claim that is available at common law. It provides a remedy to a person at whose expense another person has enriched themselves, without a juridical basis for doing so.

[107] He submitted that in the labour context, unjust enrichment has been used interchangeably with the notion of *quantum meruit*. It has been used to compensate employees who provided services to their employers beyond what was expected of them under a collective agreement but that did not fall neatly into some other

collective-agreement compensation category. The grievor referred to *Ontario Hydro v. Canadian Union of Public Employees, Local 1000*, 1983 CanLII 4832, as providing an example.

[108] The respondent's requirement that the grievor host the IRB crews each summer both impinged on his private life and required him to do additional work supporting the IRB program's operations that went beyond his usual assignments. The respondent realized a savings by not having to rent other facilities or pay somebody to maintain them. He could not refuse to host the IRB program, so the respondent should be required to pay for the additional work he did and the imposition on him.

[109] The grievor also relied on *Dene West Limited Partnership v. Unite Here Local 47*, 2018 CanLII 81947, and *Insurance Corporation of British Columbia v. Canadian Office and Professional Employees' Union, Local 378*, 2012 CanLII 48971, as further examples.

[110] The grievor submitted that the doctrine of *quantum meruit* allows an arbitrator to fashion an appropriate remedy, even with no prior agreement as to the rate to be paid for the work. The doctrine provides a freestanding basis to award him compensation for the additional work that he was required to perform to support the IRB station at the lightstation.

4. Discrimination claim on the basis of family status

[111] The grievor claimed that the respondent's assertion that it had the unlimited ability to make use of lightstation dwellings for those lightstations staffed by a married or otherwise cohabiting couple discriminated against him on the basis of family status. He received less compensation, worked more, and experienced an inferior living situation in part because he was married to another lightkeeper who worked at the lightstation with him.

[112] The grievor relied on *B. v. Ontario (Human Rights Commission)*, 2002 SCC 66 at para. 58, in which the SCC held that family status discrimination can be established when an employer treated an employee differently because of whom they were married to.

[113] In this case, the respondent acknowledged that when two lightkeepers were in a conjugal relationship, it treated the second dwelling as a spare. Since providing a lightstation dwelling was an integral part of a lightkeeper's compensation, providing

one dwelling to two lightkeepers who were married was lesser compensation based on the grievor's family or marital status.

[114] The grievor referred to the respondent's evidence that lightkeepers who did not cohabitate had to "bunk up" to free up a spare dwelling for some visitors. In those cases, the lightkeepers were paid $20 per night, per person. For married lightkeepers, such as the grievor and his spouse, because they were already living together, they were paid only $10 per night, per person.

[115] Had the grievor not been living with the ALK at the lightstation, the respondent would either have not stationed the IRB crews there or have paid the grievor more for doing so. Applying the test for discrimination enunciated in *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33, the grievor stated that he met all three criteria, as follows:

> • he had a characteristic protected from discrimination: he was married, and his spouse was also a lightkeeper at the lightstation;
> • he experienced an adverse impact: he was required to accommodate the IRB crews, without corresponding compensation; and
> • the protected characteristic was a factor in adverse impact: the second dwelling was available to the IRB crews because he cohabitated with his spouse.

[116] The grievor stated that he was aware of the unfairness, although he did not name it as discrimination, in his discussions with the respondent. He noted that to his detriment, he had always assumed that the second dwelling belonged to his wife. When it became clear to him that the respondent asserted a right to do whatever it liked with the second dwelling, even though two lightkeepers resided there permanently, he became increasingly distraught.

[117] When compensation was refused, he began to feel abandoned by the respondent; he felt that his workplace had become toxic, and the situation affected his health adversely to the point that he had a panic attack and spent three days in hospital. In his grievance, he claimed compensation for the stress and mental-health harms that he experienced from the respondent's refusal to work with him on the issues between the lightkeepers and the IRB crews.

[118] The grievor submitted that he had demonstrated that part of the reason for the respondent's refusal to consider compensating him was that it treated lightkeepers

who were married to coworker lightkeepers adversely compared to lightkeepers who were not married to their coworkers.

[119] The grievor claims $10 000 for pain and suffering under s. 53(2)(e) of the *CHRA*. He stated that he suffered serious health effects and that ultimately, his career with the respondent ended not long after his grievance was filed. He also claims $10 000 under s. 53(3) for the respondent's wilful and reckless discrimination. He submitted that it was reckless when it failed to realize that providing lesser compensation to certain lightkeepers because of whom they are married to is discriminatory.

B. The respondent's submissions

1. Jurisdictional objections

[120] The respondent submitted that the only issue properly before the Board for determination is whether the grievor was entitled to be compensated at $20 per night for each IRB crew member that stayed at the lightstation during the 2010 to 2016 summer operational seasons. The respondent submitted that that compensation claim was based on paragraph 4 of *Identifier 028* and clause 5.05. It claimed that that is the substance of the grievance that was presented and dealt with up to and including the final level of the grievance process.

[121] The respondent relied on *Burchill* and submitted that the Board does not have jurisdiction to consider the grievor's arguments that Annex C provided him with a possessory interest, that a balancing-of-interests approach should be applied to grant him compensation, that he was entitled to equitable relief under the doctrine of unjust enrichment or *quantum meruit*, or that its practice on providing lightkeepers with accommodations, who are married to other lightkeepers, is discriminatory.

[122] It argued that those issues are not referenced in the grievance, are unrelated to it, were not raised or dealt with in the grievance presentation process and were not referenced in the referral to adjudication.

[123] The respondent argued that the dispute at adjudication must be inextricably linked to the original grievance. It relied on *Reynolds v. Treasury Board (Correctional Service of Canada)*, 2019 FPSLREB 47; *Boudreau v. Attorney General of Canada*, 2011 FC 868; *Shneidman v. Canada (Attorney General)*, 2007 FCA 192; and *Chamberlain v.*

Treasury Board (Department of Human Resources and Skills Development), 2013 PSLRB 115.

[124] The respondent claimed that the grievor's new arguments amounted to new grievances. It stated that it was deprived of the opportunity to address those new grievances during the grievance presentation process and that it was prejudiced in its ability to prepare itself, as at adjudication, it had to defend itself against a substantially different characterization of the grievance.

[125] The respondent claimed that since these were new grievances, they were out of time, and that they should be dismissed on the basis that they are untimely.

[126] The respondent also relied on *Shenouda v. Treasury Board (Department of Employment and Social Development)*, 2017 PSLREB 21; *Scheuneman v. Treasury Board (Natural Resources Canada)*, Board file no. 166-02-27847 (19981020); *Cameron v. Deputy Head (Office of the Director of Public Prosecutions)*, 2015 PSLREB 98; and *Garcia Marin v. Canada (Treasury Board)*, 2007 FC 1250.

[127] The respondent also objected to the Board's jurisdiction on the basis that the grievor did not have standing. It relied on s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which provides that only grievances that affect the grievor may be referred to adjudication. In this case, he seeks compensation for the IRB crews' overnight stays in the spare dwelling. However, he argued that the spare dwelling was his spouse's, not his. Section 209(1)(a) prohibited him from filing a grievance on his spouse's behalf.

[128] The respondent submitted that as a statutory tribunal, the Board must find its jurisdiction within the applicable *Act* or collective agreements. The *Act* allows grieving only certain matters, and only a portion of those may be referred to adjudication. There is no inherent jurisdiction. The grievor's arguments based on providing standalone relief did not fall within s. 209(1)(a) of the *Act*.

[129] In addition, the respondent submitted that the Board does not have jurisdiction over any grievance that challenges the respondent's right to organize and direct its workforce. It argued that s. 7 of the *Act* prevents the Board from taking jurisdiction to consider and determine a grievance about its decision to station the IRB program at the lightstation or that seeks compensation for what the grievor claimed were material

changes to his working conditions. In support, it relied on *Basra v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 28; *Chamberlain*; *Cameron*; and *Brescia v. Canada (Treasury Board)*, 2005 FCA 236.

2. The merits of the alleged breaches of Appendix F and a past practice

[130] The respondent stated that the fundamental object when construing a collective agreement's terms is to discover the intention of the parties that agreed to it. The Board's role is to ascertain what the parties meant by the words that they used. When determining the parties' intention, the cardinal presumption is that they are assumed to have intended what they said and that the agreement's meaning is to be sought in its express provisions. The language should be viewed in its normal or ordinary sense, unless that would lead to some absurdity or inconsistency with the rest of the agreement or unless the context reveals that the words were used in some other sense (see paragraphs 4:20 and 4:21 of Brown and Beatty, *Canadian Labour Arbitration*, 5th ed.; and *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Limited*, 2002 NBCA 30 ("*Irving Pulp & Paper*")).

[131] The respondent asserted that when a monetary benefit is claimed, as in this case, it is incumbent on the grievor to prove clearly and unequivocally that the requested monetary benefit was the intended result. Such an intent is not normally imposed by inference or implication (see *Wamboldt v. Canada Revenue Agency*, 2013 PSLREB 55 at para. 28).

[132] The respondent argued that based on the ordinary and normal meaning of the words used in clause 5.05, lightkeepers are entitled to compensation only for visitors "on travel status" making overnight stays at lightstations.

[133] In terms of the rates, *Identifier 028* explicitly referenced clause 5.05 and stated that the rates to be paid to the lightstation personnel for the maintenance and upkeep of the spare dwellings was $10 per night per person in the spare dwelling and $20 per night in the lightkeepers' dwelling.

[134] Annex C was entirely silent on the lightkeepers' entitlement to compensation and the rates to be charged to visitors staying overnight at the lightstations. Rather, it outlined the respondent's commitment to continue to provide lightkeepers with

accommodation and services (for example, grocery delivery). This was entirely separate and unrelated to their entitlement to compensation for visitors' overnight stays.

[135] In terms of paragraph 5 of *Identifier 028*, the respondent submitted that it did not create a right to compensation. It provided that all individuals who used the spare house were required to pay, except relief lightkeepers. It submitted that at the bargaining table, the parties agreed that under clause 5.05, only visitors on travel status would be charged the rate for their overnight stays at lightstations. In this case, both Mr. Barrett and Mr. Webb testified that the IRB crews were not on travel status while at the lightstation, given that it was their assigned workplace.

[136] The respondent stated that the IRB crews not being on travel status was consistent with the terms of the collective agreement and the NJC's *Travel Directive*. Comparatively, the grievor's testimony that they were not on travel status was based on his opinion. However, he acknowledged that he lacked knowledge of either of those documents.

[137] The respondent submitted that since the IRB crews were not on travel status, it is not necessary for the disposition of this grievance to determine whether they stayed overnight in the "spare dwelling" or the "lightkeepers [*sic*] dwelling", per *Identifier 028*.

[138] Finally, the respondent submitted that the rates to be paid under paragraph 4 of *Identifier 028* were for the dwelling's "maintenance and upkeep" and were described in paragraph 6 of that document.

[139] The grievor testified that he (or his spouse) did not perform any maintenance and upkeep of the spare dwelling. Both Mr. Webb and Mr. Barrett testified that the IRB crews in question did their own maintenance and upkeep. The respondent submitted that the grievor sought to be paid $20 per night per IRB crew member despite not providing the services contemplated in *Identifier 028*.

[140] The respondent relied on *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 SCR 129, in which the SCC held that contractual intent is to be determined based on the words used when the document at issue was drafted and that it can be read in light of the surrounding circumstances that were prevalent at the time. However, a party's subjective intention has no independent place in that determination (see paragraph 54). Further, in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, the SCC held

that the context and surrounding circumstances cannot be used to overwhelm a collective agreement's words (see paragraph 57).

[141] The respondent submitted that the grievor's argument that Annex C guaranteed compensation for all overnight stays was based purely on his personal subjective interpretation of the parties' intentions behind Annex C. No evidence was presented to support it; nor did the words support it. Further, his argument that Annex C created a possessory interest could lead to absurdity, as it would mean that the grievor could rent or sell the dwelling.

[142] The respondent submitted that it is preferable to read two provisions of a document in harmony and give meaning to all the words in them rather than apply an interpretation that puts them into conflict. The grievor's interpretation that paragraph 5 of *Identifier 028* meant that all visitors, regardless of whether they were on travel status, were required to pay for overnight stays would render the words of clause 5.05 meaningless, as it required that visitors had to be on travel status.

[143] The grievor's interpretation effectively sought to remove the words "on travel status" from clause 5.05 by giving them no meaning and by adding words to Annex C that referred to the practice of compensating lightkeepers for visitors' overnight stays. The Board is prohibited from doing so under s. 229 of the *Act* as it cannot render a decision that would have the effect of requiring amending the collective agreement.

[144] The ordinary and normal sense of the terms of paragraph 5 should be read to mean that all visitors "on travel status", per clause 5.05 as referenced in paragraph 4 of *Identifier 028*, must pay the lightkeepers $10 per night for overnight stays in "spare dwellings".

[145] The respondent submitted that the grievor's evidence that contractors paid him for their overnight stays at the lightstation did not establish a past practice. Obtaining a remedy based on a practice requires conduct by one party to the collective agreement that involved a clear interpretation according to a specific meaning that the other party knowingly acquiesced to. That conduct must have been unambiguous and repeated over a long period, without objection. There must also be evidence that members of one party, who had some real responsibility for the agreement's meaning, acquiesced to the practice. When a party is unaware of the practice, it cannot be relied upon (see paragraph 3:79 of Brown and Beatty).

[146] In this case, the respondent submitted that the IRB crews had consistently stayed at the lightstation without compensation on the basis that they were not on travel status. This was known to the grievor since 2010, yet no objections were made until 2015. There is no evidence to support the presence of a past practice of paying lightkeepers for visitors who were not on travel status. The grievor's evidence of one specific time when visiting contractors were charged for overnight stays did not constitute anything that could be termed a "practice".

[147] For those reasons, the respondent submitted that the grievor is not entitled to the requested compensation and that the grievance should be denied.

3. The balancing-of-interests approach

[148] The respondent submitted that the refusal to provide compensation for the IRB crews' stays at the lightstation was not a change to the grievor's working conditions.

4. The doctrine of unjust enrichment or *quantum meruit*

[149] On the merits, the respondent stated that the SCC articulated the test for unjust enrichment in *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30, as requiring these three points: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) no juristic reason to deny recovery. In *Peter v. Beblow* [1993], 1 SCR 980, the SCC held that the enrichment and the corresponding deprivation must be capable of being expressed in economic terms. In this case, there was no enrichment of the respondent corresponding to a deprivation of the grievor and, certainly, not one that was capable of being expressed in economic terms.

[150] In *Peter*, the SCC described the test for determining whether there was an absence of a juristic reason as "[w]hen a claimant is under no obligation contractual, statutory or otherwise to provide the work and services to the recipient, there will be an absence of juristic reasons for the enrichment" (at page 1018). Similarly, in *Seward v. Seward*, 1996 CanLII 19961, the Alberta Court of Queen's Bench provided that it should consider whether the parties had any contractual or statutory obligations that would justify the enrichment. If the parties contracted to undertake certain activities, the fact that one of them greatly benefits from the contractual arrangement will not lead to a successful suit of unjust enrichment.

[151] In this case, the collective agreement was the contractual arrangement in place that prevented a successful unjust-enrichment claim. The respondent's use of its dwelling to station the IRB crews was not an enrichment. Conversely, the grievor did not suffer a deprivation as a result of providing services beyond what was expected of him under the collective agreement. It was part of his terms of employment to operate the trolley. Further, the identified psychological and emotional impacts came with the lightkeeper position, and the grievor accepted them when he accepted it. If additional duties were required, the appropriate recourse would have been to file a job-content or classification grievance.

[152] The respondent also relied on *Sorochan v. Sorochan*, [1986] 2 SCR 38; and *KPMG (Trustee in Bankruptcy of Ellingsen) v. Hallmark Ford Sales Ltd.*, 2000 BCCA 458.

5. Discrimination on the basis of family status

[153] The respondent submitted that the grievor was not treated in a discriminatory manner and that he did not suffer any adverse impact based on a protected ground. The IRB crews were not on travel status; thus, the grievor, like any other lightkeeper, was not entitled to compensation for their overnight stays.

[154] As a matter of fact, he stood to benefit, since their joint living conditions created a spare dwelling where visitors on travel status were able to stay, which thus provided him income for the use of the "spare dwelling" set out in paragraph 4 of *Identifier 028*.

[155] In the alternative, if he received less compensation, it was a result of his choice since his decision to live with his spouse was voluntary. Further, the respondent's decision did not cause a dwelling to become vacant; the former PLK's retirement was the cause.

[156] In addition, the grievor's argument was without merit since it was based on the allegation that lightkeepers had a possessory interest in their dwellings, when in fact they did not.

[157] Finally, the grievor did not perform the maintenance and upkeep services listed in *Identifier 028*. As such, he could not contend to have suffered a loss given that he did not provide those services.

C. The grievor's response

1. The jurisdictional objections

[158] The grievor submitted that the grievance remained the same throughout the relevant process. It challenged the decision to station the IRB crews at the lightstation without corresponding compensation that was consistent with the past practice outlined in *Identifier 028*. None of the arguments he raised materially changed that claim. They were merely more sophisticated legal arguments to support it.

[159] The grievor submitted that the Board has repeatedly held that grievors are permitted to raise new arguments as long as the "topic of the grievance" was not changed. He cited *Delage v. Treasury Board (Department of Fisheries and Oceans)*, 2008 PSLRB 56, as an example.

[160] He pointed to *Shneidman*, which clarified that the Board can look to the parties' interactions during the grievance process to seek further clarification of what was raised in that process. He submitted that the respondent failed to provide any such evidence, despite having the burden of proof to establish its objection. He argued that while it included documents from the grievance process in its book of documents, they were not entered into evidence and therefore should be disregarded.

[161] The grievor submitted that the grievance refers to *Identifier 028* and a past practice; however, it does not cite a specific collective agreement clause. The grievance-process documents in evidence showed that the respondent consistently raised clause 5.05, not the grievor. The only bargaining-agent-created grievance-process document that referred to clause 5.05 was the referral to adjudication, which read, "Appendix F – Lightkeepers – 5.05". That was insufficient to establish a change to the nature of the grievance or to prevent the Board from considering Appendix F as a whole.

[162] With respect to the respondent's objection with respect to Annex C, the grievor relied on the principles of collective agreement interpretation summarized in *Genest*, at para. 51. He argued that Appendix F must be read as a whole, including Annex C, which supported the argument that dwellings form an important part of lightkeepers' compensation. He stated that that context is necessary to determine his compensation claim in the grievance, as clause 5.05, standing alone, was merely an agreement to consult. The grievance cites *Identifier 028* as evidence of a past practice but does not limit its reference to only paragraph 4 of that document.

[163] With respect to his discrimination claim, the grievor claimed that since the *CHRA* is quasi-constitutional legislation, it is paramount to the *Act* and binds all the parties. Thus, the Board cannot endorse a discriminatory collective agreement interpretation.

[164] The grievor submitted that there is also considerable Board and court authority that suggests that it has jurisdiction to award remedies that were not previously requested, particularly when the new remedial issue involves damages under the *CHRA*, for example *Jane Doe v. Canada (Attorney General)*, 2018 FCA 183; *Leclaire v. Treasury Board (Department of National Defence)*, 2010 PSLRB 82 at paras. 25 and 26; and *Perron v. Treasury Board (Canada Border Services Agency)*, 2013 PSLRB 109.

[165] The grievor submitted that the respondent's claim that it was caught by surprise is without merit as it had the opportunity to call different evidence to address those arguments.

[166] The grievor submitted that the respondent's timeliness objection was merely an alternative formulation of its *Burchill* objection. As such, it is unnecessary to deal with it.

[167] The grievor argued that the respondent's objection to his standing was an attempt to elevate form over substance. He stated that all witnesses agreed that the respondent did not designate lightkeeper dwellings to specific employees; nor did it designate dwellings as being for the PLK, the ALK, or as spare. The assignment of dwellings was left to the PLK who, in this case, was the grievor. Thus, he and his spouse had an equal right to either dwelling. The fact that the respondent provided one dwelling for both of them was an equal diminution of each one's compensation package under the collective agreement.

[168] The grievor submitted that he did not argue that the dwelling that the IRB crews used was his spouse's. He argued that it was a lightkeeper's dwelling in the sense of the collective agreement and *Identifier 028*. Simply put, if a lightstation has two lightkeepers and two dwellings, both dwellings must be lightkeepers' dwellings.

[169] In the alternative, the issue of the grievor's claim to the dwelling that the IRB crews used goes to the appropriate remedy. If the Board determines that the dwelling

was a spare dwelling, then the grievor would be entitled to the $10 per night per person rate under *Identifier 028*.

[170] With respect to the respondent's objection to the Board's jurisdiction to review unilateral management decisions that touch on working conditions established in the collective agreement, the grievor relied on *AJC*, at para. 20, where the SCC held that management's residual right to unilaterally impose workplace rules is not unlimited. Those rights must be exercised reasonably and consistently with the collective agreement.

[171] The grievor submitted that the respondent was free to place IRB stations where it wanted. The grievance merely states that when it put one at the lightstation and thus changed the working and living conditions of the lightkeepers who lived there, it was obligated to provide compensation that was consistent with its past practice under Appendix F, as reflected in *Identifier 028*.

[172] With respect to the respondent's argument that *quantum meruit* cannot be applied on a freestanding basis, the grievor stated that his argument was rooted in the collective agreement's interpretation and application, specifically Appendix F's compensation provisions. At its base, the argument was that it was unfair (i.e., inequitable) and an unreasonable use of management rights for the respondent to transform the nature of his job each summer without corresponding compensation, as had always been provided in every other case of housing visitors.

2. The merits of the grievance

[173] The grievor repeated many of the points that were raised in his original submissions. He summarized his argument as follows. Annex C guarantees each lightkeeper an accommodation. That guarantee contains a package of rights, including a limited right to rent the dwelling, as further particularized in clause 5.05 and *Identifier 028*. That package of rights originates in the collective agreement and can be limited by reasonable employer rules. For example, it is obviously reasonable for the respondent to prohibit the lightkeeper from selling the dwelling; conversely, it would be unreasonable for the respondent to prohibit the lightkeepers from having any visitors on a year-round basis.

[174] The grievor submitted that the respondent's reasoning was flawed. Overall, its interpretation did not meaningfully contend with his argument, as it continued to read words of limitation into the collective agreement that were not present.

[175] The grievor reiterated that he did not dispute the issue of the IRB crews not being on travel status. He conceded that it was within the respondent's discretion to designate their workplace. He submitted that that further highlighted the absurdity of its position, if the use of the words "travel status" in clause 5.05 could unilaterally disentitle lightkeepers to compensation through a decision that had nothing to do with them.

D. The respondent's reply to the jurisdictional objections

[176] The respondent's submissions reiterated many of the points it made previously. With respect to the grievor's claim that it could not rely upon the documents in its book of documents that had not been entered into evidence, it asked the Board to reopen the case, to allow for a witness to testify who could speak to those documents. It submitted that that witness's purpose would be to testify to the fact that Annex C was never raised during the grievance process; nor was the argument made that Appendix F should be read as a whole. The respondent argued that it was made aware that the grievor intended to rely on those arguments only during his closing submissions; as such, it was deprived of the ability to call that witness earlier.

[177] The respondent submitted that *Jane Doe* is distinguishable and that it does not apply to this case. In *Jane Doe*, the adjudicator found that the employer knew the case that it had to meet. The allegation was clearly stated in the grievance and was the same issue presented and argued at adjudication. There were no changes and no surprises. In this case, the grievor made a human rights discrimination allegation only on November 1, 2023, and presented and argued it only on February 16, 2024. It was too late for the respondent to identify potential witnesses and make the necessary arrangements for them to testify.

[178] The respondent agreed that the Board could not endorse a discriminatory collective agreement interpretation. However, it maintained that in this case, given the circumstances, *Burchill* applied and barred the grievor from arguing that its practices were discriminatory.

IV. Reasons

A. The respondent's jurisdictional objections to Annex C

[179] The respondent's objection to Annex C was based on the fact that it was not referred to in the grievance or during the grievance process.

[180] Looking at the grievance's wording, it specifically refers to *Identifier 028* and argues that the accepted norm and past practice was that individuals who stayed at lightstations paid $20 per person per night, regardless of whether they were on travel status or were not contractors or other workers. As corrective action, in the grievance, the grievor requests that the lightkeepers be compensated the $20 per night per person per that usual practice. I find that the grievance is clear and that it is based on an alleged past practice.

[181] In its replies to the grievance, the respondent denied it on the basis that clause 5.05 supported compensation only when visitors were on travel status. No evidence was led as to what was discussed during the grievance process.

[182] The grievance referral stated that it was based on "Appendix F – Lightkeepers – 5.05". No other clause was identified. However, the referral included the grievance, which referred to the alleged past practice and *Identifier 028*.

[183] In his closing submissions, the grievor raised for the first time that the alleged past practice was rooted in Annex C. The respondent objected to his ability to refer to Annex C, arguing that it essentially constituted a new grievance, as it had not been raised before.

[184] In its written response to the grievor's submissions, the respondent requested that the hearing be reopened and that it be allowed to introduce evidence as to what was discussed during the grievance process. I find that it was too late, as the respondent had the knowledge before the hearing that the scope of the grievance was at issue. It had the opportunity to present evidence during the hearing, but it chose not to.

[185] More importantly, this issue is moot, since the grievor did not dispute that no specific mention was made of Annex C during the grievance presentation process. He pointed out that he also did not refer to clause 5.05. Rather, he argued that his grievance remained the same throughout the process. It was always about obtaining

compensation for the IRB crews' stays at the lightstation based on the past practice outlined in *Identifier 028*. He argued that referring to Annex C did not change that claim. I agree.

[186] I find that the grievance's essential character is the grievor's reliance on the alleged past practice of allowing lightkeepers to charge **all** visitors for overnight stays, not only those on travel status. He alleged that that practice was articulated in *Identifier 028* and seeks compensation based on it. That is the essence of the grievance.

[187] The grievor's reference to Annex C (and clause 5.05) in his closing submissions did not change the grievance. In fact, Annex C was the only part of Appendix F that referred to a practice. It provided, "The Employer wishes to confirm its intention of continuing the **present practice** … **in regard to the provision of accommodation** and services **which are now provided** to Lightkeepers" [emphasis added]. Although Annex C was not specifically identified by name, I find that nevertheless, the grievor referred to it when he articulated that his grievance was based on a practice.

[188] Further, the rules of interpretation require that the collective agreement's provisions be read as a whole. In this case, I find that it was necessary to include Annex C in that analysis, as it was part of understanding what the parties intended as a practice for charging visitors to stay at lightstations. To ignore it would fail to view the collective agreement as a whole and could lead to absurd or inconsistent interpretations of it.

[189] In this case, the grievance's essential nature was based on an alleged practice, and the only part of Appendix F that referred to a practice was Annex C. To prohibit the grievor from referring to it based solely on the fact that he did not identify it by name in his grievance would represent an overly technical interpretation of the grievance, which is specifically what the SCC warned against doing in *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 SCR 157.

[190] As such, the respondent's jurisdictional objection against any consideration being made of Annex C must fail.

B. The respondent's jurisdictional objections based on the grievor's lack of standing

[191] The respondent objected to the Board's jurisdiction on the basis that the grievor did not have standing. It submitted that he seeks compensation for the use of what he alleged was his spouse's (the ALK's) dwelling; however, he was prohibited by s. 209(1)(a) of the *Act* from filing a grievance on his spouse's behalf.

[192] In response, the grievor submitted that since all the witnesses agreed that there was no official designation of dwellings, both he and his spouse had an equal right to either dwelling. He stated that if a lightstation has two lightkeepers and two dwellings, then both dwellings are lightkeepers' dwellings. In the alternative, he argued that the issue goes to the remedy and that at minimum he was entitled to $10 per night for the use of the spare dwelling under *Identifier 028*.

[193] On reviewing the grievance, it is apparent that the grievor purported to grieve on his behalf and that of his spouse. It is worded in the plural, referring to the **lightkeepers**. Further, throughout his testimony and in his emails with the respondent, he consistently referred to his belief that the spare dwelling was his spouse's.

[194] Section 209(1)(a) of the *Act* provides that an employee may refer to adjudication an individual grievance if it is related to "… the interpretation or application **in respect of the employee** of a provision of a collective agreement or an arbitral award …" [emphasis added]. As a result, the grievor could not claim compensation on behalf of his spouse; he could do it only on his own behalf.

[195] In this case, the grievor submitted that he is entitled to compensation either because he had an equal ownership interest in the second dwelling or because it was a spare dwelling under *Identifier 028*. As both relate to him, I find the respondent's objection unfounded.

C. The merits of the grievance based on Appendix F and a past practice

[196] The grievance raises a very unique set of facts. It is based on an alleged past practice. The grievor alleged that that practice had been to allow lightkeepers to charge **all** visitors for overnight stays, regardless of whether they were on travel status. He claimed that clause 5.05, which was the only collective agreement clause that specifically referenced the issue, was intended only to protect the respondent's

interest in controlling the rates to be charged to visitors on travel status. He claimed that it was never intended to override the lightkeepers' overarching right to charge all visitors. He relied on *Identifier 028* to support his interpretation of that clause, as he alleged that it confirmed that practice. He submitted that the practice itself was guaranteed under Annex C, since that part of the agreement created a possessory interest for lightkeepers in **their** accommodations.

[197] The respondent denied that interpretation. According to it, clause 5.05 was clear and specifically restricted charging for overnight stays only for visitors on travel status. It claimed that Annex C and *Identifier 028* did not support the grievor's alleged practice of charging for all visitors.

[198] As this matter concerned the interpretation of clause 5.05, I was clothed with jurisdiction under s. 209(1)(a) of the *Act* to hear it and make a determination on that clause's proper interpretation. Further, since the grievance is based on an alleged past practice and the only part of Appendix F that referred to a practice was Annex C, I was also clothed with jurisdiction to determine what the parties intended that practice to be and whether it was violated.

[199] After carefully reviewing the wording of the collective agreement, *Identifier 028*, and the evidence presented about the alleged practice, I am unable to agree with the grievor's interpretation. My reasons are explained as follows.

[200] My analysis started with clause 5.05, as it was the only collective agreement clause that specifically addressed the issue of charging for the use of lighthouse accommodations. Clause 5.05 provided as follows: "The Employer and the Alliance [the bargaining agent] **agree to the principle of charging visitors on travel status** for meals and overnight accommodation supplied by the lightkeeper. Both parties will consult on the matter of rates to be charged" [emphasis added].

[201] That language is clear and unambiguous. It clearly qualifies which visitors were subject to being charged for overnight accommodations — those on travel status. The grievor argued that clause 5.05 in no way restricted his ability to charge visitors who were **not** on travel status. He argued that that clause applied only to those who **were** on travel status.

[202] When interpreting the collective agreement, I must assume that the parties meant what they said. I must provide words with their plain and ordinary meanings (see *Irving Pulp & Paper*). In this case, had the parties meant for clause 5.05 to merely limit what could be charged for visitors on travel status but not override the general right to charge for all visitors, they could have said so. They could have said something like this: "The Employer and the Alliance agree to the principle of charging visitors for meals and overnight accommodation supplied by the lightkeeper. Both parties will consult on the matter of rates to be charged **for those on travel status**." That reframed wording was what the grievor argued, but the language of the collective did not say it. As such, I found that clause 5.05, on its own, did not support the grievor's interpretation.

[203] However, my analysis did not stop there since the grievor's argument was based on the existence of an overarching right to charge all visitors, despite clause 5.05. Therefore, the next step in the analysis was to determine whether another collective agreement clause provided him with that right.

[204] The grievor claimed that Annex C did just that. He argued that the practice of providing accommodation under Annex C created a possessory interest in **his** accommodation and that that interest constituted an integral part of a lightkeepers' compensation. He argued that the possessory interest was such that lightkeepers were at liberty to rent **their** dwellings year-round as they pleased, limited only by the terms of clause 5.05. He argued that his position was supported by the words used in the collective agreement and in *Identifier 028*, as it was possessive in nature by referring to "the lightkeepers [*sic*] dwelling" and the accommodations being "provided by" the lightkeepers.

[205] He argued that paragraph 5 of *Identifier 028* further supported his position, as it specifically provided that "[**a**]**ll** individuals" were required to pay, with the sole exception of relief lightkeepers. He argued that that was a clear articulation of the parties' practice.

[206] In other words, the grievor acknowledged that Annex C did not specifically state that he could charge all visitors for their stays at the lightstation. However, he argued that its reference to a practice was the one articulated in *Identifier 028*.

[207] Therefore, a close review of *Identifier 028* was required.

[208] *Identifier 028* was said to be part of the *Lightstation Procedures Manual*. Although it was dated May 3, 2016, all agreed that it applied during the period relevant to the grievance. Indeed, the grievor referred to it in his email to Ms. Evans a year earlier, on May 28, 2015. Unfortunately, no one could speak to what if any amendments were made to it before May 3, 2016. Given the importance that the grievor placed on it in his grievance, and the fact that the grievance covered the period from 2010 to 2016, I find that on a balance of probabilities, when it was filed, one of the parties would have raised any material changes to it affecting its outcome. Having heard no evidence of that, I find that the paragraphs in *Identifier 028* that the parties sought to rely upon remained unchanged during the material time of the grievance period (i.e., from 2010 to 2016). That finding is consistent with the evidence that was adduced.

[209] Turning now to the terms of *Identifier 028*, paragraph 4 purported to detail the rates agreed to through the parties' consultation under clause 5.05. It quoted clause 5.05 and stated that the rates to be paid to lightstation personnel "… for the maintenance and upkeep of spare dwellings when there have been guests overnight …" was established at "… $10.00 per night per person in the spare dwelling …" and "… $20.00 per night in the lightkeepers [*sic*] dwelling".

[210] As for paragraph 5, it provided that **all** individuals who used the spare house were required to pay the $10 per night, except for relief lightkeepers, who it also provided were responsible for their own maintenance and upkeep while they occupied the spare dwelling.

[211] The grievor argued that the terms "spare dwelling" and "lightkeepers [*sic*] dwelling" in paragraph 4 did not mean that the spare dwelling was not the lightkeeper's dwelling. Rather, he argued that "spare dwelling" was used simply to refer to it being vacant at the time of its use; however, both dwellings remained those of the lightkeepers.

[212] The grievor claimed that the testimonial evidence supported his position. He argued that the past practice of charging contractors, who were not employees, for the use of the spare dwelling demonstrated that being on travel status was not a condition precedent to charging an occupancy fee.

[213] After carefully considering the grievor's arguments, I am unable to agree with them.

[214] As stated in *Allen* and *Irving Pulp & Paper*, an adjudicator cannot add or eliminate words to or from a collective agreement. Further, as held in *Wamboldt*, for a grievor to claim a monetary interest, there must be clear language to that effect. In this case, there were no specific words in the collective agreement that supported the grievor's interpretation. He sought to read the statement in Annex C that the respondent agreed to continue "… the present practice … in regard to the provision of accommodation …" as providing a freestanding possessory interest to lightkeepers to rent their accommodations as they pleased, limited only by clause 5.05. That is a significant monetary benefit that the language, on its own, does not provide.

[215] However, despite the absence of any such words, it would still have been possible to find in the grievor's favour since Annex C referred to a practice, which thus opened the door to make a determination based on a practice alone. Unfortunately for him, the evidence did not support a finding of the past practice that he suggested.

[216] As Brown and Beatty state, for a past practice to be relied upon, there must be a clear practice, it must be applied consistently, and it must be known to both parties, in particular by those in authority. The grievor bore the burden of proof. The evidence provided did not support the presence of a known clear and consistent practice that extended over time.

[217] Looking at that evidence, all agreed that the IRB crews stayed at the lightstation from 2010 to 2016, during which time they did not pay for the use of those accommodations. The fact that the grievor did not ask for compensation before 2015, on its own, tends to support that the practice that he espoused did not exist.

[218] In his closing submissions, the grievor attempted to argue that the reason the IRB crews stayed without compensation for so long was due to a deal struck with Mr. Palliser about improvements to the lightstation. However, I noted that he did not actually testify to that effect. His testimony was simply that initially, he agreed with the decision since it made good business sense and that he was happy that Mr. Palliser had committed to making some improvements to the island. He did not say that the compensation issue or foregoing it in exchange for the improvements was ever discussed.

[219] Moreover, the grievor testified that the IRB crews stayed at the lightstation twice before his arrival in 2006. Having heard no evidence to the contrary, I inferred that they also did not pay for those stays. That again supported that the past practice was that the IRB crews did not pay for their stays at the lightstation.

[220] The only evidence that the grievor led to support his alleged past practice was his experience of charging contractors for their stays at the lightstation. However, he admitted that he did not seek authorization before doing so; nor did he inquire as to whether they were on travel status.

[221] As for the respondent's evidence, both Mr. Barrett and Mr. Webb agreed that contractors paid for their stays at lightstations. However, neither was able to say whether the contractors were on travel status. Mr. Barrett testified that those terms would have been included in their contracts, but no such contract was entered into evidence.

[222] Both parties agreed that the NJC's *Travel Directive* dictated when people were to be considered on travel status. However, I note that its application was not limited to employees. The version in force as of the events at issue stated that it applied to "… public service employees, exempt staff **and other persons travelling on government business**, including training" [emphasis added]. That supported that contractors might actually have been on travel status when they stayed at lightstations.

[223] In light of all that evidence, I was unable to find that the contractors were not on travel status when they stayed at lightstations. In other words, I did not find a practice of charging all visitors, regardless of whether they were on travel status, as the grievor alleged.

[224] My review of *Identifier 028* also did not convince me of the existence of that practice.

[225] First, it provided in paragraph 4 that the payments for overnight stays were "… for the maintenance and upkeep of spare dwellings …". That was contrary to the grievor's claim that the payments were due to an overarching possessory interest in the dwelling.

[226] Second, paragraph 5 specifically stated that relief lightkeepers were not expected to pay the $10 per night. That also went against the grievor's argument that he had a possessory interest since the relief lightkeepers could stay for free.

[227] Third, paragraph 5 provided that relief lightkeepers were responsible for the maintenance and upkeep of the spare dwelling while they occupied it. That, coupled with the language of paragraph 4 that also based the payments on the "maintenance and upkeep of spare dwellings", supported the inference that the intention was to charge for stays when maintenance services were required but not to charge for it when they were not required. In the case of the IRB crews, it was undisputed that they were responsible for their maintenance and upkeep and the grievor had been repeatedly advised that he bore no responsibility for the IRB crews or their accommodations.

[228] Fourth, the wording used in paragraph 5 suggested that it was not a standalone provision but rather that it had to be read jointly with paragraph 4, which specifically quoted clause 5.05 that expressly limited the payments to visitors on travel status. Paragraph 5 then provided that "[**a**]**ll** individuals" who used the spare house were required to pay "**the** $10.00 per night", except for relief lightkeepers. The reference to "**the**" $10 suggested that it was to be read with paragraph 4, as it was the only other paragraph that referred to that payment. Therefore, it can be inferred that the reference in paragraph 5 to "[a]ll individuals" was meant to refer to the individuals identified in paragraph 4; i.e., visitors on travel status. It should also be noted that no evidence was led as to the status of the relief lightkeepers and whether they were considered on travel status when they stayed at a lightstation.

[229] Lastly, to support the grievor's interpretation, clear language would have been required, such as "**notwithstanding clause 5.05**, all individuals … are required to pay $10.00 …". In this case, the language of the collective agreement and the evidence presented did not support that interpretation.

[230] As a result of all that, I find that the language of the collective agreement and *Identifier 028* and the parties' evidence do not support the grievor's claim that a practice existed of charging all visitors who stayed at lightstations, regardless of their travel status. Having found no existence of that practice, I conclude that there was no violation of Annex C or of clause 5.05.

D. The grievor's compensation claim using the balancing-of-interests approach and the doctrine of unjust enrichment, and the respondent's jurisdictional objection to those arguments

[231] In his closing submissions, the grievor claimed that the balancing-of-interests approach or the doctrine of unjust enrichment could be used to award compensation to him, even if the collective agreement was otherwise silent on his right to it.

[232] In his submissions, he argued that in this case, the balancing-of-interests approach that the SCC used in *AJC* could be invoked to invalidate the respondent's "… policy of preventing lightkeepers from seeking compensation for the use of the spare dwelling by the IRB crew." He argued that that meant that even if there was no collective agreement right to demand compensation, it was unreasonable for the respondent to change his working conditions and intrude into his private life without corresponding compensation.

[233] In terms of the doctrine of unjust enrichment, he claimed that the respondent should not have been allowed to realize savings by using a policy that extracted additional work from him and that impinged on his private life. He submitted that that equitable doctrine had been used to compensate employees who provided services to their employer beyond what was expected of them under the collective agreements but that did not fall neatly into some other collective agreement compensation category. He argued that the doctrine provided a freestanding basis to award him compensation for the additional work that he was required to perform to support the IRB station at the lightstation.

[234] The respondent objected to those arguments on several grounds. It cited *Burchill*, as they were not raised in the grievance or during the grievance process. It argued that s. 209(1)(a) of the *Act* prevents the Board from considering any standalone argument independent of the collective agreement or legislation. Lastly, it argued that s. 7 of the *Act* prevents the Board from taking jurisdiction to consider and determine a grievance that relates to the respondent's decision to station the IRB program at the lightstation or that seeks compensation for what the grievor claimed were material changes to his working conditions.

[235] In response to the respondent's objections, the grievor clarified his position. He stated that it is settled law that the Board has jurisdiction to review unilateral management decisions that touch working conditions established in a collective

agreement. He quoted from *AJC*, in which the SCC held that management's residual rights are not unlimited and that they should be exercised "… reasonably and consistently with the collective agreement …".

[236] He submitted that his arguments were rooted in the interpretation and application of the collective agreement's compensation provisions in Appendix F. He stated that at its base, his argument was that it was unfair (i.e., by the rules of equity) and unreasonable (i.e., under management rights and according to *AJC*) for the respondent to transform the nature of his job each summer without corresponding compensation, "… as was always provided in every **other** case of housing visitors" [emphasis added]. He claimed that the grievance remained unchanged and that his new arguments were merely more sophisticated manners of articulating it.

[237] Looking closely, both were presented as alternative arguments. The suggestion was that if I found that the collective agreement did not provide for a right to charge **all** visitors for lightstation stays, I could use those arguments to provide the grievor with compensation, as had been done in "other", in his word, cases of housing visitors.

[238] Since I have already found that the collective agreement did not support the grievor's interpretation, it is difficult to rationalize how the balancing-of-interests approach or the unjust-enrichment doctrine could be used to interpret it differently. As an adjudicator, I cannot change the agreement's terms on the basis that they are unfair or unreasonable. Doing so would be to put words in the agreement that do not exist in it. Not only would that be contrary to the well-established rules of interpretation, but also, I am precluded from doing so under s. 229 of the *Act*.

[239] As such, I do not have the jurisdiction to use those arguments to interpret and apply the collective agreement's terms as the grievor suggested. Moreover, I do not have the jurisdiction to use those arguments independently of the collective agreement's terms, as he also suggested.

[240] The grievance does not refer either directly or indirectly to any collective agreement clause that supported the balancing-of-interests approach or the unjust-enrichment arguments; nor did the grievor refer to any in his submissions. To the contrary, he argued that those arguments created a right to compensation despite the absence of a right in the collective agreement.

[241] As a result, the grievor's arguments fails to meet the requirement of s. 209(1)(a) the *Act* as they do not relate to "… the interpretation or application … of a provision of a collective agreement or an arbitral award …". Therefore, I am without jurisdiction to hear them.

[242] Since I have made those determinations, I need not address the respondent's other jurisdictional arguments.

E. The grievor's discrimination claim on the basis of family or marital status, and the respondent's jurisdictional objection to it

[243] The grievor submitted that the respondent's practice of considering second dwellings as spare dwellings at lightstations housing lightkeepers in conjugal relationships constituted family status discrimination. He argued that since providing a dwelling was an integral part of a lightkeeper's compensation, providing one dwelling to two lightkeepers who were married was lesser compensation based on his family or marital status.

[244] In his closing submissions, the grievor claimed that he was aware of that unfairness in his discussions with the respondent, although he did not name it discrimination. He asked for $10 000 for pain and suffering under s. 53(2)(e) of the *CHRA* and for $10 000 under s. 53(3) for the respondent's wilful and reckless discrimination.

[245] The respondent objected to that argument, citing *Burchill*, as it was not raised or addressed during the grievance process.

[246] Considering the parties' arguments, I find that I am without jurisdiction to entertain the grievor's argument. In reaching that conclusion, I was most influenced by the statements made in *Boudreau* and *Shneidman*.

[247] In *Boudreau*, at para. 19, the Federal Court emphasized that the rules of procedural fairness dictate that the respondent should not be required to defend at adjudication against the following:

> *[19] … a substantially different characterization of the issues than it encountered during the grievance procedure. This is not merely a technicality but is fundamental to the proper functioning of the dispute resolution system for labour disputes in the federal public administration.*

[248] The Federal Court of Appeal also addressed that issue in *Shneidman* as follows at paragraph 27:

> *[27] Where the grievance on its face is sufficiently detailed, the employer will have notice of the nature of the employee's grievance at all levels. However, where, as here, it is not clear on the face of the grievance what grounds of unlawfulness will be relied upon by the employee, the employee must provide further specification at each stage of the internal grievance process as to the exact nature of her complaint if she intends to refer the matter to adjudication.*

[249] To summarize, the grievor was free to raise new arguments at adjudication but they had to still fall within the essence of the grievance. If a grievance's wording is unclear, it must be clarified during the grievance process.

[250] The grievor did not deny that his discrimination argument was new and that it was not previously raised. The fact that he submitted his notice to the Canadian Human Rights Commission only days before the hearing (via the Board's Form 24) supports that point.

[251] Therefore, the question to answer is whether his argument changed the essence of the grievance.

[252] I have already determined that the essence of the grievance was the grievor's claim that he was entitled to compensation based on the practice of allowing lightkeepers to charge for all stays at the lightstation.

[253] The grievance's wording makes no reference to the points in the grievor's discrimination argument. It does not refer to discrimination or the *CHRA*, either directly or indirectly. It does not refer to his marital or family status. It does not seek any remedies under the *CHRA*. It does not refer to receiving less compensation as a result of being in a conjugal relationship. It does not refer to any issues with considering the second dwelling a spare dwelling. It does not refer to a respondent policy of denying compensation. To the contrary, it refers to *Identifier 028*, which it claims provided those rights.

[254] As was held in *Shneidman*, if the grievance's wording lacked clarity, it was incumbent on the grievor to provide that clarity during the grievance process. No such clarity was provided.

[255] As a result, I find that the grievor's discrimination argument falls outside the scope of the grievance. There was simply no reason for the respondent to suspect or infer that the grievance included a discrimination claim on the basis of family or marital status.

[256] Having said that, the grievor also claimed that since the *CHRA* is quasi-constitutional legislation, it is paramount to the *Act*, and the Board cannot endorse a discriminatory collective agreement interpretation. The respondent did not contest that point; nor do I.

[257] The grievor claimed that the respondent's practice of providing one dwelling to two married lightkeepers was discriminatory, as it represented lesser compensation based on the grievor's family or marital status. He did not specify which collective agreement clause was allegedly discriminatory. However, since Annex C was the only part of the collective agreement that referred to providing accommodations, I assume that he was referring to it.

[258] Annex C maintained the practice of providing lightkeepers with accommodations. The grievor testified that he was provided with one and that his spouse lived with him. No evidence was led that she requested her own accommodation or that she was forced to share one with him. By all accounts, his decision to live with his spouse was voluntary. Having made that voluntary choice, he could not claim at the hearing that it was discriminatory.

[259] Moreover, he was not entitled to compensation for the IRB crews' overnight stays because they were not on travel status. Had they been on that status, he would have received compensation. There is no link between his family or marital status and any lightstation visitor's travel status.

[260] Lastly, I agree with the respondent's observations that the grievor's living situation actually favoured him, as it created a spare dwelling. There is no evidence to suggest that he would have been in a better situation had he and his spouse occupied the separate dwellings. To the contrary, his testimony was that during the IRB crews'

stays at the lightstation before 2006, the ALK was relocated to another nearby lightstation for those summers. Under that scenario, the PLK would have continued to be entitled to compensation based on the visitors' travel status.

[261] For the reasons provided, I find that the grievor did not establish that the respondent's application of the collective agreement was discriminatory.

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

(The Order appears on the next page)

V. Order

[263] The grievance is denied.

April 9, 2025.

Audrey Lizotte,
a panel of the Federal Public Sector
Labour Relations and Employment Board