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File No.: 166-2-15117

No. 245

THE PUBLIC SERVICE STAFF RELATIONS ACT
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

BLAINE B. PETERSON,

Grievor,

- and -

TREASURY BOARD
(Transport Canada),

Employer.

Before: Thomas W. Brown, Board Member.

For the Grievor: C.H. MacLean, Counsel, Canadian Air
Traffic Control Association.

For the Employer: T.K. Tax, Counsel.

RELOCATION
DIRECTIVE

Heard at Winnipeg, Manitoba, August 8, 1985.

MORTGAGE INTEREST DIFFERENTIAL

DECISION

The grievor, Blaine B. Peterson, is an air traffic controller, at the AI-01 classification level, presently employed by the Ministry of Transport, in its VFR Control Tower, Winnipeg, Manitoba. In 1982 his place of duty was Brandon, Manitoba. He was relocated in September of 1982 to Winnipeg, some 120 miles away, where he was to undergo training in the IFR control function but, when he was taken off that course because he was deemed unsuitable for that function after only a few months of training, he was immediately relocated to Brandon to work again in the VFR Control Tower. In January of 1985 he was once again relocated to Winnipeg to take up his present position.

When he was first relocated to Winnipeg, the grievor owned a private residence in Brandon on which there existed a mortgage in the amount of \$36,500.00, representing the total amount of the purchase price. This mortgage was in favour of his father, who had loaned him all of the money needed to complete the purchase in 1978. No interest charges were payable nor paid to the grievor's father during the period the grievor owned the house, prior to selling it in September of 1982 for the sum of \$47,000.00. However, there was a stipulation in the registered mortgage deed which reserved to the mortgagee a discretion at anytime to demand payment of interest at the conventional bank mortgage interest rate existing at the time of demand for the balance of the term of the mortgage. The grievor did not purchase another residence in Winnipeg when living there for the short period of time before returning to Brandon. Back again in Brandon, he bought another home on February 1, 1983, for the sum of \$60,000.00, paying

\$47,000.00 in cash and the balance of \$13,000.00 with monies borrowed and secured by a mortgage in favour of the Bank of Montreal at the interest rate of 13.5%. When once again relocated to Winnipeg, he sold this last house, with possession date set at September 1, 1985.

The question before me to resolve is whether by virtue of the "Relocation" directives, being Chapter 375 of the employer's Administrative Policy Manual, filed as Exhibit U-1, and which forms part of the collective agreement then covering the grievor between the Treasury Board and the Canadian Air Traffic Control Association, Code 402/82, the grievor is entitled to the "mortgage interest differential" provided for by such Relocation directives. Specifically, the grievor claims that he is entitled to the equivalent of the differential between the rate of interest in force on his mortgage covering the house which he first owned and sold in Brandon - which he claims was zero (0) percent - and the interest he agreed to pay on the mortgage he obtained when buying a house for the second time in Brandon on February 1, 1983.

Counsel for the grievor disputed the employer's claim that the grievor's original relocation from Brandon to Winnipeg was an "employee - requested" relocation and that as such the application of the Relocation directives were merely discretionary to the employer. She pointed to the documentation covering such relocation, which were filed as exhibits, to establish that the relocation was "employer - requested", thus rendering the application of the directives mandatory. Counsel pointed to the fact

that the Relocation directives reasonably did not provide for mortgage interest differential liability to continue forever but did cover transactions which took place within a two-year period. It mattered not, in the circumstances, she argued, that the relocation was within the same geographic area, as in this case, for instance, from Brandon to Brandon. The words "new place of duty" found in section .4.5.2 of the directives should not, therefore, be interpreted, she contended, to limit the application of the directives to the immediately preceding place of duty - in this case Winnipeg. The directives are to be applied to transactions which occurred within a two-year period. Counsel relied, in support of this position, on the definitions given in the directives to the terms "replacement residence", "single-family dwelling" and "place of duty". In the instant case there was a replacement residence purchased at a "new" place of duty within a two-year period which, therefore, calls for the application of the provisions of the directives with regard to mortgage interest differential. No significance should be given to the fact that the two transactions took place within the same geographic area. Although there were injustices and inequities which flowed from the treatment given the grievor, no reliance was made on those factors and the only argument advanced by counsel for the grievor was one based on the alleged misinterpretation and misapplication of the Relocation directives.

The employer's position is that the grievor has no entitlement whatsoever to mortgage interest differential costs under the directives in the circumstances in which the grievor found himself because he had not owned a home

in Winnipeg, the place of duty from which he was relocated to Brandon, prior to buying a home in Brandon for the second time. This position is taken because of the restrictive provisions of the Relocation directives at subsection .4.5.2(f), and the terms of Appendix "C" to these directives, dealing with "mortgage interest differentials". Reliance for this position was also placed on the definitions given in the directives to the key words "place of duty", "principal residence", "replacement residence" and "relocation". In addition, because the grievor's original relocation from Brandon to Winnipeg was an "employee - requested" relocation, it was within the employer's discretionary power to refuse the application of the same or all of the provisions of the directives to the grievor and, in the instant case, the employer decided not to grant him any mortgage interest differential costs.

Prior to buying a home for a second time in Brandon, the grievor's "former place of duty", the term used in section .4.5.2(f) of the directives, the very section upon which the grievor relies for entitlement to mortgage interest differential, was Winnipeg. But he did not own a home in Winnipeg. Therefore, it was argued on behalf of the employer, he did not have any mortgage interest rate to compare with the mortgage interest rate he assumed in his "new place of duty", Brandon. He cannot refer to the mortgage or mortgage interest rate affecting his original home in Brandon, which, in any event, is unclear as to its amount, that is, whether zero (0) percent or the bank rate at the time, because he was not relocated from Brandon to Brandon nor to anywhere else where he purchased a home

subject to a mortgage. Relocation, by definition found in the directives, implies a geographical move of an employee from one place of duty to another place of duty.

REASONS FOR DECISION

I am not at all convinced that, as contended by counsel for the employer, the relocation involved when the grievor first was relocated from Brandon to Winnipeg was an "employee-requested relocation". The evidence is to the contrary and, thus, the application of the Relocation directives to the grievor was mandatory and not, as he suggested, discretionary. This is also true for the relocation from Winnipeg back to Brandon. But, with regard to the grievor's entitlement to "mortgage interest differential", the grievor's right to such entitlement is not at once apparent. As suggested by counsel for the grievor, but not relied upon as a basis for argument, the fact that several relocations back and forth between Brandon and Winnipeg over less than a two-year period, did not result in a possible advantage for the grievor, mortgage interest-wise, under the Relocation directives, tends to depict the grievor as a person who but for a "quirk" would have benefitted from these directives. But was it a "quirk" or a legal basis on which the refusal to give him benefits in this area was founded. It is quite clear from the directives that any misinterpretation or error on which the grievor may have acted in securing a mortgage at 13.50% interest rate when purchasing a new residence when he returned from Winnipeg to Brandon could not be corrected, except perhaps, as suggested by the

directives, by submission to and permission of the Treasury Board. But no one else but the Treasury Board could deal "equitably" with the grievor. The directives were mandatory, again, in this area for managers.

In the circumstances, the grievor had to come within the Relocation directives to qualify for mortgage interest differential. To do so he would have had to have had an existing mortgage, with an interest rate, at his "former place of duty" when leaving it to relocate in Brandon. To my mind, the grievor's "former place of duty" was Winnipeg and not Brandon. This interpretation is supported by the words of the Relocation directive and appendix "C" to these directives, read as a whole, and also by the definitions given to the terms "employer-requested relocation", "place of duty", "principal residence", "relocate or relocation" and "replacement residence", which are as follows:

Employer-requested relocation means all other geographic relocations within Canada, including employee relocations other than on appointment, that result from staffing actions. Where an employee requests consideration for a transfer to a different geographic location, a relocation which may eventually result from that request shall be an employer-requested relocation if the employee is appointed to a position at the appropriate group and level that is vacant on arrival at the new place of duty, unless the deputy head provides written certifi-

cation, as described in article .1.1.8(b).

Place of duty means the location of the official station or headquarters at or from which an employee ordinarily performs his duties, or to which an appointee is required to report for duty, and includes any area which, according to local custom, is within commuting distance of the place of duty. The place of duty of employees employed as Ships' Officers or Ships' Crews is defined in article .8.8.1 of the Travel Policy, Chapter 370.

Principal residence means a single-family dwelling owned by the employee or dependant residing with the employee, which was occupied continuously at the time the relocation at public expense was authorized and which is recorded as the employee's permanent address on the departmental or agency personnel file. Summer residences or other temporary or seasonal accommodation are excluded by this definition.

Relocate or relocation means the authorized geographic move of an employee from one place of duty to another place of duty or the authorized move of an appointee from his place of residence to his first place of duty upon appointment to a position in the Public Service.

Replacement residence means a single-family dwelling purchased or leased at the new place of duty which will become the employee's principal residence following the relocation.

I find additional support for such a position in the French version of subsection .4.5.2 (f) of the directives - the specific provision on which the grievor founded his grievance where the term "l'ancien lieu de travail" is used in the translation of the term "the previous first mortgage". Subsection .4.5.2(f) reads as follows in English and in French:

(f) if the employee's first mortgage at the new place of duty is a higher-interest mortgage than the previous first mortgage, the employee shall be reimbursed the difference in the interest charges between the two mortgages, based on the amount of the mortgage and the unexpired term of the mortgage at the former place of duty, up to a maximum period of five years, and up to a maximum of \$5,000 (see Appendix D).

f) si l'intérêt hypothécaire sur la résidence de l'employé à son nouveau lieu de travail est supérieur à l'intérêt hypothécaire sur la résidence à l'ancien lieu de travail, il faut rembourser à l'employé l'écart des frais d'intérêt entre les deux hypothèques,

calculé à partir de l'hypothèque
et de l'hypothèque non échu
à l'ancien lieu de travail,
cependant une période maximale
de cinq ans, et jusqu'à la
somme maximale de \$5,000.
(Voir l'appendice D.)

It is clear from the French version that Winnipeg and not Brandon could only have been intended to be considered when a liability for mortgage interest differential was created by the directives. The condition that such liability was to continue, where applicable, for a two-year period, had application only in the event that a purchase were made within two years of relocating from the "former place of duty" which in this case was Winnipeg and only if the grievor had bought a house subject to a mortgage while in Winnipeg.

In the circumstances, this grievance is denied.

Thomas W. Brown,
Board Member.

OTTAWA, November 1, 1985.