



eBULLETIN - January 2017

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Highlights

[Compensation for Loss of Personal Items](#) (case no. 2015-254)

While on pre-deployment leave, the grievor was authorized to retain his room and left his personal belongings there. During his absence, Canadian Armed Forces authorities advised the cleaning staff to remove all of the grievor's belongings. Upon return from leave, the grievor was unable to locate most of his belongings and submitted a claim against the Crown for reimbursement for the cost of the missing items.

[Accommodations for Breastfeeding](#) (case no. 2015-310)

Shortly after her return from maternity leave, the grievor was notified that she was to take part in an exercise. She asked that she would be deployed to an environment favourable to breastfeeding. When she returned from the exercise, the grievor submitted a grievance asking that the Canadian Armed Forces adopt a policy in support of breastfeeding and reimburse her the costs of renting a breast pump.

[Annual Leave during Retirement Leave](#) (case no. 2016-089)

One of the amendments announced in [CANFORGEN \(Canadian Forces General\) 115/15](#) was that Canadian Armed Forces members on retirement leave could not earn annual leave. The grievor contended that he lost 10 days of leave as a result of the amended regulations and he requested 10 days of special leave, as was granted during the transition period announced in [CANFORGEN \(Canadian Forces General\) 115/15](#).

Case Summaries

Compensation for Loss of Personal Items

Committee Findings and Recommendations

While on pre-deployment leave, the grievor was authorized to retain his room in the military barracks and therefore left his personal belongings there. During his absence, Canadian Armed Forces ([CAF \(Canadian Armed Forces\)](#)) authorities advised the cleaning staff to remove all of the grievor's belongings from his room. Upon return from leave, the grievor was unable to locate most of his belongings and therefore submitted a claim against the Crown for reimbursement for the cost of the missing items.

Acting as the initial authority, the Director General Compensation and Benefits determined that, in accordance with Defence Administrative Orders and Directives ([DAOD \(Defence Administrative Order and Directive\)](#)) 7004-2, the grievor was not entitled to compensation because his belongings were covered by private insurance and he was ineligible to request compensation from the Crown for the same.

The Committee found that the grievor had suffered a loss for which the [CAF \(Canadian Armed Forces\)](#) was directly and entirely responsible. Finding that the grievor's circumstances clearly met the eight criteria listed in [Compensation and Benefits Instruction \(CBI \(Compensation and Benefits Instructions\)\)](#) 210.01(5) to be eligible for compensation, the Committee recommended that the Chief

of the Defence Staff approve the grievor's claim for reimbursement.

Final Authority Decision

The final authority (FA (Final Authority)) agreed with the Committee's finding that the grievor is entitled to compensation for the loss of his personal property. Therefore, the FA (Final Authority) agreed with the Committee's recommendation that, pursuant to CBI (Compensation and Benefits Instructions) 210.03(3), the grievor's claim in the amount of \$600 be reimbursed.

Accommodations for Breastfeeding

Committee Findings and Recommendations

Shortly after her return to work following a maternity leave, the grievor was notified that she was to take part in an exercise. She asked the base medical staff to obtain employment limitations that would allow her to be deployed to an environment favourable to her decision to breastfeed her child. The medical staff informed her that her request was administrative in nature and should be addressed through the chain of command.

The grievor sent her chain of command a list of her needs, including access to a private room, electricity, running water, a freezer and the approval of regular break periods. The chain of command indicated that it would support the grievor's requests when possible and in accordance with the operational needs of the exercise, adding however that it would take place in austere conditions and that the high operational tempo would not guarantee that her needs would always be met. The chain of command cautioned the grievor that she should be resourceful in finding solutions to her specific needs.

When she returned from the exercise, dissatisfied with the treatment she had received, the grievor submitted a grievance asking that the Canadian Armed Forces (CAF (Canadian Armed Forces)) adopt a policy in support of breastfeeding and reimburse her the costs of renting a breast pump for the duration of the exercise. She submitted that despite the support from her chain of command and its efforts to put in place favorable conditions, the exercise was incompatible with breastfeeding and represented a risk to her health due to hygiene reasons, the schedule and lack of privacy.

The initial authority (IA (Initial Authority)) denied the grievance, indicating that breastfeeding is a personal choice and that medical limitations should not be issued to allow a mother to breastfeed her child. He explained that it was up to the chain of command to accommodate the needs of a breastfeeding mother, which seemed to have been done for the grievor, to the extent possible. As for reimbursement of the breast pump, the IA (Initial Authority) concluded that this was not included in the range of CAF (Canadian Armed Forces) health services, so an exception to accommodate the grievor was not justified.

The Committee found that the grievor had not established a prima facie case of discrimination against her, based on sex or family situation. Although she had a legal obligation to feed her child, she did not demonstrate that the child had a medical condition necessitating breast milk or that there was no other accessible or available alternative in providing care for her child.

Moreover, the Committee found that the chain of command's efforts to accommodate the grievor during the exercise, although it was not obligated to do so, were reasonable.

As for reimbursement of the breast pump, the Committee agreed that this was not included in the range of CAF (Canadian Armed Forces) health care services that are comparable to health care services provided for Canadians under provincial health care plans, which do not include this either. Given the absence of a specific medical condition, the Committee determined that the grievor's situation did not justify that an exception be made and recommended that the breast pump not be reimbursed.

Lastly, although the grievor required that the CAF (Canadian Armed Forces) adopt a clear policy on breastfeeding, the Committee determined that the Canadian legislation to which the CAF (Canadian Armed Forces) are subject already very clearly frames the needs in the grievor's request. The Committee recommended that the grievance be denied.

Final Authority Decision

The final authority agreed with the Committee's findings and recommendation.

Annual Leave during Retirement Leave

Committee Findings and Recommendations

In February 2015, the grievor submitted his intent for release in October 2015. In June 2015, CANFORGEN (Canadian Forces General) 115/15 – Amendments to the *Queen's Regulations and*

Orders for the Canadian Forces (QR&O (Queen's Regulations and Orders)) chapter 16 was issued. One of the amendments announced was that Canadian Armed Forces (CAF (Canadian Armed Forces)) members on retirement leave could not earn annual leave, and this amendment was effective 1 April 2015. The message also allowed for a transition period from 1 April to 31 August 2015, wherein military members who had already commenced retirement leave during that timeframe would receive special leave in lieu of annual leave. It was also made clear that for CAF (Canadian Armed Forces) members who would commence retirement leave after 31 August 2015, their retirement leave would be administered under the amended *QR&O (Queen's Regulations and Orders)*; in other words, no special leave in lieu was to be authorized. The grievor contended that his retirement plan and decision were based on the regulations in effect at the time he submitted his intention to release, and that he lost 10 days of leave as a result of the amended regulations. He requested 10 days of special leave, as was granted during the transition period announced in *CANFORGEN (Canadian Forces General) 115/15*.

Acting as the initial authority (IA (Initial Authority)), the Director General Compensation and Benefits denied the grievance. The IA (Initial Authority) noted that *QR&O (Queen's Regulations and Orders)* chapter 16 – Leave represents the Minister of National Defence (MND (Minister of National Defence)) regulations pursuant to subsection 12(2) of the *National Defence Act*. As such, the IA (Initial Authority) stated that the MND (Minister of National Defence) is the only authority who can create and amend these regulations, and officers in the CAF (Canadian Armed Forces) cannot grant leave in any other manner. Given that the grievor commenced his retirement leave in October 2015, the IA (Initial Authority) stated that he has no authority to grant special leave outside of the authorized transition period in *CANFORGEN (Canadian Forces General) 115/15* and the grievor is therefore subject to the amended *QR&O (Queen's Regulations and Orders)* provisions.

The Committee noted that the grievor commenced his retirement leave on his chosen date in October 2015, which occurred after the amended *QR&O (Queen's Regulations and Orders)* took effect in April 2015, and after the transition period ended in August 2015. As a result, the Committee found that he was not eligible to accumulate annual leave, and not entitled to special leave during his retirement leave.

Over the years, the Committee has often been critical of the reduction or the removal of benefits without a measure of protection or transition. The Committee was pleased to see that in this instance the CAF (Canadian Armed Forces) did implement a transition measure.

The Committee recommended that the grievance be denied.

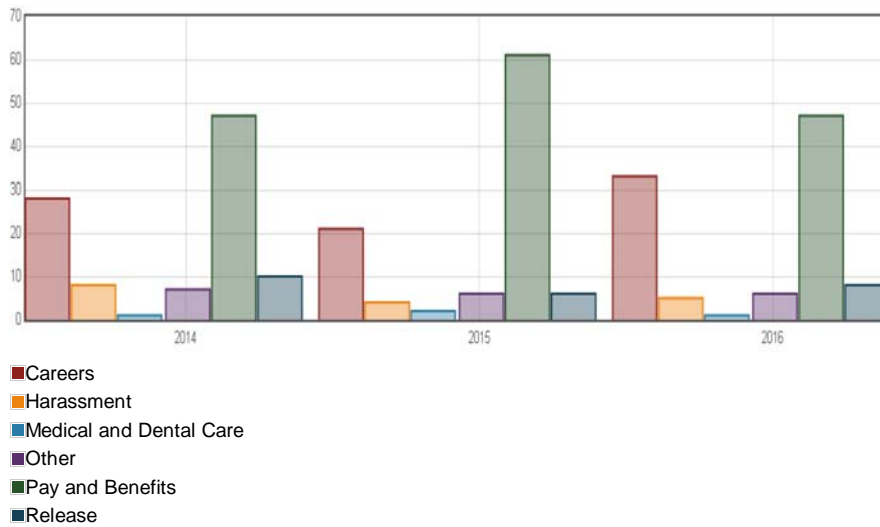
However, the Committee made an observation that, as comparable groups to the CAF (Canadian Armed Forces), the Federal Public Service and the Royal Canadian Mounted Police are both currently permitted to accrue annual leave while taking annual leave, special leave, or other paid leave, even when that leave is taken right before retirement. In other words, unlike the CAF (Canadian Armed Forces), they are not restricted from earning annual leave while taking various types of paid leave at the end of their career. The changes to the *QR&O (Queen's Regulations and Orders)* have essentially placed CAF (Canadian Armed Forces) members at a disadvantage when compared to their federal counterparts. It is unclear to the Committee why this amendment was felt to be necessary, and left it to the Chief of the Defence Staff to decide whether he wished to review the amendment.

Final Authority Decision

The final authority (FA (Final Authority)) agreed with the Committee's findings and recommendation that the grievance be denied. With respect to the Committee's observation, the FA (Final Authority) indicated that he was not prepared to render any conclusions regarding the equity of the retirement leave policy in the CAF (Canadian Armed Forces) compared to other organizations.

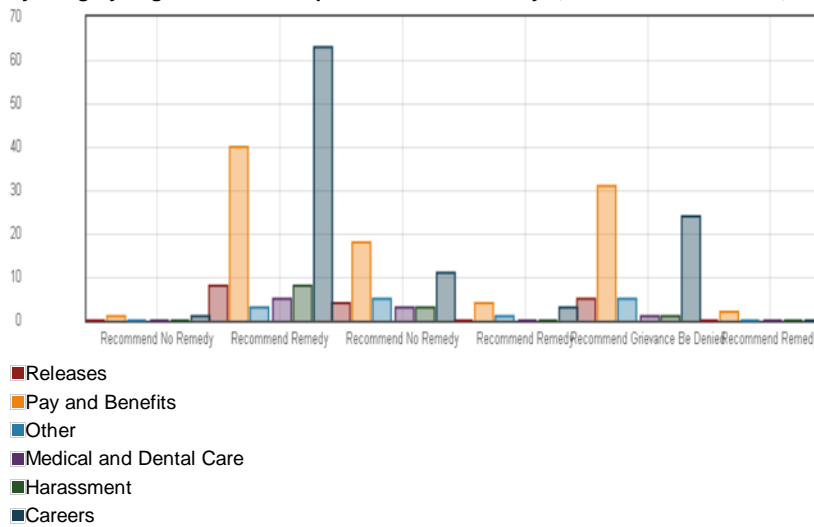
Statistics

Category of grievances received since 2014 as of December 31, 2016



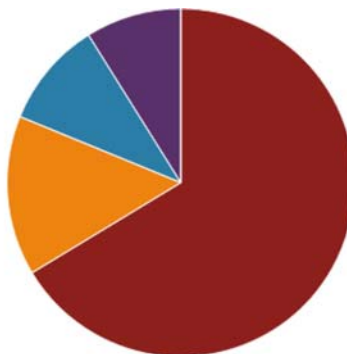
► **Category of grievances received since 2014 as of December 31, 2016 - Table**

Distribution of the Findings and Recommendations (F&R (Findings and Recommendations)) by category of grievance for the period between January 1, 2016 and December 31, 2016



► **Distribution of the Findings and Recommendations (F&R (Findings and Recommendations)) by category of grievance for the period between January 1, 2016 and December 31, 2016 - Table**

Chief of the Defence Staff (CDS (Chief of the Defence Staff)) decisions received between January 1, 2016 and June 30, 2016



- CDS agrees with Committee's F&R
- CDS partially agrees with Committee's F&R
- CDS does not agree with Committee's F&R
- Grievances resolved by CAF Informal Resolution

► **Chief of the Defence Staff (CDS (Chief of the Defence Staff)) decisions received between January 1, 2016 and June 30, 2016 - Table**

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