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File: 166-32-36186

Citation: 2009 PSLRB 6



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

WALTER O. OLSON

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Indexed as
Olson v. Canadian Food Inspection Agency

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: [Renaud Paquet, adjudicator](#)

For the Grievor: [Anna Preto, Professional Institute of the Public Service of Canada](#)

For the Employer: [Adrian Bieniasiewicz, counsel](#)

Heard at Lethbridge, Alberta,
November 25 to 27, 2008.

I. Grievance referred to adjudication

[1] Dr. Walter O. Olson (“the grievor”) was a surplus employee of the Canadian Food Inspection Agency (“the employer”) covered by the collective agreement signed by the employer and the Professional Institute of the Public Service of Canada for the Veterinary Medicine Group bargaining unit on May 27, 2002 (“the collective agreement”). On July 30, 2004, the employer informed him that, as he had not successfully completed the retraining required to appoint him to another position, his surplus status would come to an end on August 30, 2004. On October 13, 2004, the grievor filed a grievance alleging that the employer had terminated his employment for disciplinary reasons and in bad faith and in violation of article D12 of the collective agreement and of the Employment Transition Appendix (“the ETA”), which forms Appendix B to the collective agreement. The grievor asked to be restored to an appropriate position and sought full redress.

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

[3] The grievance was referred to adjudication and, in a decision dated February 28, 2007 (*Olson v. Canadian Food Inspection Agency*, 2007 PSLRB 24), the adjudicator dismissed the grievance. Among other things, the adjudicator concluded that the adequacy of a retraining program under the ETA was a matter purely within the purview of the employer. The grievor applied for judicial review, and on February 19, 2008, the Federal Court of Canada allowed the application and ordered that the matter be remitted to a different adjudicator for redetermination on the merits: *Olson v. Canada (Attorney General)*, 2008 FC 209.

[4] The Federal Court outlined its reasons for allowing the application as follows:

...

[17] I do not agree that the adequacy of the retraining program created under the transition provisions of this collective agreement was a matter purely within the purview of the Agency and that the only basis for the Adjudicator to

look behind that program was to determine whether it was surreptitiously set up to fail.

[18] The Employment Transition provisions of the collective agreement impose significant positive duties on the Agency to provide "reasonable" and "appropriate" retraining with a view to facilitating the continued employment of its surplus employees. Article 1.1.1 of the Employment Transition Appendix requires the Agency to give "every reasonable opportunity" to surplus employees to continue their careers; Article 4.1.1 stipulates that the Agency "shall make every reasonable effort to retrain" its surplus employees; Article 4.1.3 allows for up to two years of retraining; and, finally, Article 4.2.2 imposes upon the Agency the responsibility "for ensuring that an appropriate retraining plan is prepared".

...

[20] I accept that the burden of showing that the employer breached the collective agreement rests upon the affected employee. Nevertheless, the Adjudicator has a responsibility to decide, on the evidence, whether the retraining program was "reasonable" and "appropriate" to permit the employee to meet the expectations for the new position. Such a retraining program is not expected to be perfect but the Adjudicator must assess whether the program was objectively adequate, in the circumstances, to facilitate the reappointment of the surplus employee. In short, when an employer makes specific contractual promises to its employees of the sort made here by the Agency, it does not enjoy an unfettered, unilateral discretion to determine how those promises will be executed.

[21] Here, the Adjudicator identified a "gap" in the training program dealing with labour relations management issues. He also noted that the Agency essentially adopted a "sink or swim" approach to the serious labour relations problems confronting Dr. Olson at Fort MacLeod. Whether Dr. Olson bore some responsibility for identifying the weaknesses in the retraining program does not afford absolution to the Agency if, as it appears, the Agency was also aware of those difficulties and did nothing to address them.

[22] In summary, I am satisfied that the Adjudicator erred in law by holding that he was not required to determine whether the Agency breached the collective agreement in the design and implementation of the retraining program afforded to Dr. Olson. The employer had a contractual obligation to provide "reasonable" and "appropriate" retraining to Dr. Olson and which could have led to his appointment at Fort MacLeod. Whether it did so has yet to be determined. In the result, Dr. Olson's grievance must be redetermined by a different adjudicator on the merits.

...

[5] Considering the decision of the Federal Court, I have to determine whether the employer met its contractual obligation to provide reasonable and appropriate retraining to the grievor, which would have led to his appointment to a new position with the employer.

[6] The parties were not available for a hearing prior to November 25, 2008.

II. Summary of the evidence

[7] The parties adduced 24 documents in evidence. The grievor called Dr. Ray Fletcher, and the employer called Dr. Larry D. Turner, Dr. Susan Meszaros and Michael Hwozdecki as witnesses. The grievor also testified. Dr. Fletcher was the acting veterinarian-in-charge (VIC) at the Fort Macleod plant in April and May 2004. Dr. Turner was the associate director of the Lethbridge Laboratory in 2003 and 2004. Dr. Meszaros was the VIC at a Maple Leaf plant in 2003 and 2004. Mr. Hwozdecki was the inspection manager, Animal Programs, for the Alberta South Region of the employer in 2003 and 2004.

[8] The grievor was employed as a VM-02 veterinarian scientist at the Lethbridge Laboratory. In addition to his research work, the grievor had supervisory responsibilities over one or two laboratory technicians, and he was in charge of four to five employees working at the laboratory's small farm. The grievor worked there from 1985 to September 2003. He started working as a VM-01, and after he completed his Ph.D., he became a VM-02. In a letter dated September 30, 2003, the employer advised the grievor that his position was identified as surplus. In the same letter, the employer informed the grievor that alternative employment had already been found for him.

[9] On October 16, 2003, the grievor accepted the alternative employment offered to him. The offer was for an indeterminate appointment as a VIC at the Fort Macleod plant, subject to the successful completion of a retraining plan. The grievor was advised that if he was not successful in retraining, he could be laid off.

[10] According to the original plan, the retraining was supposed to last six months, but it was extended to seven-and-a-half months because the grievor took a total of six weeks of sick leave during that period. The retraining began on November 12, 2003, and completed on June 30, 2004. On July 20, 2004, the employer informed the grievor

that he had not successfully completed the retraining plan and that he would not be appointed as a VIC in Fort Macleod. On July 30, 2004, the employer informed the grievor that he would be laid off effective August 30, 2004.

[11] Even though the position of Veterinarian Scientist and the position of VIC at a slaughterhouse are classified at the same group and level (VM-02), there are substantial differences between the two positions. In the VIC position, the grievor would be working in the environment of a meat packing plant dealing with food safety concerns, performing *ante mortem* and *post mortem* carcass inspections, supervising inspectors, and generally supervising the food safety at the plant.

[12] Based on those differences and the grievor's past work experience, Dr. Turner, in consultation with Dr. Meszaros, developed a retraining plan to enable the grievor to acquire the necessary knowledge to perform the VIC duties at Fort Macleod. The retraining plan specified that Dr. Meszaros would assume responsibility for the retraining on behalf of the employer. According to the grievor, neither Dr. Turner nor Dr. Meszaros met with him to consult on his training needs regarding the VIC position. On the other hand, the grievor did not express any concerns with the retraining plan.

[13] Based on the key activities of the VIC position, the retraining covered the following six knowledge areas:

1. *Meat Hygiene training modules - there are a number of the modules that would have priority over others.*
2. *Meat Hygiene Manuals of Procedure. - There are several chapters that will be prioritized in the order they are completed. Chapters not relevant to the position may not be completed in the initial training period.*
3. *FSEP/MCAP (Food Safety Enhancement Program/ Multi-Commodity Activity Program) There are four levels of certification that our staff need to complete. This training would include an understanding of the Recall procedures. This training will extend beyond the initial training period.*
4. *Familiarity with ante-mortem, slaughter, on-site processing and cold storage operations. This would require significant hands-on training in identification of pathological conditions, their significance on food safety, appropriate follow up. Also this training would involve the interacting with the EG 01 / 02 / 03 staff*

to understand their duties and authority levels. This training should include working at the two slaughter plants [...]. During the training period, to become familiar with the high line speed slaughter plants, there will also be visits to the IBP plant at Brooks and the Cargill plant at High River. When this training is complete, the individual should have the level of expertise to complete a monthly audit and action to take when an establishment has changed it's ranking because of audit deficiencies.

5. *Processing / Cold Storage Establishments - It is important to have an understanding of the inspection role and the frequency of tasks that need to be completed in processing and storage establishments.*
6. *Other - HR responsibilities, signing authority levels, scheduling and supervision of staff, etc.*

[Sic throughout]

[14] The retraining activities were divided into months, and a training log was included as an addendum to the plan. On April 23, 2004, Dr. Meszaros and the grievor met and signed the training log, confirming that the training activities for the first four months had been completed. This meant that the grievor had been successful in that part of the retraining. Dr. Meszaros did not express any concerns to the grievor about his progress in the retraining plan.

[15] During the last part of the retraining, the grievor was sent to Fort Macleod (on April 21, 2004) to work with the acting VIC, Dr. Fletcher, and, eventually, to assume the complete responsibilities of the VIC position. Before being assigned to the Fort Macleod plant, the grievor did not receive any formal human resources management (HRM) or labour relations (LR) training. Dr. Turner knew about this as, in July 2003, he had recommended that the grievor be given the opportunity to take a supervisory course sponsored by the employer. The grievor, however, was never given that opportunity.

[16] In his first few months while shadowing Dr. Meszaros, the grievor observed how she managed her staff and handled problems that arose. Then, after arriving at Fort Macleod, the grievor worked for a period of four weeks with the acting VIC, Dr. Fletcher. He had an opportunity to observe how Dr. Fletcher handled HRM or LR issues with the staff. From his observation of the grievor's behaviour with the employees and from discussions with him, Dr. Fletcher concluded that the grievor

would be very competent in the job. After those four weeks, the grievor was left alone in the job. During that period, he had the option of calling Dr. Meszaros, Mr. Hwozdecki or human resources (HR) specialists if he encountered any problems.

[17] The Fort Macleod plant seemed to be very difficult to manage. There were four or five inspectors reporting to the VIC. Those inspectors had been there for a long time, and for the last few years the VIC position had been filled on an acting basis or by short-term appointments. All the witnesses, although each used different words, testified that it was not an easy place to manage.

[18] Dr. Fletcher testified that the inspectors at Fort Macleod were resistant to the changes that he wished to introduce. The inspectors defied him, and they would not listen. He had to give them verbal and written warnings. Dr. Fletcher also mentioned that the inspectors resisted complying with the guidelines that required two of them to be on the production line at the same time. Also, three of the inspectors wore jewellery on the kill floor even though it was against the guidelines. Dr. Fletcher had to give them verbal and written warnings to stop that practice. While he was the acting VIC at Fort Macleod, Dr. Fletcher felt that he had very little support or assistance from Mr. Hwozdecki or from the HR specialists in dealing with those issues.

[19] Dr. Turner testified that he did not know that there were HRM and LR problems at the Fort Macleod plant when he developed the retraining plan. Dr. Meszaros testified that there are HRM and LR issues in every plant but that the issues at Fort Macleod were more “elevated.” There were personality conflicts and power struggles among the inspectors. According to the grievor, Dr. Meszaros joked with him, saying something similar to the following: “Wait until you get to Fort Macleod with the inspectors, you have not seen anything yet.”

[20] Mr. Hwozdecki also knew about the HRM and LR problems at Fort Macleod. The VIC in that plant reported to him. During a telephone conversation on May 19, 2004, Mr. Hwozdecki advised the grievor and Dr. Meszaros that he did not want to turn over to the grievor “a hornet’s nest of staff relations issues,” referring to the situation at Fort Macleod. Mr. Hwozdecki added that the grievor had expertise in being a veterinarian but needed assistance in staff relations. Mr. Hwozdecki testified that the problems at the Fort Macleod plant were related to personality clashes, issues with authority and staff not taking direction. These were long-standing issues.

[21] The grievor testified that the relationship between the VIC and the inspectors at Fort Macleod was tense. The dynamic between the inspectors was not collegial. One of the inspectors had a strong personality, and he set the tone for the rest of the group, with the others following his lead. The problems existed when the grievor was working with Dr. Fletcher, and they continued after his departure.

[22] The grievor testified that, even though he had previous supervisory experience in a laboratory, he had never had to face the situation that confronted him at the Fort Macleod plant. He did not feel prepared to face it. In the earlier part of his retraining, the grievor had observed Dr. Meszaros dealing with HRM or LR situations, but those situations were not comparable to the problems that he had to handle at Fort Macleod. He was left alone with a very heavy workload that required him to work at least 50 hours per week.

[23] The grievor testified that he received no help or coaching from Dr. Meszaros while he was working at the Fort Macleod plant. He also mentioned that it was not always possible to talk to Mr. Hwozdecki since he was difficult to reach. In early May 2004, the grievor briefly met with Mr. Hwozdecki at the Fort Macleod plant. During that meeting, Mr. Hwozdecki did not express any concerns or criticism to the grievor on how he was progressing with the retraining plan.

[24] In a telephone conversation between the grievor, Mr. Hwozdecki and Dr. Meszaros on May 19, 2004, Dr. Meszaros mentioned that she wanted to have weekly meetings with the staff and the grievor at the Fort Macleod plant. According to the grievor, those meetings never took place. Dr. Meszaros does not remember whether those meetings took place. She testified that she had very little contact with the grievor when he was at the Fort Macleod plant. If the grievor needed assistance, he could have contacted her, but he never did.

[25] The grievor testified that he could not see anything in the retraining plan that could have helped him face the LR problem at the Fort Macleod plant. He felt that he was not prepared to manage insubordinate staff, workplace conflict or resistance to changes to work practices. No one assisted him in his efforts to improve a difficult workplace.

[26] Mr. Hwozdecki testified that the retraining plan was adequate. To him, the grievor being exposed to issues at other plants before going to Fort Macleod gave him

the opportunity to observe how to manage HRM and LR issues. However, Mr. Hwozdecki admitted that the HRM and LR issues were not as important in those other plants. Also, he could not recall what support he gave to the grievor to address the issues at the Fort Macleod plant. However, the grievor could have asked for assistance or advice from him, Dr. Meszaros or the HR specialists.

[27] On June 2, 2004, at the beginning of the last month of the retraining program, Mr. Hwozdecki wrote to the grievor, outlining short-term goals that needed to be met. In his letter, Mr. Hwozdecki specifically referred to the following issues: work not being distributed equally among the inspectors; the constant trade-off of shifts among inspectors; non-compliance with the requirement to have two inspectors on the kill floor at all times; arguments among inspectors that led to tense moments; and various incidents indicating that the inspection staff completely disregarded what the VIC had to say. Mr. Hwozdecki indicated in his letter that the grievor should develop an action plan and submit it to him for review. This action plan was to include the procedures to ensure corrective action, the steps that the grievor would take to ensure delivery of the corrective action and the planned follow-up to the corrective action, as well as the timelines.

[28] The grievor testified that this was the first time that Mr. Hwozdecki expressed his expectations. According to the grievor, Mr. Hwozdecki gave him no help on how to go about executing the action plan, and there was no specific timeframe provided. However, Mr. Hwozdecki testified that he made it clear to the grievor that the action plan was critical and that unless he completed it, the successful completion of his retraining was in jeopardy. According to the grievor, Mr. Hwozdecki did not tell him that not completing the action plan was a “pass or fail” for his retraining plan. The grievor did not complete the action plan because he did not know how to do it and because he was extremely busy with his work.

[29] On June 25, 2004, Mr. Hwozdecki, Dr. Turner, an HR specialist, a bargaining agent representative and the grievor had a conference by telephone. Mr. Hwozdecki expressed his concerns that the grievor did not complete the action plan and did not address the issues raised in his June 2, 2004, letter. The grievor continued to work at the Fort Macleod plant to the end of June 2004. After that, he went on sick leave for three weeks, beginning July 2, 2004.

[30] On July 20, 2004, Mr. Hwozdecki wrote to the grievor to advise him that he had not successfully completed his retraining plan. The key elements of that letter are as follows:

...

It has been clearly spelled out to you that the Fort Macleod worksite is in dire need of the leadership and consistency that only an ongoing incumbent veterinarian-in-charge can provide to ensure effective staff relations as well as the successful day to day operation of the plant. Regrettably, you have not demonstrated this leadership. This shortfall was addressed in our face to face meeting on June 3, 2004 and most recently in our teleconference last Friday June 25, 2004. At the former session you were presented with a number of short term goals as well as an action plan format that would be used to engage the Inspection Manager in useful dialogue that would assist in your last but most crucial step of your training. The latter session was used to discuss the fact that no action ensued from the previous meeting.

Further to our teleconference on June 25, 2004, I wish to advise you that as of June 30, 2004 your training period has expired. During the last month of your training period, it appeared that you did not participate or cooperate fully. You appeared unwilling or reluctant to assume supervisory authority. I note that one staff relations issue you told us you addressed, namely the jewellery issue, remained unresolved as of June 25th, and at no time did you take this issue further. Unfortunately, you failed to demonstrate that you meet the requirement level of competency for supervision.

Therefore, you will not be appointed to the VM-2, Veterinarian-in-Charge position at [...] Fort McLeod.

...

[Sic throughout]

[31] On July 30, 2004, the grievor received a letter from Dr. Judith Bossé, Vice-President of the employer's Science Branch, advising him that he would be laid off effective August 30, 2004.

III. Summary of the arguments

A. For the grievor

[32] The employer violated the collective agreement and, more specifically, the ETA. The employer had a contractual obligation to make every reasonable effort to facilitate the grievor's appointment as a VIC in Fort Macleod, and it did not meet that obligation.

[33] The evidence shows that the retraining went well for the first four months. Dr. Meszaros confirmed it by signing the training log, and the employer admits as much. During the fifth month, the grievor worked with Dr. Fletcher, who testified that the grievor had the competence to do the job. In the sixth month, the grievor was left alone and received no training. Rather, the employer used that month as a trial period, and there is a difference between a trial period and a training period. In that respect, the grievor referred me to *Labatt Breweries Ontario v. Brewery, General and Professional Workers' Union, Local 1* (2003), 116 L.A.C. (4th) 81, and *Ivaco Rolling Mills v. United Steelworkers of America, Local 7940* (1997), 69 L.A.C. (4th) 1.

[34] The employer did not respect its obligation under clause 4.2.2 of the ETA by not providing the six-month training period as specified in the retraining plan. Mr. Hwozdecki left the grievor alone at the Fort Macleod plant and decided that the best way to train him was to monitor his success. That does not represent a reasonable effort to retrain an employee.

[35] Nothing prevented the employer from extending the retraining period. Clause 4.1.3 of the ETA provides for the approval of up to two years of retraining. The employer never considered extending the grievor's retraining period. To the contrary, it reduced the retraining period to five months.

[36] There was an important gap in the retraining plan regarding HRM and LR issues, and the plan was never amended to fill that gap. That gap was a major flaw. Evidence was presented that the employer was aware of the severity of the HRM and LR issues at the Fort Macleod plant, but the retraining plan did not contain any key training activities regarding that aspect. Furthermore, the evidence shows that the employer knew that the grievor needed supervisory training. Despite this, the employer did nothing to fill the gap.

[37] The grievor had 19 years of service with the employer, and he deserved appropriate consideration to maintain employment and to do productive work. The employer violated the ETA by not doing all it should have done before laying off the grievor.

[38] The adjudicator cannot order that the grievor be appointed to a particular position. However, he should order the employer to rescind the layoff and reinstate the grievor to his original position as a VM-02. In that respect, the grievor referred me to *Graham v. Treasury Board (Office of the Commissioner for Federal Judicial Affairs)*, PSSRB File No. 166-02-24158 (19931020). The grievor should also be compensated for any loss of salary and benefits incurred since he was laid off.

B. For the employer

[39] The only issue in this case is whether the employer provided adequate retraining to the grievor as per clause 4.2.2 of the ETA. The grievor has the burden of proving that the employer did not provide adequate retraining. In 2008 FC 209, the Federal Court stated that a retraining plan does not need to be perfect. It just needs to be appropriate and reasonable.

[40] The retraining plan did not provide any specifics regarding supervisory skills. However, that does not make the plan inappropriate. The grievor was told that he could call Mr. Hwozdecki, Dr. Meszaros or the employer's HR specialists at any time if he needed assistance, but he chose not to do so.

[41] A retraining plan is not a one-way street. The employee's input is required, and the employer must be made aware of the employee's training needs. The grievor never raised any concern with his retraining, either when the plan was approved or later during the retraining period.

[42] The grievor already had supervisory experience from his former position. Dr. Turner took that into account when developing the retraining plan. Furthermore, the grievor already had supervisory exposure in his retraining plan before going to Fort Macleod.

[43] The precedents submitted by the grievor are not relevant, considering that they originate from the private sector and that they refer to different legislation and collective agreements.

[44] The employer asks that the adjudicator dismiss the grievance. If the adjudicator decides to allow the grievance, he cannot order that the grievor be reinstated as a veterinarian at the Lethbridge Laboratory because that position has been abolished. The grievor should be reinstated to a VIC position and subjected to a training plan. He should then demonstrate that he meets expectations before being appointed. According to section 13 of the *Canadian Food Inspection Agency Act*, S.C. 1997, c. 6, the authority to appoint employees belongs to the President of the Canadian Food Inspection Agency.

IV. Reasons

[45] In 2008 FC 209, the Federal Court asked that an adjudicator redetermine the grievance on its merits. The Court concluded that an adjudicator had jurisdiction to determine if the employer met its contractual obligation to provide “reasonable” and “appropriate” retraining with a view to facilitating the continued employment of the grievor. To make that determination, I must first examine the following sections of the ETA:

...

Definitions

Retraining (recyclage) - is on-the-job training or other training intended to enable affected employees, surplus employees and laid-off persons to qualify for known or anticipated vacancies within the Agency.

...

1.1.1 Since indeterminate employees who are affected by employment transition situations are not themselves responsible for such situations, it is the responsibility of the Agency to ensure that they are treated equitably and, wherever possible, given every reasonable opportunity to continue their careers as Agency employees.

...

1.1.30 The Agency shall ensure that, when it is required to facilitate appointment, a retraining plan is prepared and agreed to in writing by the employee and the appropriate manager.

...

4.1.1. To facilitate the appointment of affected employees, surplus employees and laid-off persons, the Agency shall make every reasonable effort to retrain such persons for:

(a) existing vacancies,

or

(b) anticipated vacancies identified by management.

...

4.1.3 Subject to the provisions of 4.1.2, the President shall approve up to two years of retraining.

...

4.2.2 The Agency is responsible for ensuring that an appropriate retraining plan is prepared and is agreed to in writing by the employee and the appropriate manager.

...

[46] There is no dispute between the parties that the grievor succeeded in the first four months of his retraining plan. The problems arose in the last part of the retraining, after the grievor was left alone as the VIC of the Fort Macleod plant.

[47] The employer determined that the grievor did not succeed in the last part of his retraining. The failure had nothing to do with the technical or scientific functions of the VIC position but rather with its leadership, HRM or LR functions. The grievor argued that he did not receive adequate training to prepare himself for the HRM or LR issues at Fort Macleod. The grievor argued that the employer violated the ETA in acting as it did.

[48] The retraining plan is fairly general in terms of HRM and LR knowledge areas, and I need to look at the retraining activities that took place to determine if the employer met its contractual obligation.

[49] The part of the retraining that is at issue started on April 21, 2004, when the grievor was sent to the Fort Macleod plant, and ended on June 30, 2004. For the first four weeks of that period, the grievor's job consisted of shadowing Dr. Fletcher, to

learn how to do the job. Before that period, the grievor had an opportunity to job shadow VICs in other plants. Then, once left alone at Fort Macleod, the grievor had the choice of calling Mr. Hwozdecki, Dr. Meszaros or the employer's HR specialists if he needed assistance. This is essentially the "training" that the grievor received.

[50] Dr. Turner was the grievor's supervisor when he developed the retraining plan. He took into consideration the grievor's past work experience, including his supervisory experience. However, Dr. Turner did not take into consideration that the Fort Macleod plant was a very difficult place to manage. He testified that he did not know that that was the case. Consequently, no special consideration was given to that factor. Dr. Turner knew that the grievor never received any formal training in supervision, and he did not think that it was important to include any in the retraining plan.

[51] The evidence has demonstrated that, on HRM and LR issues, the supervisory work at Fort Macleod was far more complicated than it was in the plants where the grievor had previously been exposed to supervisory duties. The only real preparation or useful retraining that the grievor received was his shadowing Dr. Meszaros and Dr. Fletcher.

[52] On June 2, 2004, two weeks after the grievor had been left alone at Fort Macleod, he received a letter from Mr. Hwozdecki asking him to submit an action plan to fix specific problems. The problems had been there, unresolved, long before the grievor arrived at Fort Macleod. That is not retraining. Rather, as the grievor pointed out, it is a trial period on which the grievor was placed. It was a pass or fail situation. The employer expected that the grievor would propose solutions to complex problems that were long-standing while he was on retraining.

[53] I do not accept the employer's argument that retraining took place in the last month of the retraining plan. No retraining took place after Dr. Fletcher left Fort Macleod. The fact that the grievor could call some people for assistance cannot be considered, by any stretch, as retraining. As a result, the evidence has shown that the grievor received only five of his six months of retraining, and that he was not well prepared and not adequately trained by the employer to face the difficult HRM and LR situations at Fort Macleod, including insubordinate staff, workplace conflict and resistance to changes to work practices. In those respects, the retraining plan fell short

of the employer's contractual obligation of ensuring that a reasonable and appropriate training plan was prepared and, I must add, put in place.

[54] The employer did not meet its contractual obligation under the ETA. It had to provide "reasonable" and "appropriate" retraining to the grievor with a view to facilitating his continuous employment, and it did not do so. Retraining was offered to the grievor, but it was clearly insufficient in relation to the important HRM and LR challenges that the VIC position at Fort Macleod involved.

[55] I do not have the authority to order the appointment of the grievor to his former position at Lethbridge Laboratory since that position was abolished in 2003. Consequently, I order that the grievor be placed back into the same situation as he was before August 30, 2004, when he was laid off, i.e. a surplus employee protected under the ETA. From there, the employer will have to apply to the grievor the protection offered by the ETA and start the process of dealing with him as a surplus employee.

[56] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[57] The grievance is allowed in part.

[58] I order the employer to reinstate the grievor as a surplus employee and, from there, to apply the provisions of the ETA.

[59] I order the employer to compensate the grievor for all loss of salary and benefits that he incurred from August 30, 2004, to the time of his reinstatement, less what he received from other employment during that period.

[60] I will remain seized for a period of 90 days from the date of this decision to address any matters relating to its implementation.

January 23, 2009.

**Renaud Paquet,
adjudicator**