

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**JAMES SAMPSON**

Grievor

and

**TREASURY BOARD  
(Indian and Northern Affairs Canada)**

Employer

***Before:*** Yvon Tarte, Deputy Chairperson

***For the Grievor:*** Wayne Rogers, The Professional Institute of the Public Service of  
Canada

***For the Employer:*** Roger Lafrenière, counsel

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Heard at Moncton, New Brunswick,  
September 27, 1995 and February 1st, 1996

## DECISION

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James Sampson who was an Account Executive with Indian and Northern Affairs Canada (INAC) has grieved that he was laid off on May 31, 1994, without first receiving a reasonable job offer in contravention of the Work Force Adjustment Directive (WFAD). The WFAD forms part of the Master agreement entered into by the Treasury Board and the Professional Institute of the Public Service of Canada (PIPSC). By way of remedy, Mr. Sampson seeks firstly to be reinstated without loss of pay or benefits and secondly to receive all the benefits conferred upon him by the WFAD.

### THE EVIDENCE

Much evidence of an historical nature, concerning Mr. Sampson's trials and tribulations within the department prior to his lay-off, was adduced. It appears that the grievor has questioned the propriety of his appointment to the position which he held immediately prior to his lay-off. Those matters had been the subject of a prior grievance which was still outstanding during much of the relevant time period for this reference. I indicated to the parties at the hearing that the legality of Mr. Sampson's lay-off was not a matter that I could look at. I asked the grievor and his representative to limit their presentation to issues relating to the alleged violation of the WFAD.

Mr. Sampson had worked for the department for approximately 6 1/2 years at the time of his lay-off.

In September, 1993, Mr. Sampson was advised that the position he held would "become redundant because of the discontinuance of functions". The declaration of surplus letter (Exhibit E-1, tab 1) signed by Gérald LeBlanc, Director of Human Resources, INAC, Atlantic Region, goes on to say:

*...Because of this redundancy, you are being placed on surplus status effective September 24, 1993 to the end of the business day April 11, 1994.*

*In accordance with the Workforce Adjustment Procedures, the Department will make every effort to find you another position for which you are qualified or could be qualified with retraining. This may not be at the same salary level, in the same occupational group, nor in the same geographic location. In addition, the Public Service Commission will be informed of your surplus status in order that your name may be placed on their priority list. In this way, you will be given priority consideration for positions for which, in the opinion*

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*of the P.S.C., you are qualified or would become qualified with retraining not only within the Department but across the Public Service as a whole. If you are appointed from surplus status to a lower-level position, you are entitled:*

- a) to be considered for re-appointment to a position equivalent to that of your former level, for a period of 24 months from your date of appointment;*
- b) to continue to receive all pay entitlements provided by the collective agreement or by the terms and conditions of employment applicable to the position from which you were declared surplus. This will continue until such time as:
  - i) you are appointed to a position at your former level, or*
  - ii) you refuse an offer of a position at your former level.**

*If you have not already done so, please prepare a curriculum vitae detailing any information you feel would assist in your placement and return it to me as soon as possible. In determining your availability for placement, you may establish certain limitations in respect to either the occupation levels/groups or the geographic location for which you are available. Every effort will be made to respect your preferences, but since we wish to provide every possible practical alternative employment option, the PSC may refer you to positions which are beyond the area for which you have declared yourself available.*

*The effort to find alternative employment can lead to alternative career opportunities and should be considered as a co-operative effort between the Department and yourself. You are strongly urged to take any steps you can on your own behalf to find a new position. If you wish to explore job opportunities outside the Federal Public Service, you should contact your local Canada Employment Centre for information on services available.*

*My office is available to help you in updating your curriculum vitae, explaining work force adjustment procedures, discussing employment strategies with you, and providing other career counseling services. Please call Barbara Hachey (902) 661-6274 should you wish to meet on any of these issues.*

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*If our joint efforts to find suitable employment should prove unsuccessful, you will be notified by the Director General, Human Resources, one month in advance of your last day of employment with the Department.*

*For additional information on Workforce Adjustment, please find attached a copy of Section 1.1.10 (Workforce Adjustment Policy). I want to assure you that everything possible will be done to find you a suitable position. I hope that you will make every effort on your own behalf and that in the near future our combined efforts will be successful.*

The surplus period was eventually extended to May 31, 1994. This fact was transmitted to Mr. Sampson by letter dated April 13, 1994. Mr. Sampson testified that he has always believed that the duties of his position have in fact continued to be performed and that consequently his surplus and lay-off were not legitimate.

On September 24, 1993, the INAC workforce adjustment unit and the priorities section of the Public Service Commission were advised of Mr. Sampson's surplus status.

Five days later Barbara Hachey, a Human Resources & Staff Relations Officer with INAC and C. Hegge, the Director of Funding Services, both from the Atlantic Region, met with the grievor. In a memo to file (Exhibit E-1, tab 4) dated September 29, 1993, the day of the meeting, Ms. Hachey wrote:

*C. Hegge and I met with J. Sampson this date to discuss the completion of the Work Force Adjustment Activity Report, mobility and resumes.*

*Both Cal and I stressed the importance of completing a resume in order for Jim to be marketed during this surplus period. We also advised the Department was prepared to pay for training costs to help him develop additional skills such as computer, how to prepare for interviews, etc.*

*Jim advised he was in the process of preparing a letter outlining his mobility which he would be forwarding to G. LeBlanc.*

*A copy of an information booklet entitled "Are You Facing Surplus and Lay-Off" was given to Jim. I advised him that additional information was available on how to prepare resumes and I would assist him with his resume if he wanted help. He advised he had the information on resume writing that I had forwarded to him before.*

*Jim spoke to his discontent with the surplus letter and the way he has been treated. Cal Hegge counseled Jim on concentrating on priority issues first such as completing his resume so the Department could start to market him.*

*Jim stated the Department must find him a job within 16 kilometers from his headquarters area.*

*I advised him that there were qualifications on this statement and I would review this particular phrase and get back to him.*

Also on September 29, 1993, Mr. Sampson wrote a letter to Gérald LeBlanc (Exhibit E-1, tab 5):

*The surplus letter received and dated September 24, 1993 is acknowledged.*

*First of all let me state that I was pleased with the co-operative tone of the letter and the genuine sincerity of the comments you expressed. This letter is to let you know that I will be working on my curriculum vitae and will hopefully have a draft copy for you in the next week or so. Mr. Kerr indicated at the meeting he is prepared to have the department issue a letter of recommendation for me and I would appreciate if this could be provided within the next week.*

*It is my desire to stay within the Public Service hopefully in commerce group (CO) position. This would correspond with the approximately 15 years experience I have in the economic development and lending field.*

*In regard to my preference area I was hoping to receive a reasonable job offer within my headquarters area (Amherst) as stipulated in the work force adjustment policy. Both Moncton and Sackville for non bilingual positions would also be good alternatives. I am mobile however, I do request that over the next 6 months or so that the employer do everything within their power to place me first internally, second within the HQ area, and thirdly to the Sackville-Moncton area. This would cause less disruption to my family situation and continue along on my career with limited duress. Consideration could be given to expanding this area once we have exhausted all avenues.*

*It is my intentions to work cooperatively with management to address these issue. As you are aware, I do however have some major concerns as to how the surplus letter came about*

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*and its timing. In the spirit of cooperation could you please clarify for me the following:*

- 1. How is my situation a work force adjustment situation. We still maintain a active Ministerial Guarantee program and provide maintenance and collection follow up on our Direct Loans. As far as I know the Department has not withdrawn from the Canadian Aboriginal Economic Strategy (CAEDS) and these are duties specific to my CO-1 function. I know the Department intends to enter into a contract with a Aboriginal Capital Corporation for my duties however, this has not materialized as planned.*
- 2. Under what circumstances did the position and duties become redundant i.e. downsizing, streamlining, devolution, privatization, contracting out, or reorganization.*
- 3. Could I please have a copy of the job description for which I am being declared surplus and to which the functions have been discontinued.*

*It would also be appreciated if you could explain further your comments in the letter that the position will become redundant. It was my understanding the government has not yet entered into any contract nor has there been a agreement reached yet with any other federal agency to take over these functions. I know the Department is looking at hopefully getting out of the loan business by 1996 however everything appears to be up in the air at this point in time including the feasibility of making legislative changes for Ministerial Guarantees. In the meantime several other employees are carrying out these duties.*

*Could you please give consideration to withdraw the surplus letter until such time as the position does in fact become redundant.*

In early October, 1993, Ms. Hachey advised the grievor that even though the employer would take into account the employee's geographical location, there was no 16 kilometer rule. She also stressed the need for employees to be mobile and to be ready to retrain.

On October 7, 1993, the Public Service Commission (PSC) wrote to Mr. Sampson, telling him of a four-month waiting period before the PSC would activate his name on

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their Priority inventory. During that period of time, he was told, each department was to consider its own employees for employment opportunities.

Mr. Sampson forwarded a draft curriculum vitae to his employer on October 12, 1993, asking that specific dates be filled in and that the finished document be typed and "professionalized".

On October 21, 1993, the employer wrote to the grievor telling him there were no vacant positions requiring a commerce classification in the Amherst area (Exhibit E-1, tab 8). Mr. Sampson was also told that there were few job opportunities in the area to which he has restricted his mobility. The suggestion was therefore made that the grievor expand his mobility to the federal Public Service across Canada.

Barbara Hachey advised Mr. Sampson that there were three vacant positions in the National Capital Region (NCR) on October 27, 1993 (Exhibit E-1, tab 10). The grievor was asked to advise if he required more information or if he wished to be referred to the positions. On the same day Mr. Sampson thanked Ms. Hachey for bringing the three positions to his attention but reminded her of his stated "preferred area for at least the first six months" (Exhibit E-1, tab 11). He added:

*Notwithstanding that if you personally feel I should be looking at northern positions for consideration you may want to provide me with a job description and the necessary qualifications. It is difficult to respond to your letter under current circumstances and to a title. I was hoping in the spirit of co-operation that I could at least get a response to my grievance prior to considering and making career decision on other positions.*

In late October, the employer circulated Mr. Sampson's résumé to other departments in an attempt to market him as a person with priority entitlement.

On November 1, 1993, the grievor met with Ms. Hachey and Mr. Hegge. Mr. Sampson was told of the rule imposed by the PSC (contained in subsection 43(2) of the Public Service Employment Regulations, 1993, SUR/93-286) whereby the entitlement to a priority appointment does not apply to appointments that would constitute promotions.

During the meeting, Mr. Sampson confirmed once again that his mobility, at that point in time, was restricted to Amherst, Sackville and Moncton. The grievor was given copies of the statements of qualification for the three vacant positions in the NCR and told that the actual job descriptions were being faxed to the region that very day.

On November 1, 1993, the grievor wrote to Ms. Hachey concerning her letter dated October 21 (supra) (Exhibit E-1, Tab 14). He wrote:

*Your letter dated October 21, 1993 is acknowledged.*

*Most aspects of this letter will be addressed under the grievance process and require no further comment at this point in time.*

*There is, however, one aspect of the letter that warrants immediate response. You are correct when you stated that it would be my preference to stay in the commerce group within my headquarters area. If however it is your opinion that this is not possible we should explore other positions within this area for which I could be re-trained.*

*Could you please provide some information on retraining or on opportunities that may exist. Does the department consider re-training, for example, should I wish to go back to Agricultural College and finish my business degree.*

*You (sic) help is always appreciated.*

On November 2, 1993, Ms. Hachey transmitted to Mr. Sampson copies of job descriptions for the three NCR positions and a completed Workforce Adjustment Activity Report (WAAR) for his review. Again the grievor was encouraged to expand his mobility since there were limited opportunities in the locations he had selected. The WAAR specified that there was mobility but went on to say that Mr. Sampson's preference was for appointment to a position in Amherst, Sackville or Moncton.

Two weeks later, on November 15, 1993, Mr. Sampson wrote to Gerry Kerr, the Regional Director for the Atlantic Region, to express his belief that Ms. Hachey "*has no intention of fulfilling the joint cooperative efforts as specified in the surplus letter*" (Exhibit E-1, Tab 17). The grievor went on to say that he felt there was a "*personal hidden agenda*", of which senior management was not aware, which could "*hinder her desire to act in (his) best interest*". Mr. Sampson made other allegations of a similar



nature against Ms. Hachey. During her testimony, Ms. Hachey denied all of the grievor's accusations. At one point during his cross-examination, Mr. Sampson stated that Ms. Hachey had harassed him "by unduly pressuring him to move across Canada and increase his mobility".

On November 17, 1993, unaware of the grievor's concerns about her, Ms. Hachey wrote to Mr. Sampson again advising him to seriously consider expanding his mobility beyond the stated geographical areas. The next day Ms. Hachey wrote to the grievor to ask if he was interested in being considered for referral to two positions being advertised in the NCR (Exhibit E-1, Tab 19).

Mr. Kerr met with Mr. Sampson on November 19, 1993 to discuss the concerns he had about Ms. Hachey's alleged bias toward him. Mr. Kerr testified that he did not believe that Ms. Hachey had conducted herself improperly. Nevertheless he agreed to the appointment of Ms. Audrey Henry from head office in Ottawa as Mr. Sampson's new workforce adjustment counselor. In his notes to file concerning this meeting (Exhibit E-1, Tab 20) Mr. Kerr wrote:

*I indicated to him that while it was up to him that he had currently restricted his mobility, that my advice was that he consider unlimited mobility. I noted that I had made an intervention with HQ to ensure that the posted positions there would be open to regional surplus employees. To that end, regional personnel had reviewed all these positions and referred him to those which he might be considered. In response to his concern that he might not be qualified, I noted again the retraining provisions.*

Sometime in November, 1993, Ms. Hachey gave Mr. Sampson's name to Revenue Canada for possible employment at the Summerside (PEI) Tax Centre. When Revenue Canada advised the grievor that local managers might contact him, he replied (Exhibit E-1, Tab 23):

*This will confirm our recent telephone conversation and your letter dated November 26, 1993.*

*As you are aware I am in a surplus situation however, the surplus status is in dispute with several grievances filed through the Professional Institute of the Public Service of Canada.*

*I do not (sic) feel comfortable at this point in time being added to a out of province deployment inventory list until such time as the grievance has been heard and a decision rendered. It would almost be impossible to make a career minded decision under these circumstances.*

*Could you please temporarily stop the deployment action until such time as I have a (sic) opportunity to clarify my situation.*

The same language was used in a letter to Ms. Henry on December 7, 1993 who responded at length (Exhibit E-1, Tab 25):

*This is to acknowledge your letter of December 7th, regarding your surplus situation and the three related grievances you have filed.*

*Your view that your priority status and surplus period should begin after a decision is rendered through the grievance procedure has been referred to the Staff Relations and Compensation Division. I have been advised that a grievance against a management decision does not suspend or negate the implementation of that decision, in your case the decision to declare your position redundant and place you on surplus status. Moreover, it was suggested that you should be advised to take full advantage of the benefits under the Work Force Adjustment Directive.*

*Regarding the Work Force Adjustment Activity Report, this form was devised here in our Unit for the purpose of assisting us to determine how to market the employee. In the past Work Force Adjustment situations, when it is known that a certain employees have made arrangements to be redeployed elsewhere in the department the "Forecast redeployment" for that employee is INAC; in devolution situations, some teachers indicate they will be accepting job offers with the **Band**; for **other** some employees do not want to be referred either because they are retiring or for other personal reasons; **when there is an indication that there is no plan, the employee is, therefore, marketed immediately by the Work Force Adjustment Unit.** In this way, it saves us time by not having to contact all the employees on the priority list when there is a job opportunity.*

*As we discussed previously, your restricted mobility may hinder your receiving a reasonable job offer, however, I encourage you to continue with your initiative on contacting other departments and the Public Service Commission.*

During a telephone conversation with Ms. Henry in late November or early December, Mr. Sampson indicated that his children were in French immersion and that he did not want to move his family at that time. On another occasion, Mr. Sampson and Ms. Henry discussed the latest employment possibilities in the NCR identified by Ms. Hachey on November 18, 1993. The grievor testified that he was told by Ms. Henry not to apply since there were too many applicants from NCR already. Ms. Henry on the other hand stated that she specifically asked the grievor if he wanted to be referred to the positions. According to her, Mr. Sampson refused stating once more he did not want to move his family.

On December 20, 1993, Mr. Sampson replied to Ms. Henry (Exhibit E-1, Tab 26):

*The point I was trying to make in my letter dated December 7, 1993 is that the surplus letter received is not perceived to be a valid letter and is not recognized as such. You, I or anyone would have a (sic) impossible job making a career decision under these circumstances.*

*I was advised by Barb Hachey, our A/Human Resource Director (Atlantic Region) that Judy Crawford of Headquarters had been assigned to investigate my complaint/grievance several months ago and I am currently waiting for this to take place. In the meantime I do not feel I am being unreasonable to ask the Staff Relations and Compensation Branch for this concession. It simply would not be perceived to be a fair or just situation to put a surplus employee in the position to react (especially to out of province positions) pending the investigation.*

*I am confident that the grievances filed will be successful and the invalid surplus letter will be withdrawn. In the mean time the respectful courtesy of this request would be appreciated.*

A few weeks later, on January 13, 1994, Ms. Henry advised the grievor not to pass up any employment opportunities while waiting for a decision on his grievance. At the beginning of February, 1994, she forwarded a Statement of Qualifications for another position in the NCR that would likely be staffed in the near future. She wrote (Exhibit E-1, Tab 29):

*Just in case you have changed your mobility to include the National Capital Region, I am enclosing a copy of a Statement of Qualifications for a PM-04, Liaison Officer position which is proposed for staffing in the near future.*

*I realize that you do not want to expand your mobility right away, however, I didn't want you to miss any opportunities which is the reason I am sending this to you. Please let me know if you would like a referral when the request for clearance is received here in Work Force Adjustment. Apparently the Educational Requirements as stated on the present Statement of Qualifications will be revised as the manager wants to consider everyone on the priority list at the equivalent level.*

On the same day, February 3rd, 1994, Mr. Sampson advised Mr. Kerr that he had agreed to go on the Public Service Commission priority list under protest (Exhibit E-1, Tab 30). He further reiterated the fact that he did not recognize the legitimacy of the surplus letter and that he did not feel comfortable making career and family decisions under such "grievable circumstances". Again, Mr. Sampson requested that his surplus status be put on hold until his grievance was resolved.

During a meeting on February 1st, 1994 with Omer Melançon, a human resources officer with the PSC, Mr. Sampson indicated that he would be mobile in Nova Scotia and New Brunswick but that his preference was still Moncton, Amherst and Sackville.

On February 4, 1994, Mr. Kerr wrote to the grievor to repeat to him that a grievance does not suspend or negate the implementation of an employee's surplus status; Mr. Sampson was again urged to consider all opportunities presented to him. During February, Mr. Sampson continued to argue that his substantive position had never been properly declared redundant.

Mr. Sampson was laid off effective May 31, 1994. The letter dated April 18, 1994 confirming that fact (Exhibit E-1, Tab B) stated in part:

*In September 1993, you were advised that your position would be redundant effective April 11, 1994. This was subsequently extended until May 31, 1994.*

*I am sorry to say that both the Department and the Public Service Commission have been unsuccessful in their efforts to find employment suitable for you in your preferred geographic location and regrettably you will be laid off effective May 31, 1994 unless a position is found for you by that date.*

*You will be granted lay-off privileges for a period of one year and you will be considered in priority for positions for which you are qualified, or could be qualified with retraining, within the Public Service. In addition, you will be entitled to enter any competition for which you would have been eligible had you not been laid off.*

On May 24, 1994, Mr. Sampson filed a grievance denouncing the "*emotional harassment and abuse carried out by senior management INAC Atlantic which has been on-going since June 10-11, 1992.*" (Exhibit E-2) Ms. Henry testified that Mr. Sampson told her, during a telephone conversation shortly after the lay-off date, that he did not want to disrupt his family life and would not accept any referrals until his grievance had been decided.

On September 9, 1994, the Public Service Commission confirmed in writing to Ms. Hachey (Exhibit E-1, Tab C) that it had been unable to make any referrals on behalf of the grievor during his priority status because of the lack of employment opportunities within Mr. Sampson's area of mobility.

Finally, Mr. Sampson obtained from the Public Service Commission a list of staffing requests received from INAC in Amherst for the period from January 1st, 1994 to June 19, 1995 (Exhibit G-21). A note which accompanies that list sought to explain why the grievor had not been referred to any of the positions.

## ARGUMENTS

### For the Grievor

Although much evidence has been adduced, this case is very straightforward. At issue is whether the employer has complied with the WFAD which requires that at least one reasonable job offer be made to every surplus employee. Two caveats are associated with this obligation. One relates to limited mobility and the other to an employee's inability to be retrained.

In this matter the employer has relied on Mr. Sampson's alleged lack of mobility to justify not giving him the full benefit of the WFAD. The department holds the view that mobility under the WFAD must be Canada wide. The reasonableness of

an employee's mobility must be determined on a case by case basis. The restriction to New Brunswick and Nova Scotia, the area of mobility specified by Mr. Sampson to the PSC when the grievor met with Mr. Melançon, was reasonable in the circumstances.

The employer would have us believe that it tried to place Mr. Sampson during his surplus period and that it was unable to find suitable employment for him in his preferred area of mobility. In fact, the employer never clearly advised the grievor of its definition of mobility.

Mr. Sampson was never asked to attend any job interviews. The WFAD does not require a job referral from the employer; it requires a job offer which Mr. Sampson never got during his eight months of surplus status. The department has tried to negate the benefits conferred by the WFAD on the basis of its narrow definition of mobility. Throughout this exercise INAC has ignored its responsibilities and paid little or no attention to the grievor.

The Graham decision (Board file 166-2-24158) is useful to determine what can be expected of a sophisticated employer in work force adjustment situations. The employer has hidden behind its definition of mobility to shirk its responsibilities and in so doing has created financial and psychological hardship to Mr. Sampson and his family. The grievor should be reinstated and placed on continued surplus status until he receives a reasonable job offer.

#### For the Employer

Mr. Sampson was told repeatedly and from very early on that he should expand his mobility, failing which he could be laid off. It is clear from the testimony of witnesses and the great volume of documentary evidence that Mr. Sampson understood or should have understood that his failure to be mobile could result in a lay-off situation.

Throughout the surplus period, the grievor refused to cooperate with the employer by restricting his mobility. Mr. Sampson was not pleased with his surplus status and his conduct was more concerned with showing that displeasure than

cooperating with the employer. The grievor's negative attitude caused him to neglect his own responsibilities under the WFAD.

The sole impediment to the making of a reasonable job offer in this case was created by Mr. Sampson himself. Mobility under the WFAD must mean mobility to a location where jobs are available. It makes no sense to impose a mobility requirement in the WFAD if the affected employee can determine where this reasonable job offer must come from by simply restricting his mobility. The WFAD is meant to help employees who cooperate and live up to their responsibilities to actively seek employment and to seriously consider all job opportunities.

The employer recognizes it did not make a job offer to Mr. Sampson. However, in order to be entitled to such an offer, the employee must be mobile. The onus of proof lies with the grievor in this case. In meeting that onus he must prove that he was mobile. Mr. Sampson has failed to do so.

The Hobbs case (Board file 166-2-21685) raises a similar fact situation where the grievor (page 23) "*was so adamant in his views on mobility and acceptable employment that he gave his Department and the Public Service Commission no room to play with.*". The Budgel case (Board file 166-2-25555) shows what happens when an employee is primarily concerned about pursuing his personal and financial interests over and above those of his accommodating and patient employer. The Graham (supra) fact situation is completely different from the situation of Mr. Sampson who, throughout this saga, continued to refuse to adequately extend his mobility. His grievance must be denied.

### Reply

The employer has been cavalier in its approach to the delicate situation of Mr. Sampson. INAC never really tried to find suitable employment for the grievor in his preferred area of mobility. Such conduct is in violation of the WFAD. The grievance should be allowed.

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The Work Force Adjustment Directive (WFAD)

What follows are some extracts from the WFAD (Exhibit G-2) referred to by the parties:

**Objectives**

*It is the policy of the Treasury Board to minimize the impact of work force adjustment situations on indeterminate employees, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to affected employees. It is, however, recognized that it is impracticable to guarantee the continuation of a specific position or job. The emphasis of this directive is, therefore, upon the concept of employment security rather than job security. To this end, every indeterminate employee whose services will no longer be required because of a work force adjustment will be guaranteed a reasonable job offer within the Public Service, subject to the provisions of the directive.*

(...)

*A **reasonable job offer** is an offer of indeterminate employment within the Public Service, normally at an equivalent level but not precluding higher or lower levels, and is guaranteed to an employee affected by normal work force adjustment who is both trainable and mobile. Where practicable, a reasonable job offer shall be within the employee's headquarters area as defined in the Travel Policy; (offre d'emploi raisonnable)*

(...)

**PART I**

**Roles and responsibilities**

**1.1 Departments**

*1.1.1 Since indeterminate employees who are affected by work force adjustment situations are not themselves responsible for such situations, it is the responsibility of departments to ensure that they are treated equitably and given every reasonable opportunity to continue their careers as Public Service employees.*

(...)

*1.1.12 The minimum period of surplus notice prior to lay-off that must be afforded to an employee is six months.*



(...)

1.1.14 *Departments shall guarantee every affected or surplus employee who is both mobile and retrainable a reasonable job offer during the surplus period, and shall extend any such surplus period until at least one such offer has been made. Where practicable, a reasonable job offer shall be within the employee's headquarters area as defined in the Travel Policy. Deputy heads shall apply this directive so as to keep actual involuntary lay-offs to a minimum, and lay-offs shall normally only occur where an individual has refused a reasonable job offer, or is not mobile, or cannot be retrained within two years, or is laid off at his or her own request.*

1.1.15 *Appointment of surplus employees to alternative positions, whether with or without retraining, shall normally be at a level equivalent to that previously held by the employee, but this does not preclude appointment to a higher or lower level. Departments shall avoid appointment to a lower level except where all other avenues have been exhausted.*

1.1.16 *Home departments shall appoint as many of their own surplus employees or laid-off persons as possible, or identify alternative positions (both actual and anticipated) for which individuals can be retrained.*

(...)

1.1.31 *When an employee refuses a reasonable job offer during the six-month notice period, he or she shall be subject to lay-off at the end of such notice period. However, when the home department has been unable to make a reasonable job offer during the first six-month surplus period, such period shall be extended and the employee shall not be laid off until after a reasonable job offer has been refused.*

1.1.32 *Departments are to presume that each employee wishes to be redeployed unless the employee indicates the contrary in writing.*

(...)

## **1.4 Employees**

1.4.1 *Employees who are directly affected by work force adjustment situations are responsible for:*

- (a) *actively seeking alternative employment in cooperation with their departments and the Public Service*

*Commission, unless they have advised the department and the Commission, in writing, that they are not available for appointment;*

- (b) seeking information about their entitlements and obligations;*
- (c) providing timely information to the home department and to the Public Service Commission to assist them in their appointment activities (including curriculum vitae or resumes);*
- (d) ensuring that they can be easily contacted by the Public Service Commission and appointing departments, and attending appointments related to referrals;*
- (e) seriously considering job opportunities presented to them (referrals within the home department, referrals from the Public Service Commission, and job offers made by departments), including retraining and relocation possibilities, specified period appointments and lower-level appointments.*

#### REASONS FOR DECISION

I must state at the outset that I have no authority to adjudicate on the legality of Mr. Sampson's lay-off. As was the case in Hobbs (supra), this grievance must stand or fall on the employer's application of the WFAD.

The WFAD sets out clear obligations and responsibilities on the part of the home department (INAC in this case), the Treasury Board, the Public Service Commission and the affected employee. In order for the system to work all concerned must cooperate and provide the necessary flexibility.

For all intents and purposes, Mr. Sampson so restricted his mobility for deployment purposes, that it became impossible to guarantee a reasonable job offer. Throughout the surplus period, the grievor gave his employer and the PSC the distinct impression that he would only accept employment in his preferred area of mobility thus failing to observe the obligations imposed upon him by section 1.4 of the WFAD. That he clearly conveyed that message is evident in the counselling he received from

Ms. Hachey, Ms. Henry and Mr. Kerr who repeatedly suggested that Mr. Sampson expand his mobility.

The grievor was well aware of their concerns. If in fact Mr. Sampson was serious about extending his mobility to more reasonable limits as he pretended to be during his testimony, he should have clearly said so. Quite the contrary, at every turn, he would repeat his credo: I am mobile but for now I won't look at anything outside Moncton, Sackville or Amherst. Mr. Sampson was the author of his own misfortune. It was clear from Mr. Sampson's demeanor during his testimony that he can be unduly intransigent. Mr. Sampson has accused the employer of having a hidden agenda. In fact, it is the grievor who steadfastly attempted to skew the process in such a way as to obtain employment on his terms in his preferred area of mobility.

For all these reasons, Mr. Sampson's grievance is denied.

**Yvon Tarte,  
Deputy Chairperson**

OTTAWA, May 13, 1996.