

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**BARBARA L. EDWARDS**

Grievor

and

**TREASURY BOARD  
(Agriculture & Agri-Food Canada)**

Employer

*Before:* J. Barry Turner, Board Member

*For the Grievor:* Suzelle Brosseau, The Professional Institute of the Public Service  
of Canada

*For the Employer:* Harvey Newman, Counsel

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Heard at Vancouver, British Columbia,  
October 29, 1997.

## DECISION

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Barbara Edwards, a Senior Program Officer, AG-03 classification, Food Production and Inspection Branch (FPIB), Agriculture and Agri-Food Canada, New Westminster, B.C., is grieving the employer's decision to deny her a lump-sum payment in lieu of unfulfilled surplus period under Part VI of the Work Force Adjustment Directive (WFAD) (Exhibit G-1).

Her grievance reads:

*I am being unreasonably denied a lump sum payment of six months salary in lieu of unfulfilled surplus period as per Work Force Adjustment Directive, Clause 7.2.2.*

(NJC)

The parties agreed that the reference in the grievance to clause 7.2.2 is not correct but should be Part VI of the WFAD.

The grievor was, at all material times, subject to the relevant provisions of the Master Agreement between Treasury Board and the Professional Institute of the Public Service of Canada which was signed by the parties on September 24, 1991. Clause 36.03(12) provides:

*36.03 The following directives, policies or regulations, as amended from time to time by National Joint Council recommendation and which have been approved by the Treasury Board of Canada, form part of this Collective Agreement:*

(12) *Work Force Adjustment Policy;*

The relevant parts of Part VI of the WFAD read as follows:

**Part VI**  
**Lump-sum payments**

**6.1 General**

*6.1.1 There are three possible lump-sum payments that may be made to employees under this directive. These are:*

(a) *pay in lieu of unfulfilled surplus period;*

...

**6.2 Pay in lieu of unfulfilled surplus period**

...

*6.2.2 Approval of pay in lieu of unfulfilled surplus period is at the discretion of management, but shall not be unreasonably denied.*

*6.2.3 The deputy head shall ensure that pay in lieu of unfulfilled surplus period is only authorized where the employee's work can be discontinued on the resignation date and no additional costs will be incurred in having the work done in any other way during that period.*

The grievor is requesting the following corrective action:

*That I be granted a lump sum payment of six months salary & be laid off.*

A request for the exclusion of witnesses was made and so ordered.

The hearing lasted one day with five witnesses testifying and fifteen exhibits submitted into evidence.

### Summary of Evidence

1. Barbara Edwards worked for Agriculture Canada for over twelve years doing operational activities for plant protection. She directed AG-02 and AG-01 inspectors at various locations. She testified that there had been a June 28, 1994 staff meeting to discuss a reorganization, but since she was not invited she assumed her position was not affected.

The next day she saw her position no longer fit into the new organization. She saw Al Oliver, Director General, on June 29, 1994 who told her not to worry as she would fit into the new organization. She saw him again on July 6, 1994 when he told her he wanted her to work at the Regional Office. As she did not want to do this, she volunteered to become an AG-02 and be allowed to do hands on field work and not Regional "paper and policy work". Mr. Oliver was not sure what would become of her. During the fall of 1994, management agreed to leave her at the District level but it was not certain who her boss would be.

Ms. Edwards identified the new organizational chart announced by Mr. Oliver on 21 February 1995 (Exhibit G-2) that indicated the District Program Officers no

longer reported to her. She was now under the Coastal North Area, New West, Plant Health and Food area. Three areas that used to be under her supervision, Victoria, Abbotsford and Pacific Highway were now under Coastal South Area. In the past, she had relied on these three areas for field information, whereas now they were independent bodies that dealt more with the Regional Office and not the District Office. The next day, she asked her new acting supervisor, Mr. S. Wilson, and Mr. Oliver what she should do. As time went on she found it more and more difficult to do her work under the new organization. She communicated with Mr. Wilson by E-mail on March 27, 1995 (Exhibit G-3) asking to be declared surplus. She was told in early April by Mr. Wilson that she was going to be transferred to the Regional Office. She told Mr. Wilson she was not interested in this transfer and preferred to leave the Branch. He told her after he spoke with Mr. Oliver that he wanted her to finish her projects, take on some new ones and he would try to get her an Early Departure Incentive (EDI) package rather than declare her surplus and lose a full-time equivalent position (FTE).

The grievor, who was a trained investigator, was referring to notes to refresh her memory that she had taken from 1994 at the suggestion of her bargaining agent.

Ms. Edwards added Mr. Wilson told her he would maximize a lump-sum payment for her to the best of his ability if she agreed to do some projects; otherwise Mr. Wilson would play "hardball" with her. She agreed to do some projects. She went on EDI and Early Retirement Incentive (ERI) courses that encouraged some persons to go into private business and possibly get some funds from the government. She took a three day course on her own regarding a future business.

The grievor tried to keep herself busy in June 1995, and was told she would not qualify for EDI but Mr. Oliver was going to offer her a Regional Office job. She did not want it and told him she wanted to be declared surplus. As he told her he might have to declare her surplus right away, she packed up her belongings in preparation.

The grievor met on June 30, 1995 with Al Oliver and Mr. Oster, Human Resources. Mr. Oliver said he could not arrange for her to do a job swap and that he was going to rewrite her job description and force her to work at the Regional Office. Mr. Oster told her, if she was declared surplus, she would not get a lump-sum

payment. She added both men suggested she resign. She disagreed with them since she felt her job had disappeared and she should therefore not have to resign especially since she would not even be eligible for employment insurance. She asked to be declared surplus again under the WFAD on July 4, 1995 (Exhibit G-4).

The grievor testified that she also spoke with the Program Manager, Ms. Le Page, regarding being in a surplus situation. Ms. Le Page told her that she would have to do the Regional job or quit. She met with Mr. Oliver the same day she met with Ms. Le Page. He told her he would declare her surplus even though he did not have to, or she would have to stay on the job for six months and not get a lump-sum payment since they still needed her. Mr. Oliver suggested she work on some sort of private sector accreditation opportunity that would give her industry experience that she could use outside government service. She felt this would be a conflict of interest and wrote Mr. Oliver accordingly on July 6, 1995 (Exhibit G-5).

She filed a grievance on July 7 regarding surplus status, had a hearing scheduled for July 17, but on July 10 she heard from her bargaining agent that she was going to be declared surplus and there was no need for a hearing.

Ms. Edwards was given a surplus notice on July 17, 1995 signed by Al Oliver (Exhibit G-6) at a meeting attended by R. Oster. It offered her a job at Regional Headquarters in New Westminster at the AG-03 level. She declined this offer since it would have been an involuntary deployment. The grievor told Mr. Oliver that what he was doing was not appropriate. He asked her if she was refusing to do the job and, if she did not do it, she was told she would be given other duties that she would not like very much. Another reference was made again to playing "hardball" during the meeting. The grievor checked her personal notes regarding the use of the term "hardball". Mr. Newman was allowed to review them as well.

The grievor wrote Richard Zurbrigg, Operations Director, Coastal Area North, on July 19, 1995 asking to be laid off immediately (Exhibit G-7). She clarified Exhibit G-7 on July 21, 1995 with an offer to resign under section 7.2.1 of the WFAD and requested a lump-sum payment of six months since she felt her job had disappeared months earlier (Exhibit G-8). Mr. Zurbrigg acknowledged Exhibits G-7 and G-8 on July 21, 1995 (Exhibit G-9).

Ms. Edwards grieved on July 21, 1995.

She was bored in June and tried to keep busy. The grievor identified a memorandum sent to her dated July 26, 1995 assigning her temporary duties (Exhibit G-10).

The duties she was assigned in Exhibit G-10 were not very similar to the ones she had done in her previous job; in fact, duties 1, 2, 3, 4 and 5 Ms. Edwards would have assigned to others to do. Number 6 she used to do.

She felt horrified, insulted and demoted by Exhibit G-10, and added the employer was merely trying to find her things to do. Exhibit G-10 made her so ill she went on sick leave from July 26 until October 11, 1995. No one replaced her while on sick leave since she said there were no duties to perform.

Ms. Edwards identified an undated, probably between July 21 and 31, 1995, E-Mail from Al Oliver (Exhibit G-11) regarding the grievor's situation. She obtained Exhibit G-11 at a Public Service Commission hearing into a harassment complaint she made against Mr. Oliver.

Ms. Edwards identified a letter dated August 10, 1995 (Exhibit G-12) from Mr. Zurbrigg responding to her memoranda Exhibits G-7 and G-8 that said there was still work for her to do. When she returned to work on October 11, she said Mr. Zurbrigg told her she had to come up with something to do, but he would not make her perform the duties outlined in Exhibit G-10. She did odd field jobs that were normally done by inspectors, persons she used to supervise. She found this particularly strange since an inspector, Mike Raynor, was declared surplus on December 1, 1995 in a letter to him dated November 28, 1995 (Exhibit G-13).

Mr. Newman objected to the relevance of Exhibit G-13. I allowed its entry and said I would weigh it accordingly.

Ms. Edwards was laid off from the Public Service on January 18, 1996, six months from when her position was declared surplus in Exhibit G-6 signed by Al Oliver.

During cross-examination, the grievor identified her old job description before she was declared surplus (Exhibit E-1) and only the title of her proposed new position of Regional Program Officer of Operations (Exhibit E-2). Her harassment complaint was determined to be unfounded by the PSC.

She added that after several meetings with Mr. Oliver, the new job she was offered was unreasonable since it was not work she wanted to be involved with even though it was an indeterminate position.

Ms. Brosseau objected to Mr. Newman's line of questioning, but added that the grievor was offered a job in Exhibit G-6 and turned it down.

The grievor responded to Mr. Newman, with respect to Exhibit G-12, the letter from Mr. Zurbrigg that her duties and position had disappeared with the reorganization. The grievor said she knew Mr. Raynor who had been declared surplus. He did work similar to that which she did after she returned from sick leave in October 1995. She said Mr. Oliver did not understand what she used to do; neither did Mr. Zurbrigg since he was new to the organization. She was unhappy about how she had been treated and felt "betrayed" because her managers said one thing, then did another.

Ms. Edwards felt it was her right to say yes or no to a job, and that Mr. Oliver was only trying to protect a full time equivalent (FTE) person year, even though he tried and failed to get an alternate for her through a job swap. She added: "To save an FTE they tried to make me quit". When Mr. Newman argued that management wanted to keep her as a "valued employee", she responded: "They told me to resign".

Ms. Edwards agreed, if the employer had given her a lump-sum, it may have hired someone else but added: "They didn't do either". While she was on sick leave, no one did her duties.

When asked if indeed Mr. Oliver had told the grievor he would play "hardball" with her, she reviewed her personal notes taken at the time or written soon after her meetings, and found a reference on March 27, 1995 and July 17, 1995 to "hardball".

Ms. Edwards agreed that Dr. Zurbrigg tried to work out duties most palatable to her. She concluded by saying: "My job was gone completely and my employer was

unreasonable in denying me a lump-sum even though they made me a job offer that I felt was unreasonable”.

2. Marla Chalmers was a CR-04 in July 1995 and had worked for the department for ten years. She prepared export documents for the plant protection program, compiled statistics, and worked with program officers on projects. The grievor was her functional supervisor in 1995.

Regarding Exhibit G-10, the temporary duties assigned to the grievor on July 26, 1995, when asked if some of them were her duties, the witness responded to each duty: (1) was not hers; (2) was all hers as a project she would report information to her boss; (3) she could be a part of retrieving past information and had done something similar in the past; (4) was not her duty; (5) she did the basis of requests for phytosanitary certification but did not sign the documents; (6) was not her duty.

She added that at least fifty percent of her own job description was listed on Exhibit G-10 and that she was performing these duties in July 1995.

During cross-examination, Ms. Chalmers said that the grievor had asked her to perform some of the compilation duties in Exhibit G-10, and that she was available to assist a technical person in July 1995 if this was delegated to her.

3. Edward Ross has worked for Agriculture Canada for twenty-five years, and is now a Program Officer, AG-02, for the new Canadian Food Inspection Agency (CFIA). He deals with import/export matters for plant quarantine, works with field staff, documents export certificates and other duties. His supervisor in 1994/95 was the grievor.

With respect to Exhibit G-10, temporary duties assigned to the grievor on July 26, 1995 he also went through all six duties as follows: (1) he performed a lot of these duties especially regarding D-memos and manuals; (2) he did some of these duties with M. Chalmers many times, and part of (2) with others; (3) he did most of this duty from memory since he knew their client problems well. He added Shane Sela did some of this work before he moved to Victoria; (4) he did a lot of this duty as well since he examined imported plants for phytosanitary; (5) was a “big part” of his job in 1995 and he signed documents as well; (6) was mostly for an AG-03 person.



Overall he said Exhibit G-10 represents about seventy percent of his duties.

Mr. Ross remembered a conversation with Dr. Zurbrigg regarding finding some duties for the grievor to perform. He was not sure what to say since the grievor had been his supervisor. He recalled being told by Dr. Zurbrigg to find something for her to do or he (Dr. Zurbrigg) would and she would not like it. Mr. Ross reports to Dr. Zurbrigg now.

Regarding the job offered to the grievor on July 17, 1995 (Exhibit G-6), Mr. Ross knew it had been offered to her. It was not posted, and he felt it did not seem like a long term position. It was offered to him but he declined. Mr. Sela, an AG-02 who is now based in Victoria, took the job as an acting assignment, AG-03, and comes to Vancouver two or three days per week.

During cross-examination, Mr. Ross said that he was the most senior expert person in his job area and that he declined the job offer (Exhibit G-6) because he felt it was too unstable. He added he and the grievor had a very efficient, team working relationship. When asked if the grievor would also have performed the temporary duties in Exhibit G-10, he said it would not be fair to say yes since she was “more of a coordinator and keeper of projects and would really delegate the duties on Exhibit G-10, some at the CR level, some to AG-01 or AG-02 levels”.

4. Al Oliver, Director General, B.C. Region, explained there was a major reorganization of animal and plant inspection areas that affected the grievor’s position. Some elements of her former position would have been in her new one under the reorganization. The grievor was a “valued employee” for whom he has a lot of respect. They met a number of times to discuss the reorganization since he felt there was still a job for her even though she preferred to stay in the field rather than go to Regional Headquarters. Ms. Edwards was affected by the reorganization and “had to come to grips with a career change”.

Mr. Oliver said he looked throughout the research branch of Agriculture Canada during the spring and summer of 1995 to find someone to replace Ms. Edwards so that she could go on a cash-out and he would not lose an FTE in the process. He failed to find such a swap opportunity. He told her to “hang on”. In March 1995, he and the grievor spoke about EDI but he never threatened her with a “hardball” reference. He

really did not want her to go since plant protection people are very specific and hard to find. Her employment was never threatened since at the time of the reorganization on February 20, 1995, they were not doing serious downsizing.

Mr. Oliver said that up to June 1995 there was no lack of work for her, especially regarding the gypsy moth. During her six months surplus period the grievor spoke of demeaning jobs she had to do. He identified the new position he offered the grievor at the Regional Headquarters as Exhibit E-2 and felt that it was about 60% similar to what she had done before and that she was fully capable of doing it. In the end, her new responsibilities were done by the Director of Operations and Shane Sela.

Mr. Oliver never told the grievor to do odd jobs. He got the impression that during the period after the reorganization she was less cooperative. He said she felt he had let her down. She took some sick leave even though the employer tried to accommodate her with tasks she preferred. Some duties she was asked to do during her six month surplus period were not done.

He agreed he suggested she work with industry since he felt she wanted to consult with the nursery industry once she was outside government. He suggested to her that he might arrange for her to be seconded to industry to learn both sides of their work and also allow her to develop contacts. She would have been paid by the government but would have worked on the outside during her surplus period in an area she enjoyed. Mr. Oliver added however that, if the grievor had done this, her regular work with the government would have had to be made up by others. She did not accept this suggestion but wanted to be declared surplus and get a cash-out. Mr. Oliver hastened to add that such a request is not automatically granted especially if there is a RJO made to the affected employee.

Regarding a July 17, 1995 meeting with the grievor and R. Cairns, Mr. Oliver agreed that she argued she was being involuntarily deployed, but the employer had left her in her position. He could not recall if he asked her at that meeting if she was refusing to do what she was told to do, nor could he recall ever saying he would find a job for her that she would not like very much.

Mr. Oliver read Exhibit G-11, his undated memorandum to R. Cairns regarding the grievor, that he said would have been written shortly before July 31, 1995. He merely wanted tasks for her six month surplus period to be clear to everyone since she was concerned about working at the Regional office. The temporary duties assigned to her in Exhibit G-10 on July 26, 1995 were to fill her six month surplus period. He did not describe these duties as clerical and also heard the grievor went off sick near the end of July. When she returned in October, Mr. Oliver was concerned that Ms. Edwards' stress was still affecting her and that he might have caused some of it. He added Dr. Zurbrigg was also conscious of this, was tolerant of the grievor's situation, did not force her to do certain things in Exhibit G-10, but also recognized there was still valuable work to do.

Mr. Oliver testified that Inspector Raynor was properly declared surplus.

During cross-examination, Mr. Oliver said he believed Mr. Sela began to act as an AG-3 on August 28, 1995. He did not know if this acting position had been posted. He agreed it was fair to assume his E-mail to R. Cairns in late July (Exhibit G-11) led to the temporary duties described in Exhibit G-10. He agreed the grievor was not replaced while she was on sick leave. When she returned, some of her supervisory duties were done by others and some AG-02's were asked to take on more responsibilities. Regarding the new organizational chart (Exhibit G-2), Mr. Oliver said the grievor lost the supervision of some AG-02's in the Victoria, Abbotsford and Pacific Highway areas but still had some overall responsibility in both Coastal Areas North and South. He agreed that trap collection duties in the field is done by PI's and AG's.

5. Dr. Richard Zurbrigg became the Operations Director, Coastal North Area, in July 1995. He said in August Ms. Edwards' position still existed and he expected her to continue to perform some of the remaining duties in her job description. He felt the temporary duties assigned to her in Exhibit G-10 on July 26, 1995 were appropriate, and did not think they would insult or demean her. There was no intent to do this. He added that when she returned after sick leave, she was still extremely upset and wanted to remain close to the field work.

During cross-examination, Dr. Zurbrigg testified that the grievor was paid while she was on some courses for about a total of one week for three different courses.

### Argument for the Grievor

Ms. Brosseau argued that under subsection 1.1.1 of the WFAD the grievor must be treated equitably by the employer. Subsection 1.1.1 reads:

#### **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.*

She added that under subsection 1.1.7 of the WFAD the grievor's position ceased to exist and the grievor referred to this in Exhibit G-4 on July 4, 1995. Subsection 1.1.7 reads:

*1.1.7 A department shall declare surplus, upon request, any affected employee who can demonstrate that his or her job has already ceased to exist.*

Ms. Brosseau argued also that the criteria cited earlier under subsections 6.1.1(a), 6.2.2 and 6.2.3 of the WFAD were not met by the employer.

She argued first the grievor was told her job was safe after the February 20, 1995 reorganization; then she was told it would disappear, then she was told she might get EDI through a job swap if she performed certain duties. Ms. Edwards wanted to leave the government since her position was gone and she was no longer happy.

Ms. Brosseau argued there are four phases in this matter:

- (1) From June 1995 to end of July 1995 the grievor had no duties and told her supervisor accordingly;
- (2) She was assigned temporary duties in Exhibit G-10 on July 26, 1995 but these were ones she would normally have delegated. Ms. Brosseau could not

understand why this would have happened at all if the first sentence of paragraph 5, page 1 of Exhibit G-12 dated August 10, 1995 is correct. It reads:

*Given the above circumstances, it is my understanding that considerable work remains to be done over the term of your six month paid surplus period -- work that is directly related to your expertise and job description, and in consequence to be given to you as an assignment. ...*

- (3) If the grievor's work was so important to the workplace, why was she not replaced during her three months of sick leave in 1995 and how could she have been seconded to industry as Mr. Oliver suggested?
- (4) The grievor was forced to do certain inspector duties at a time when inspector Raynor was being declared surplus in November 1995 (Exhibit G-13) or be deemed to be disobedient.

Ms. Brosseau concluded that if there was no need for the grievor then why deny her pay in lieu of unfulfilled surplus period? She argued the alleged RJO for a position that was not posted, from Mr. Oliver on July 17, 1995 (Exhibit G-6) the same day the grievor was declared surplus, merely allowed the employer an opportunity not to help Ms. Edwards any more, and to remove her eligibility for EDI.

She argued that even today the person doing the grievor's former job, Mr. Sela, is not full-time but is acting only. She said the employer was angry as is seen by Mr. Oliver's handwritten reference in Exhibit G-11 to the word "battle"; she concluded the employer never wanted to give her pay in lieu of unfulfilled surplus period. She said the grievor was not treated fairly, was asked to do demeaning inspector work, was denied EDI by virtue of an alleged RJO, and her position does not exist today.

Ms. Brosseau referred me to *Roessel* (Board file 166-2-27341).

#### Argument for the Employer

Mr. Newman does not dispute the fact that when the grievor saw the new reorganization chart (Exhibit G-2) she became very stressed. He argued she was never told her employment was in jeopardy, just that she would have to do different duties. Mr. Oliver did not anticipate this as a downsizing issue. Mr. Newman argued the grievor has to show that there was no room whatsoever for the employer not to give

her cash in lieu of unfulfilled surplus period. He said the WFAD is not designed to give employees largesse but is a safety net for employment security. There is no guarantee that anyone will be given money. He quoted the WFAD objective as:

**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 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, except as provided in Part VII.*

Mr. Newman also referred to Part VI of the WFAD, subsection 6.1.1(a) previously cited, 6.1.2, 6.2.1, and 6.2.2 and 6.2.3 previously cited. Subsections 6.1.2 and 6.2.1 read

**6.1.2 No lump-sum payment may be granted under section 6.1.1 in combination with any other lump-sum payment under that section.**

*The following section was in effect prior to July 15, 1995 and will come back into effect on June 23, 1998 unless further changes are brought to the Directive.*

*6.1.2 Only the separation benefit may be granted in combination with any lump-sum payment; the other two are mutually exclusive.*

**6.2 Pay in lieu of unfulfilled surplus period**

*6.2.1 When a surplus employee offers to resign before the end of the surplus period on the understanding that he or she will receive pay in lieu of unfulfilled surplus period, the deputy head may authorize a lump-sum payment equal to the surplus employee's regular pay for the balance of the surplus period, up to a maximum of six months.*

He argued subsection 6.2.3 does not have to be in favor of an employee. Even if work is discontinued, management can still reasonably refuse payment. He said if there is no employment jeopardy at the time of being declared surplus, that is, if a

RJO is made, it would be irresponsible for management to offer pay in lieu of unfulfilled surplus period. He argued the purpose of the exercise is not a get rich quick scheme. He said an affected employee can always leave work but should not expect a cash bonus for doing so. He argued the grievor got some benefits during her surplus period but not a lump-sum of money. Her position was reconfigured but, as she still had some former duties to perform after the reorganization, it was not a downsizing exercise. Mr. Newman referred me to the WFAD subsection 1.1.7 and made reference to the word “job”, and subclause 6.2.3 the use of the word “work”, and concluded Mr. Oliver and Dr. Zurbrigg had “work” for the grievor to do in her new “job”, that is, neither had disappeared. Subsection 1.1.7 reads:

*1.1.7 A department shall declare surplus, upon request, any affected employee who can demonstrate that his or her job has already ceased to exist.*

(underlining mine)

Mr. Newman concluded management had not been unreasonable since the grievor was in a state of confrontation, was not cooperating, and there was no violation of her collective agreement. He argued that the circumstances in *Roessel* decision (supra) are altogether different from what is before me, and asked me to dismiss the grievance.

In rebuttal argument, Ms. Brosseau expressed her amazement at Mr. Newman’s creativity with respect to subsection 6.2.3 of the WFAD. She said that pay in lieu of unfulfilled surplus period according to Mr. Newman’s interpretation could never be given to anyone who is given a RJO, and is contrary to what the WFAD wishes to accomplish.

### Decision

I am being asked to decide if the grievor was unreasonably denied a lump sum payment under subsection 6.1.1(a) of the WFAD, of six months salary, after she was declared surplus starting on July 18, 1995 (Exhibit G-6). The WFAD is incorporated into the grievor’s collective agreement.

The Executive Committee of the National Joint Council met on March 20, 1996 to consider this matter, but its deliberations resulted in an impasse. I too have had

considerable difficulty reaching my decision. Under certain circumstances the WFAD is difficult to interpret and to apply.

However, based on the balance of probabilities and after careful review of all the evidence, I find that after the reorganization on 21 February 1995 (Exhibit G-2), most of the grievor's cherished responsibilities, that is field related work and field work, disappeared. I believe the work she was eventually asked to do as temporary duties on July 26, 1995 (Exhibit G-10) was merely a make work exercise to keep her busy until her surplus period ran out on January 18, 1996. From July 18, 1995 onward, she did little or nothing substantial and was in fact according to her own testimony bored at times. The employer suggested that she resign. Does this mean the grievor should have been offered cash in lieu of unfulfilled surplus period? I must look at the WFAD to determine the answer to this question.

Was Ms. Edwards treated equitably as required by subsection 1.1.1 of the WFAD? I do not think so. As far back as June 1994 the grievor was concerned that she would no longer fit into the organization even though in the fall of 1994, her employer agreed to leave her at the District level where she could do field work. She volunteered to become an AG-02 in order to be able to do field work. After the February 1995 reorganization, she was told her job was safe and then that it would disappear. She asked to be declared surplus in March 1995. She was not. She was advised she might qualify for EDI through a job swap. She did not. She asked again to be declared surplus in July and was told to consider private sector accreditation work that she felt was a conflict of interest. I find it strange that Mr. Oliver on the one hand wanted to keep Ms. Edwards employed but on the other suggested she develop a program that would allow her to gain private sector experience while on the government payroll.

The grievor was finally declared surplus on July 17, 1995 (Exhibit G-6) and given a job offer for a position in Regional Headquarters the same day, a position she had consistently said she did not want and one she considered to be an "involuntary deployment". The position was one that the most senior expert in his job area also declined, that is Mr. Ross, even though it was classified at a higher level than the position he occupied as he felt the new position was too unstable. Even today, the



position is being filled on a part-time basis by Mr. Sela who is based in Victoria. Under all the circumstances, I do not consider it to have been a "reasonable" job offer.

Ms. Edwards was given temporary duties on July 26, 1995 (Exhibit G-10) that insulted her. She went on sick leave, and when she came back, was still expected to do the temporary duties. It is no wonder the grievor may have become difficult to deal with. Dr. Zurbrigg also expected her to perform some remaining duties in her job description.

Since witnesses Chalmers and Ross testified the temporary duties (Exhibit G-10) reflected at least fifty percent in one case and seventy percent in another, the duties that they respectively performed, I believe that these duties were a make-work project for the grievor since her previous position was for all intents and purposes gone. Since the grievor was described as a "valued employee", and if her work was so important but yet she was not replaced while on sick leave for almost three months, and it was suggested she resign, I find her overall treatment to have been unfair and her job importance exaggerated by the employer, since her resignation would probably have saved an FTE for her employer.

Regarding subsection 1.1.7 of the WFAD, the grievor claimed her job ceased to exist with the February 21, 1995 reorganization. I believe her, especially in light of the temporary duties that I described as a make-work exercise, and the testimony of witnesses Chalmers and Ross. For all intents and purposes her 'job' ceased to exist and she twice requested to be declared surplus. As the employer did, it is always possible to find 'work' to do, especially for someone with her diversified skills and responsibilities.

The grievor has satisfied me that her former job had all but disappeared; she was declared surplus on July 17, 1996 (Exhibit G-6), was not offered pay in lieu of unfulfilled surplus period, but was given as I have determined an unreasonable job offer the same day at Regional Headquarters. The refusal to give her pay in lieu of unfulfilled surplus period is at management's discretion according to subsection 6.2.2 of the WFAD, but a request therefor shall not be unreasonably denied. I believe that the employer tried to be "cute" on the same day it declared her surplus, by making her a job offer that, if accepted, would have continued her employment. If the employer

was really serious about keeping the grievor in its employ, it should have worked out a new working relationship fully acceptable to both parties. It did not.

A RJO is defined in the WFAD as:

*A **reasonable job offer** (offre d'emploi raisonnable) - except as provided in Part VII, 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 as defined in the Travel Directive.*

Ms. Edwards declined the job offer and had in fact asked earlier to be demoted to an AG-02 in order to be allowed to continue to do field work. If her request had been met, this probably would have ended the matter.

Regarding subsection 6.2.3, I have no evidence that there would have been any additional costs to the employer if the grievor had been given pay in lieu of unfulfilled surplus period in July 1995 even though Ms. Edwards said the employer may have had to hire someone else. We will never know. The employer claimed her work was important, yet she was not replaced when on sick leave, and even today, Mr. Sela, based in Victoria, is performing some of the grievor's former duties in an acting capacity on a part-time basis only. I believe that the employer acted unreasonably when it denied the grievor's request for pay in lieu of unfulfilled surplus period contrary to subsection 6.2.2 of the WFAD.

I therefore order the employer to compensate the grievor in the amount of six months' pay in lieu of unfulfilled surplus period. I shall remain seized with this matter in the event that the parties encounter any difficulties in implementing my decision.

For all these reasons, this grievance is allowed.

**J. Barry Turner,  
Board Member.**

OTTAWA, December 22, 1997.