

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**NANDANIE W. AMARATUNGA & OTHERS**

Grievors

and

**TREASURY BOARD  
(Revenue Canada - Customs, Excise, Taxation)**

Employer

***Before:*** [Rosemary Vondette Simpson, Board Member](#)

***For the Grievors:*** [Robert Morissette, Public Service Alliance of Canada](#)

***For the Employer:*** [Michel LeFrançois, Counsel](#)

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Heard at Sudbury, Ontario,  
August 26, 1998.

## DECISION

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The grievors (see Appendix) were all term employees, classified at the CR-04 level. They worked for Revenue Canada at the Sudbury Taxation Centre, in the Enquiries and Adjustments Division. On September 25, 1995, they requested severance pay under clause M-24.01(a)(i) of the Master Agreement between the Treasury Board and the Public Service Alliance of Canada. Their request was denied by the Department on September 29, 1995. They grieved this denial on September 29, 1995.

### Summary of Evidence

The following Agreed Statement of Facts was submitted by the parties (Exhibit G-1):

*The grievors were all term employees hired as CR-04. They worked for Revenue Canada, at the Sudbury Taxation Centre, in the Enquiries and Adjustments Division, T1 Client Services Section.*

*On June 29, 1995, they all received a letter confirming that their term contract would be extended from June 30, 1995 until September 29, 1995. The letter also served as a notice that their term contract would not be extended beyond September 29, 1995. The notice was served in accordance with Treasury Board Policy on the Management of term employees during the downsizing period and the Revenue Canada Annex to the Guidelines on the Management of Specified-Period Employment.*

*On Monday, September 18, 1995, the supervisor of the T1 Client Services Section, Enquiries and Adjustments Division, Ms. Kate Gordon, telephoned each term employee and offered them an extension of their term contract from September 29, 1995 until October 31, 1995. All these term employees (the grievors) agreed to have their terms extended to October 31, 1995.*

*On Wednesday, September 20, 1995, the acting assistant director of Enquiries and Adjustments Division, Mr. René Rioux, had a meeting with all the term employees who had received the verbal offer of employment from Ms. Gordon. Mr. Rioux informed these term employees that*

*the verbal offer was being rescinded based mainly on budget cuts and lack of funds. They were told that their term contract would thus end on September 29, 1995 as per the due date written in the June 1995 letter.*

*On Thursday, September 21, 1995, each affected term employee requested Mr. Rioux to grant them severance pay in accordance with clause M-24.01(a)(i) of the Master Agreement.*

*On September 29, 1995, Mr. Rioux denied their request stating that there was no entitlement.*

*On September 29, 1995, each grievor filed two sets of grievances.*

*On May 26, 1996, Mr. Robin D. Glass, the Assistant Deputy Minister, denied all the grievances at the third level.*

*A form 14 has been signed by the grievors; a group signed it on the 16<sup>th</sup> of February 1998, others on the 17<sup>th</sup> and others on the 18.*

*The names of the grievors are attached along with their TOS date and the calculation of their severance pay if it was to be decided that they were entitled to it.*

*The parties to this joint Statement of Facts may provide additional evidence not contradicted by the above.*

The Agreed Statement of Facts was supported by the testimony of four witnesses: Bev Leach and John Kosiba for the grievors, and Kate Gordon and Frank Salvatore for the employer.

The evidence of the witnesses did not substantially alter or add to any of the facts in the Agreed Statement of Facts. Attempts were made, in the examination and cross-examination of the witnesses, to establish the exact words used in the "offer" but none of the witnesses were able to recall them. Bev Leach testified that she cancelled vacation plans when she received the "offer" but reinstated her vacation plans when she learned from Mr. Rioux a few days later that her term would not be extended. She suffered no disadvantage.

Kate Gordon testified that, while she "offered" the grievors a month's extension to their term, there was no intention of creating a legally binding relationship. This was normally done later in the written contract. The contract was always a written one on or after the day they started work. Only Mr. Salvatore had the delegated authority to hire. All of the grievors had worked a succession of previous terms and therefore were very familiar with the long established practice of being canvassed orally by telephone about whether or not they would take an extension to their term.

Frank Salvatore testified that Kate Gordon did not have the delegated authority to hire terms. He has this authority (Exhibit E-1). He authorized her to make the initial calls to see which employees would accept a contract. Normally, if they said "yes" and showed up at work, they would be offered a written contract for a month. Before this happened, he discovered he did not have the funding. The reasons the terms were not extended was not because there was any lack of work or discontinuance of a function, but simply that the funding did not come through.

### Arguments

The employer's counsel argued that, in legal terms, nothing happened on the evidence presented in this case. In simple contract law, no legally binding relationship was established. An "offer" was made and withdrawn. The grievors indicated acceptance but no consideration was given. In practical terms, the telephone call is the way the Department finds out which people want to be extended. The grievors suffered no damage. No appointment took place. The essence of an "appointment" is contained in the *Public Service Employment Act*.

The grievors' representative argued that the case was basically a simple one. An offer to have the grievors' term extended from September 29 to October 31, 1995 was made to the grievors by Kate Gordon on September 18, 1995. All accepted. This exchange constituted a binding employment contract to October 31, 1995. He also argued that probably the grievors were inconvenienced by having to deal with changes to car pool arrangements and baby-sitting services. When the employees were sent home at the end of September, they were in a lay-off situation and were therefore entitled to severance pay.

In response to arguments of counsel for the employer that the facts of the case did not fit the definition of "lay-off" because there was no lack of work or discontinuance of a function, Mr. Morissette cited the *Coles* decision (Board file 169-2-12), a 1972 decision by former Chief Adjudicator Edward B. Jolliffe, Q.C., which stated that the fact there was insufficient funds to pay for work was equivalent to being a "lack of work" as far as the employees were concerned.

Mr. Morissette submitted calculations of the number of weeks of severance pay the grievors were entitled to. Since these amounts were disputed by the employer, Mr. Morissette concurred, at the request of the employer's counsel, that I remain seized of the cases should the grievances be allowed.

### Decision

The grievors' case is based on the premise that they accepted a legally binding "offer" thereby creating a contract. In her evidence, Ms. Kate Gordon stated that when she called the grievors she had no intention of making a legally binding offer which would create a legal relationship if the grievors accepted and agreed to report for work the following month.

Frank Salvatore, who had the delegated authority to hire terms (Exhibit E-1), testified that this authority was never subdelegated to Ms. Gordon. What he asked Ms. Gordon to do was in the nature of having her canvass the employees to see which employees would accept a contract. Normally, according to established practice, if they said "yes" and reported to work, they would be offered a written contract for a month.

The grievors, on the other hand, felt that they had been made a legally binding offer. None of the witnesses, including Ms. Gordon, could remember the exact words used by Ms. Gordon in the telephone conversation with the grievors.

In the circumstances of this case, I find that the grievors did not discharge the onus of proving that a legally binding offer was made to them.

Since I do not find that a contract existed which extended the term of employment to the end of October, their terms ended at the end of September.

For these reasons, the grievances are dismissed.

**Rosemary Vondette Simpson,  
Board Member**

OTTAWA, November 26, 1998

**APPENDIX**

<b><u>Grievor Name</u></b>	<b><u>File Number</u></b>
Nandanie W. Amaratunga	166-2-28385
Paula A. Benoit	166-2-28386
Angela Evelyn Bottrell	166-2-28387
Lucille Brisson	166-2-28388
Deborah Brouse	166-2-28389
Ginette Chevrier-Léger	166-2-28390
Glenda M.M. Côté	166-2-28391
Carole Dandeno	166-2-28392
Lucie Derro	166-2-28393
Rupinder Dhaliwal	166-2-28394
Karen Lynn Dinan	166-2-28395
Kathryn L. Gosselin	166-2-28396
Elizabeth Alice Goupil	166-2-28397
Maureen Hodgins-Fortier	166-2-28398
Lynda J. James	166-2-28399
Gisèle Lachapelle	166-2-28400
Beverley Leach	166-2-28401
Hélène Lefebvre-Paquette	166-2-28402
Sharon M <sup>c</sup> Gibbon	166-2-28403
Vickey M <sup>c</sup> Lean	166-2-28404
Patricia A. Rhéault	166-2-28405
Gisele St.-Denis	166-2-28406
Evelyn Zimmerman	166-2-28407