Lib.

File: 166-2-28605

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

BRENDAN JAMES DONALD

Grievor

and

Treasury Board (National Defence)

Employer

Before: P. Chodos, Vice-Chairperson

For the Grievor: David Landry, Public Service Alliance of Canada

For the Employer: Jock Climie, Counsel

Heard at Victoria, British Columbia, May 19, 1999.

Prior to his lay-off the grievor had been employed as an Acoustics Research Technologist (EG-5) with the Esquimalt Defence Research Detachment (EDRD) in Esquimalt, British Columbia. Mr. Donald was working on the Spinnaker Project which involved placing underwater sonar listening devices in the High Arctic. Mr. Donald designed specialized electronic equipment and was responsible for field logistics, including ensuring that the equipment employed is safely delivered to three base camps in the Arctic.

EDRD was created when the Defence Research Establishment Pacific (DREP) was closed in April 1995 as a result of budget cuts. In 1996 there were further budget cuts which necessitated the consolidation of EDRD with the Defence Research Establishment Atlantic (DREA). In 1998 some of the activities which had been performed at Esquimalt, including the Spinnaker Project, were transferred to the Halifax area. According to the Director General of DREA, Dr. Prakash Bhartia, ten positions from Esquimalt were transferred to Halifax, including Mr. Donald's position. Mr. Bhartia indicated that the Spinnaker Project is now defunct, however, a scaled-down Arctic Acoustics Program continues to exist and is funded into the year 2000.

As a consequence of these administrative changes the EDRD employees were advised by a letter dated 1 October 1996 from Mr. Bhartia that, among others, employees of the Spinnaker section would be offered relocation to DREA in Halifax by:

...

> *... no later than 31 March 1997. They will have six months from this date to decide if they wish to move with their positions. As these positions constitute a reasonable job offer, they would preclude any offer of the Early Departure Incentive (EDI) or the Early Retirement Incentive (ERI) at the time of any future surplus declaration should this occur. . . .*

It was Mr. Donald's contention that this offer of his relocated position, now in the Halifax area, was not a reasonable job offer as that term is used in the Work Force Adjustment Directive (WFAD). Following the submission of a grievance by Mr. Donald, he received a letter from Mr. Bhartia dated 2 October 1997 advising him that:

...

The purpose of this letter is to notify you that because you have not formally indicated that you wish to relocate to DREA, Dartmouth, Nova Scotia with your position, your services have been identified as surplus to departmental requirements and therefore, you are being granted status as a surplus employee for a period of six months from 6 October 1997 to 6 April 1998. A copy of the Work Force Adjustment directive is enclosed.

...

However, because you have not indicated that you wish to relocate, this offer is not deemed to be a reasonable job offer in accordance with the Work Force Adjustment Directive (WFAD) at this time. In other words, the Department and the Public Service Commission (PSC) will endeavor to find other employment for you in the Public Service during your surplus period. It is our intention, however, should no other redeployment opportunities be available, to once again offer you the position in the new location nearer the end of your surplus period. At that time, the offer will be considered to be a reasonable job offer in accordance with the WFAD.

...

(Exhibit G-1)

Mr. Donald had a number of reservations about relocating with his position to DREA in Halifax. Mr. Donald was concerned about the long-term viability of the Arctic Program; he noted that in a letter to the Chief Research and Development in Ottawa dated 31 January 1997 (Exhibit G-9), Mr. Bhartia made reference to the Electromagnetics Section at EDRD, but made no mention at all of the Arctic Program. His concerns were not assuaged by assurances from Mr. Bhartia that:

...

... All the positions that will be moved to the East Coast will be on an "Indeterminate" basis and the individuals that move with the positions will retain their Indeterminate Status. . . .

(Exhibit G-10)

Mr. Donald stated that he had tentatively concluded that he did not want to go to Halifax for both personal and professional reasons. However, he did decide to check it

out, and in June of 1997 was sent by the Department to Halifax on a fact-finding exercise. While there, he initially thought that he might want to work at DREA. He concluded soon thereafter that this would be a mistake. He observed that only four technical persons were picked to move; management did not select the more senior technical people, one of whom was the key person in the Arctic Program. This raised questions in his mind whether management was serious about that program.

In cross-examination Mr. Donald stated that he is married, and that it was unresolved whether his wife was willing to move to the Halifax area. He maintained that the most important consideration was the nature of the job, and not the location. From the input he received from employees at Halifax, he concluded that the operation was heavily bureaucratic and that the employees had less freedom and respect in the job.

Mr. Donald referred to a letter (Exhibit G-11) from Mr. G.H. Kimbell, the Acting Chief Research and Development in which he invited affected employees to submit an analysis of the relocation costs versus the costs of a departure incentive; Mr. Kimbell noted that:

...

> *... Naturally, if the results favour the offer of a Departure Incentive over Relocation Costs, the job offer will be rescinded. . . .*

Mr. Donald responded by submitting a cost analysis which indicated that moving costs were $1,200. less than the cost of a Departure Incentive. In a letter dated 14 October 1997 Mr. Bhartia advised him that his request for an early departure incentive could not be granted; the letter also stated that:

...

> *... Since you have not indicated that you wish to accept this job offer, the Department and the Public Service Commission will continue to search for other employment opportunities for you in your area of mobility during your surplus period. It is our intention, however, that if no other redeployment opportunities are available, you will be reoffered the relocated position before the end of your surplus period and it will be considered to be a reasonable job offer at that time.*
>
> ...
>
> (Exhibit G-12)

It was this letter that precipitated the subject grievance; Mr. Donald felt that the offer of his relocated position amounted to a denial of other options which were available to him, and was therefore invalid. Mr. Donald noted that he wishes to be reinstated in his position in Esquimalt for the purpose of being properly declared surplus; he does not consider the Halifax position to be a "reasonable job offer" as that term is used in the WFAD. He is no longer interested in another job offer at this point, as he has gone back to school.

By a letter dated 3 March 1997, Mr. Donald was given formal notice of the relocation of his work unit to Nova Scotia, and was advised that:

...

> *If you decide not to relocate to Dartmouth, Nova Scotia, you will be declared surplus to requirements on 30 September 97 for a period of six months. . . .*
>
> *If another employee with priority status cannot be appointed to your position in the new location, your relocated job will be offered to you as a reasonable job offer when you are declared surplus, making you ineligible for a departure incentive. . . .*
>
> (Exhibit E-1)

Mr. Donald formally indicated in a document dated 30 May 1997 that he did not wish to be relocated with his position and that he understood that he would be declared surplus on 30 September 1997 for a period of six months (Exhibit E-4).

By letter of 29 January 1998, Mr. Bhartia advised Mr. Donald that his position in the Halifax area was again being offered to him and was considered by the Department as a reasonable job offer "in accordance with the Workforce Adjustment Directive"; he was further advised that if he did not accept the offer and no other employment can be found during the remainder of his paid surplus period, he would be laid off effective 7 April 1998. His surplus period was extended beyond April; he received a letter dated 29 July 1998 advising him that his surplus period would be ending 31 August 1998 and he would be laid off as of 1 September 1998. In fact, Mr. Donald's surplus period was again extended to 20 September 1998. He was laid off effective 21 September 1998 (Exhibit G-5).

In his testimony Dr. Bhartia maintained that Mr. Donald never expressed any interest in working anywhere outside of Victoria. He observed that while there may be positions in Canada for which the grievor was qualified, it is clear that there was nothing in Victoria for him at that time. It was his belief that Mr. Donald had valuable skills which would be very useful in the continuation of the Arctic Program at DREA.

Mr. Donald maintained that he never placed any restrictions on his mobility, nor did he indicate that he was unwilling to be trained. However, he never received any plan respecting possible retraining; furthermore, he received no job offer other than the Halifax position. Mr. Donald referred to Exhibit G-15 which purports to be a list of positions offered to employees at EDRD who were affected by the relocation. According to this document, Mr. Donald had indicated that he was "not interested" in the three positions in the document. Mr. Donald testified that for one position, classified as PG-3, he had no knowledge of this position at all at the time; in respect of another, the EG-5 position, he received no information about this job, as was also the case with respect to another EG-5 position in the National Capital Region. He noted that in April 1998 he received a couple of other job descriptions; he advised Personnel that he was grossly underqualified for these jobs. He received other referrals in the form of Statement of Qualifications; however, it was clear that he was not qualified for any of these jobs as he did not possess the basic technical competence and accordingly, did not pursue them further. He acknowledged in cross-examination that it would be a very difficult decision to leave school at this time. He noted that no one ever questioned his conclusion that he was not qualified for these positions.

Ms. Laura Nevile has been employed with the Department as the Civilian Personnel Officer at Esquimalt for the last nine years. Ms. Neville outlined the efforts that were made by her and her colleagues to find alternative employment for persons such as Mr. Donald who were affected by the relocation of the EDRD. Ms. Neville testified that when an employee received a surplus letter it was her responsibility to submit information about the surplus employee, including the surplus letter and the employee's resume, to the Public Service Commission; the Commission would log this information into their computer and attempt to match up the employee's qualifications with existing vacancies. Ms. Neville referred to Exhibit E-9, a letter from the Public Service Commission attached to which is a computerized listing of the referral activity engaged in on behalf of Mr. Donald. Ms. Neville explained that the

Public Service Commission had determined that there were no suitable jobs for Mr. Donald and therefore no vacancies were referred to him. She observed that Mr. Donald's qualifications were very specific and technical; in addition, many operations were being downsized at the same time, and accordingly there was nothing available for him. Ms. Neville stated that it is her belief that every effort was made to find Mr. Donald a job other than the Halifax position. Ms. Neville maintained that while she met with Mr. Donald on several occasions, he never indicated an interest in training for any other position. She maintained that pursuant to paragraph 4.2.3 of the WFAD a training plan is only set up when a specific position had been identified which the grievor could qualify for with appropriate training.

Argument

The grievor's representative submitted that, in accordance with paragraph 3.1.1 of the WFAD, an employee has a right to choose between relocating with his position or going on surplus status. The grievor made this choice, and opted for going on surplus status. The employer in effect denied his right to make that choice when it insisted initially that he immediately be offered his former position which had been relocated to Halifax. Mr. Landry maintained that the employer cannot defeat the right accorded to employees under paragraph 3.1.1 by insisting that the employee take the relocated position, or else be laid off. The grievor's representative noted that under the WFAD an employee who is both trainable and mobile is guaranteed a "reasonable job offer". While he had a preference as to where he wanted to work, the grievor never put any restriction on his mobility. Notwithstanding, the grievor had not received any interviews or referrals.

The grievor's representative also referred to paragraph 1.1.1 which states that employees who are affected by work force adjustment are to be treated equitably. Furthermore, paragraph 1.1.14 guarantees every affected employee a reasonable job offer, and provides for an extension of the surplus period until such an offer is made. Mr. Landry submitted that the grievor is entitled to either a reasonable job offer, or the options outlined in paragraph 6.3.1; he noted that the grievor's preferred option would be paragraph 6.3.1(c). Mr. Landry referred to the *Graham* decision (Board file 166-2-24158) where the adjudicator ordered that the grievor be reinstated in his position as no reasonable job offer had been made to him.

Mr. Landry also argued on behalf of the grievor that in accordance with paragraph 1.3.10 the Department has a responsibility for providing retraining; however, no training plan was provided to the grievor. Mr. Landry noted that under paragraph 4.2.2 training is guaranteed to the employee "In addition to all other rights and benefits ...." However the Department never came back to him to advise him that he could be qualified through additional training.

Mr. Landry noted that Mr. Donald is seeking the reinstatement of his surplus status until such time as he receives a reasonable job offer; alternatively, he is prepared to accept the other options available under the new WFAD.

Counsel for the employer noted that the objectives of the WFAD, set out at page 2 of that document, places emphasis on "employment security" rather than "job security". Mr. Climie maintained that the grievor did not wish to move. On the other hand, the employer activated the system for almost a year to try to find a position for him. However, these efforts did not bear fruit, which is not surprising in view of his specialized occupation.

Mr. Climie submitted that the issue in this case is whether the job offer in Halifax constituted a "reasonable job offer". This matter was addressed by the Federal Court in *Attorney General of Canada v. Barbara Edwards*, Court File: T-105-98. Counsel for the employer maintained that Mr. Donald is seeking a job which is fully acceptable to him; however, the *Edwards* judgment makes it clear that he is not entitled to that under the WFAD.

Counsel also argued that the grievor's submission that he should be dealt with under the new WFAD was never addressed in his grievance, and therefore in accordance with the principles set down in *Burchill* (*i.e. Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109; 37 N.R. 530 (F.C.A.)), it cannot now be considered by the adjudicator. Mr. Climie also maintained that nothing turns on Exhibit G-15; the inaccurate information contained therein is not an indication of bad faith or improper conduct, or even a lack of due diligence. Mr. Climie also submitted that training cannot occur in a vacuum; it has to relate to a particular position, and in this instance, the employer was unable to identify any position which would have constituted a suitable alternative job.

In reply, Mr. Landry argued that the notion of a reasonable job offer recognizes that an employee may wish to stay in his region. Mr. Landry also argued that the *Edwards* case (*supra*) did not consider the effects of paragraph 3.1.1; also, in that case there was no issue of geographic relocation. Ms. Edwards was given a reasonable job offer; however, Mr. Donald was not referred to anything except the job he chose to reject in accordance with his rights under paragraph 3.1.1. With respect to his submissions concerning the new WFAD, Mr. Landry clarified that he was only arguing for its application if Mr. Donald is placed at this time on surplus status.

Reasons for Decision

The main issue in this case is whether an offer to an employee of his relocated position constitutes a "reasonable job offer" under the WFAD when that employee had chosen, in accordance with paragraph 3.1.1 of the WFAD, not to move with his relocated position. The facts in this case are, for the most part, not in dispute. The grievor's position was relocated from Victoria to the Halifax area; the grievor decided, and so advised the employer, that he was not interested in relocating with that position. Nevertheless, after having declared the grievor a surplus employee, the employer almost immediately offered him his old position, now located in Halifax, and maintained that this constituted a reasonable job offer. In the face of objections by the grievor the Department relented, and placed him on surplus status, which it extended for several months.

During the grievor's surplus status period efforts were made by the Department and the Public Service Commission to find him suitable alternative employment, other than his relocated position. While this is a matter of some dispute, I find that the employer made sincere and reasonable efforts to find alternative employment for the grievor. In my view, very little if anything, turns on the misinformation which apparently existed on the grievor's personnel files respecting his refusal of job offers. The evidence demonstrates, generally speaking, that there were simply no alternative positions suitable for the grievor, notwithstanding the Department's efforts, and notwithstanding his apparent willingness to consider suitable job referrals. It is also clear that, following the extension of the surplus period, the employer again offered him his relocated position in the Halifax area and indicated that in their view this was, at that time, a reasonable job offer, and the

consequence of refusing this offer would be, and indeed was, the termination of his employment with the Public Service in the form of a lay-off. Did this constitute a breach of the WFAD? In my view it did not.

The relevant provisions of the WFAD which was in place at the time read as follows:

...

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.

...

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.*

...

A ***relocation of work unit*** (réinstallation d'une unité de travail) - *is the authorized move of a work unit of any size to a place of duty beyond what, according to local custom, is normal commuting distance from the former work location and from the employee's current residence.*

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 Public Service.*

...

*The **surplus period*** (période de priorité d'excédentaire) - *is at least six months from the receipt of NOTIFICATION TO THE PSC to the proposed lay-off date.*

...

Surplus status (statut de fonctionnaire excédentaire) - *An indeterminate employee is in surplus status from the date he or she is declared surplus until the date of lay-off, until he or she is indeterminately appointed to another position, or until his or her surplus status is rescinded.*

Work force adjustment (réaménagement des effectifs) - *is a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required beyond a specified date because of a lack of work, the discontinuance of a function, a relocation in which the employee does not wish to relocate or an alternative delivery initiative.*

...

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.

...

1.1.14 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.

...

1.1.17 Home departments shall relocate surplus employees and laid-off individuals, if necessary.

1.1.18 Relocation of surplus employees or laid-off persons shall be undertaken when the individuals indicate that they are willing to relocate and relocation will enable their redeployment or reappointment, providing that there are no available local priority persons qualified and interested in the position being filled and no available local surplus employees or laid-off persons who are interested and could qualify with retraining.

...

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.

...

1.3 The Public Service Commission

...

1.3.10 While the responsibility for retraining lies with the home department, the PSC is responsible for making the appropriate referrals and may recommend retraining where it would facilitate appointment, and the appointing department is responsible for considering retraining the individual and for justifying a decision not to retrain.

...

1.4 Employees

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

...

(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.

...

Part III
Relocation of a work unit

3.1 General

3.1.1 In cases where a work unit is to be relocated, departments shall provide all employees whose positions are to be relocated with the opportunity to choose whether they wish to move with the position or be declared surplus.

3.1.2 Following written notification, employees must indicate, within a period of six months, their intention to move or be declared surplus.

3.1.3 Employees relocating with their work units shall be treated in accordance with the provisions of 1.1.17 to 1.1.20.

Part IV
Retraining

...

4.2 Surplus employees

4.2.1 A surplus employee is eligible for retraining providing:

(a) retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies in occupations or locations where there is a shortage of qualified candidates; and

(b) there are no other available priority persons who qualify for the position.

4.2.2 In addition to all other rights and benefits granted pursuant to this section, each employee is hereby guaranteed, subject to the employee's willingness to relocate, training to prepare the surplus employee for appointment to an alternative position identified by the employer, such training to continue for one year or until the date of appointment to an alternative position, whichever comes first. This appointment should be subject to successful completion of the training.

4.2.3 The home department is responsible for ensuring that an appropriate retraining plan is prepared and is agreed to

in writing by the employee and the delegated officers of the home and appointing departments.

...

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;

During the period beginning on July 15, 1995 and ending on June 22, 1998, the application of paragraph 6.1.1(b) of the Directive is suspended.

Paragraph 6.1.1(b) 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.

(b) separation benefit; and

(c) retention payment.

During the period beginning on July 15, 1995 and ending on June 22, 1998, section 6.1.2 of the Directive shall be read as follows:

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.

6.1.3 An employee not granted a lump-sum payment may grieve the reasonableness of the steps the deputy head took to determine that employee's eligibility.

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 authorise 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.

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.

6.2.4 An employee relinquishes any priority rights for reappointment upon acceptance of his or her resignation.

6.2.5 An individual who receives the pay in lieu of unfulfilled surplus period and who, during the period to be covered by the lump-sum payment, is reappointed to that portion of the Public Service of Canada specified from time to time in Schedule I, Part I of the Public Service Staff Relations Act, *shall reimburse the Receiver General for Canada by an amount corresponding to the period from the effective date of re-appointment to the end of the original period for which the lump sum was paid.*

6.2.6 When an employee has been declared surplus, a deputy head may identify another non-surplus employee who volunteers to leave the Public Service in place of the first employee. The volunteering employee shall be eligible for the pay in lieu of unfulfilled surplus period which he or she would have received had he or she been declared surplus under the terms of this directive but shall not be eligible for the separation benefit or other lump-sum payments authorised under this directive. This transaction must result in a net reduction in the size of the department.

6.3 Separation benefit

During the period beginning on July 15, 1995 and ending on June 22, 1998, the application of section 6.3 of the Directive is suspended.

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.

6.3.1 When a surplus employee is terminated, in whatever manner, under the provisions of the directive, that employee shall receive a separation benefit of one week's pay for each year of service with a department or agency for which the Treasury Board is the Employer (PSSRA I-I) up to a maximum of fifteen weeks pay, providing that the individual is entitled

> *to opt for or is entitled to an immediate annuity or an immediate allowance under the* Public Service Superannuation Act, *except where*
>
> > *(a) the employer has arranged contiguous employment elsewhere suitable to the employee, or*
> >
> > *(b) the employee has received more than one month's retraining pursuant to this directive, or*
> >
> > *(c) a non-surplus employee has volunteered to receive pay in lieu of unfulfilled surplus period in the place of a surplus employee.*
>
> ...
>
> [Emphasis in the original]

Neither the definition of a "reasonable job offer" in the WFAD, nor the provision (i.e. paragraph 1.1.14) which provides for a guarantee of a reasonable job offer, nor paragraph 1.1.31 (which states that "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.") provides any exceptions or indeed makes any reference to employees who choose to be declared surplus, rather than move with their position, in accordance with Part III of the WFAD. Furthermore, a number of the provisions of the WFAD, including paragraph 1.1.14, envisage that an employee be mobile, that is, they must be prepared to move to a location where a job is available. In light of these provisions I do not believe that the employer is precluded from considering the offer of the relocated position as a reasonable job offer. I would also suggest that this view is reconcilable with the rights accorded to employees under Part III: pursuant to paragraphs 3.1.1 and 3.1.2, an employee is entitled to "test the market"; that is, to be placed on surplus status for the requisite six-month period in order to determine whether there is another position appropriate for him or her, other than the relocated position. However, if no such position materializes within the following surplus period, the employer may then offer the relocated position as a reasonable job offer. This is in effect what the employer has done in this instance.

I would have a quite different view of this matter if the employer had maintained, as it did initially, that the offer of the relocated position, immediately following the commencement of the surplus status period, is a reasonable job offer. That would effectively deny the grievor the benefits of the option which he had made

under paragraph 3.1.1. However, having given the grievor the benefit of the surplus period and indeed extending that period, and having, in good faith, attempted to find alternative employment for the grievor, I do not believe the employer is required to indefinitely keep the employee on surplus status, and ignore the fact that in another part of the country there is a position available to him for which he is fully qualified. To find otherwise would be, in my view, an unreasonable and unwarranted application of the WFAD, and not in accordance with its provisions. As Mr. Justice Rothstein noted in the *Edwards* decision (*supra*), at page 6:

...

> *... There is nothing in the definition that implies that a job offer is not reasonable because the employee does not want it. Nothing in the definition implies that the employer is bound to work out a working relationship* "fully acceptable to both parties". *Nothing suggests that an employee has the option to refuse a reasonable job offer and therefore become entitled to pay in lieu of unfulfilled surplus period. I find that the Adjudicator's decision that the lump-sum payment sought by the respondent was unreasonably denied because there was no reasonable job offer is obviously wrong because he took into account considerations that were clearly not within the definition of reasonable job offer in the WFAD. As such, the Adjudicator's finding is patently unreasonable.*

...

I have also concluded that there has been no violation by the employer of the retraining provisions. In accordance with paragraph 4.2.1 of the WFAD a surplus employee is only eligible for retraining if certain conditions are met. In this instance, the grievor has failed to demonstrate that any of these conditions were applicable in respect of his situation. That is, there is no evidence that:

...

> *... retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies in occupations or locations where there is a shortage of qualified candidates; and ... there are no other available priority persons who qualify for the position.*

...

Accordingly, for the reasons noted above this grievance is denied.

P. Chodos,
Vice-Chairperson.

OTTAWA, July 28, 1999.