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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**WAYNE WARD**

Grievor

and

**TREASURY BOARD**  
(Solicitor General - Correctional Service Canada)

Employer



**Before:** Donald MacLean, Board Member

**For the Grievor:** Michael Tynes, representative of the Public Service Alliance of Canada

**For the Employer:** Harvey Newman, counsel

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Heard at Moncton, New Brunswick,  
June 8, 1999

## DECISION

[1] The parties presented no oral testimony in this case. Instead, they relied on documentary evidence and agreed statements of facts, which they presented orally.

[2] Wayne Ward worked as a clerk CR-03 at the Forensics Laboratory of the Royal Canadian Mounted Police in Sackville, New Brunswick. In 1992 the lab was in the process of transferring its function to a facility in the Halifax region. Because of that impending transfer, Mr. Ward's position at the lab became surplus to the needs of the RCMP. Mr. Ward was informed in April 1992 that his position would be abolished in October 1992 and that he would be laid off.

[3] Since his position was to be abolished, Mr. Ward became eligible for entitlements under the Work Force Adjustment Directive (WFAD). The directive is included in the collective agreement between the parties. The objective of the directive is as follows:

*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.*

The directive defines a reasonable job offer as:

*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.*

[4] The personnel office of the RCMP discussed the implications of the directive with Mr. Ward. They outlined how the provisions in the directive would assist him. At first, he confirmed that he was willing to accept another position within the Sackville, Dorchester, Amherst and Moncton area. In September 1992, he told personnel that he no longer wished to be considered for positions in the Moncton area. Personnel advised him that limiting the area in which he would take an appointment might reduce job

opportunities within the Public Service. He reconsidered the matter. In late September, he re-evaluated his options and told personnel that he wanted to be considered for positions in the Moncton area, as well as any openings closer to his Sackville home.

[5] Mr. Ward's surplus status had its first extension from October 15, 1992 until February 26, 1993.

[6] During that time the RCMP arrived at a secondment agreement with Correctional Services Canada at the Westmorland Institution in Dorchester for the period from January 4, 1993, until March 31, 1993. Under that agreement Mr. Ward would remain at the CR-03 level, although he would become a truck driver at the institution. He would continue to receive his CR-03 salary. The RCMP would bear the cost of the salary difference between the CR-03 and GL-MDO-5 groups and levels. Mr. Ward would be eligible to apply for competitions or transfers within the RCMP and Correctional Service. He would be reinstated to his CR-03 position at the end of the secondment period. Mr. Ward continued to pick up his pay at the Sackville Detachment of the RCMP. He was to remain within the CR bargaining unit and be entitled to all the benefits under the collective agreement for that bargaining unit.

[7] The RCMP would bill the Westmorland Institution on a monthly basis to recover Mr. Ward's salary, benefits and other related costs at the GL-MDO-5 level.

[8] The secondment agreement was extended several times. With each extension the conditions of the secondment agreement remained the same as in the original. Both departments and Mr. Ward signed the original agreement and each extension. The final extension expired on June 30, 1994.

[9] Throughout the various periods of each successive extension of the secondment agreement, Mr. Ward's surplus status with the RCMP was also successively extended, again until June 30, 1994. The extensions accommodated his secondment to the Westmorland Institution.

[10] The RCMP notified Mr. Ward that as of June 30, 1994, he would be laid off. He would be entitled to a further statutory priority for one year to allow him to apply for other positions in the Public Service. This included appointment to any position in the Public Service. Until June 30, 1995, he would be eligible to enter any competition for which he would have been eligible prior to his lay-off.

[11] On June 30, 1994, Mr. Ward was offered a term appointment as a driver by Correctional Service at the Westmorland Institution. The appointment was for three months, from July 1, 1994, until September 30, 1994. A portion of the appointment is as follows:

*Nothing in this letter should be construed as an offer of "indeterminate appointment", nor should you in any way plan on or anticipate continuing employment in the Public service as a result of this letter. The terms and conditions of employment governing your employment will be the Public Service Terms and Conditions of Employment Regulations, and, if and when applicable, a collective agreement.*

[12] His term appointment at Westmorland Institution was extended five times by Correctional Service. In a letter dated August 15, 1995, Mr. Ward was advised that his new term appointment would run from September 1, 1995 to September 5, 1995. The letter informed him that it would be the "last possible extension" of his term position. Nevertheless, on September 1, 1995, he got a new term appointment from September 6, 1995 to September 18, 1995. Each letter of appointment indicated that the conditions of employment outlined in the letter of June 30, 1994 continued to apply. September 18, 1995 was his last day of work at Correctional Service.

[13] On October 2, 1995, Mr. Ward filed a grievance with Correctional Service Canada. The grievance and corrective action sought were as follows:

*I grieve that the Employer has not treated me within the intent of the Work Force Adjustment Directive as it pertains to a guaranteed reasonable job offer, protection of my indeterminate status and any other section of the Directive pertinent to my case. This is a National Joint Council Grievance. I request that it be transmitted directly to the final level of the NJC grievance procedure.*

[14] His requested corrective action was:

*That I be treated within the intent of the Work Force Adjustment Directive; that my priority status be reinstated until such time as I am appointed to an indeterminate*

*position; that I be made whole by reimbursement of all losses including pay and benefits.*

[15] The employer's response to the grievance reads in part:

*...Any obligation with respect to your entitlements under the WFA Directive relate to your employment with the RCMP and should be directed to them.*

*Your term appointment with CSC expired on September 18, 1995. With respect to your claim that two CR-3 positions were available at that time but were offered to term employees, only one position was available and a priority surplus employee was appointed to the position on an indeterminate basis. Your one year of priority status for re-appointment, as a lay-off, ended on June 30, 1995, and as such, you were not eligible to be appointed to the position on a priority basis.*

*Your grievance with respect to your status as a laid-off employee should be directed to the RCMP.*

[16] On March 3, 1998, the National Joint Council of the Public Service of Canada concluded that it lacked jurisdiction to deal with Mr. Ward's grievance. According to their reply, he had been a term employee with Correctional Service, and, as such, he was not subject to the WFA Directive.

[17] The grievor, through his bargaining agent, referred the grievance to adjudication.

[18] The matter requires an interpretation of the WFA Directive. The parties agreed that applicable articles are as follows:

*1.1.23 Where a surplus employee is appointed by another department to a term position, the home department is responsible for these costs for one year from the date of such appointment, after which the appointing department becomes the new home department.*

*1.1.24 Departments shall protect the indeterminate status and surplus priority of a surplus indeterminate employee appointed to a term position under this directive.*

### **Summary of the representations on behalf of the Parties**

#### **Argument for the Grievor**

[19] The representative of the grievor asserts that this matter requires an interpretation of the WFA Directive. The pertinent sections are 1.1.23 and 1.1.24.

[20] The bargaining agent submits that the grievor should have retained his indeterminate status. He should have remained a priority employee. He should have continued to occupy the term position, which began on June 30, 1994. Article 1.1.23 of the WFA Directive specifies that the home department of an employee is responsible for costs for a period of one year. Under 1.1.23, the grievor's home department, after one year, became the Correctional Services of Canada. The grievor had occupied a term position with the RCMP and Correctional Service. A year after his first appointment, the RCMP was no longer his home department. Instead, Correctional Service became his home department. Correctional Service were obligated under article 1.1.24 of the WFA Directive to protect his indeterminate status and his surplus priority within that department.

[21] The grievor's employment with Correctional Service was not an extension of the secondment agreement. Rather it was a term employment under the Public Service Employment Act. Although there were letters of appointment, he was a surplus employee being extended from one period to another with Correctional Service. Such extensions should have the same meaning as a temporary appointment under the WFA Directive.

[22] The WFA Directive covers only indeterminate employees. Mr. Ward should not have lost his indeterminate status. Under the WFA Directive the RCMP protected his status as an employee through the extensions of his surplus status.

[23] According to the grievor's representative, his lay-off of June 1994, was not a legal lay-off for two reasons: (1) The RCMP did not have authority to lay off the grievor, because by then it had ceased to be his home department. Correctional Service had become his home department. Only Correctional Service could have laid off the grievor. (2) A lay-off occurs where an employee ceases to be employed and has ceased performing work for the employer. That did not occur in this instance. The grievor commenced work with the Correctional Service on the day after his lay-off from the RCMP. The extensions through the secondment agreements should only have been an extension of his indeterminate status. He was under the WFA Directive with each extension. He was

appointed for each of the specified periods; the WFA Directive was intended to cover this situation.

[24] Mr. Tynes submits that the interpretation of the directive was needed to resolve the matter for the grievor.

[25] He requested that the grievor be dealt with and treated properly, and that his priority status be reinstated to allow him the opportunity to be considered for positions within the Public Service.

[26] In addition, Mr. Ward should be reimbursed for all pay and benefits that he has lost in the interim.

**Argument on behalf of the Employer**

[27] Counsel for the employer submits that the WFA Directive provides for a reasonable job offer as long as one is mobile and trainable. The grievor restricted his mobility to Sackville, Amherst, Dorchester and Moncton. He was advised that this restriction would limit his job opportunities. However, the issue in this instance is not one of reasonable mobility. Instead, the issue is whether the RCMP had the right to lay off the grievor.

[28] The day after the grievor was laid off he was hired as a term employee with Correctional Service. By then the WFA directive did not cover Mr. Ward, because it does not cover term employees. After June 30, 1994, the WFA Directive did not protect the grievor. After that date he was not a surplus employee. He was a term employee. The objectives of the WFA Directive indicate that it is applicable only to all employees who have an indeterminate status. It covers surplus and laid-off persons in a work force adjustment situation. It is a safety net for them.

[29] At one time the WFA Directive had covered the grievor. That was when he was an indeterminate employee. The grievor was informed that he would be laid off, as of

June 30, 1994. Once he was laid off, he no longer had indeterminate status. For the purposes of the WFA Directive he was a laid-off person.

[30] During the secondment period, Mr. Ward's surplus status continued to be extended. The secondment agreement clearly showed that the RCMP was still the grievor's home department. The host department was Correctional Service. His employment records remained with the RCMP. The grievor was a CR-03 on assignment to another department. The grievor retained all rights under his CR-03 status. He remained an employee with the RCMP. He could have gone back to the RCMP at any time.

[31] However, he had no tenure after his secondment with the RCMP ended. He had not gained status as an employee with Correctional Service.

[32] Mr. Ward's indeterminate status with the RCMP ended on June 30, 1994. On July 1, 1994, he became a term employee with Correctional Service. The RCMP was his employer until the date of his lay-off. Correctional Service did not assume any added responsibility for the grievor as an indeterminate employee. He had no status under the WFA Directive to initiate a claim from Correctional Service. Correctional Service did not become the home department of the grievor under the WFA Directive. Until June 30, 1994, his home department remained the RCMP. Therefore, the RCMP had the right to lay off the grievor at that time.

[33] Articles 1.1.23 and 1.1.24 of the WFA Directive confirm that when Mr. Ward was appointed to the Westmorland Institution he was not a surplus employee. Instead, he was a laid-off person. The RCMP was not responsible for the grievor after June 30, 1994. He was not an indeterminate employee appointed to a position. His rights were as a laid-off person with a statutory priority.

[34] Mr. Ward was treated fairly and correctly at all times. The RCMP gave him the opportunity to continue to be employed in the Public Service as an indeterminate or term employee. Unfortunately for the grievor, time ran out at his lay-off date. Afterwards, he



was employed with Correctional Service on a term basis. His tenure with Correctional Service ended when his last term appointment was over.

[35] Mr. Ward has no claim under the WFA Directive. He was only covered under the directive prior to his lay-off in June of 1994. Correctional Service assumed no responsibility for him under the WFA Directive after that date. The grievance should be dismissed.

### **Conclusion and Reasons for the Decision**

[36] When his position with the RCMP was terminated in October 1992, Mr. Ward became subject to the WFA Directive. The objective of the directive is clear. It is to ensure that wherever possible alternative employment opportunities are provided to affected employees.

[37] The main issue in this case is whether the grievor had ceased to be covered by the WFA Directive. In reviewing the WFA Directive, relevant questions include the following: (1) Did Correctional Service become the home department of Mr. Ward? (2) Did the RCMP have the right to lay off the grievor on June 30, 1994, or had it ceased to be his home department? (3) When did he become a term employee of Correctional Service?

[38] Mr. Ward's position with the RCMP was eliminated in October 1992. His surplus status was extended to February 26, 1993. He was seconded to the Westmorland Institution in January 1993. The RCMP extended his assignment with Correctional Service a number of times. The RCMP also extended his surplus status. Both the secondment assignment and his surplus status ended on June 30, 1994. That was the date on which he was laid off by the RCMP. The secondment period was completed.

[39] On June 30, 1994, Mr. Ward was offered a term appointment by Correctional Service at the Westmorland Institution. His appointment at Correctional Service was extended several times. The final extension ended on September 18, 1995. In each letter

of appointment by Correctional Service, it was indicated that it was not an offer of indeterminate employment.

[40] To clarify the position of the grievor, I will review how the WFA Directive pertains to the grievor.

[41] Article 1.1.23, demonstrates that, if Mr. Ward had been appointed by Correctional Service as a term employee, after one year Correctional Service would have become his home department. Therefore, it is necessary to determine whether his earlier connection with Correctional Service can be properly construed as term appointments.

[42] It is my opinion that due to the secondment agreement Mr. Ward was on assignment from the RCMP to Correctional Service. His assignment was extended several times by the RCMP. The RCMP also extended his surplus status during this period. This was to enable Mr. Ward to find alternative employment within the Public Service. This situation continued from January 1993 until June 30, 1994.

[43] His secondment assignment with Correctional Service was to end on June 30, 1994. The RCMP extended his surplus status until that date. Therefore, Mr. Ward was not a term employee with Correctional Service during the secondment period. He was an indeterminate employee with the RCMP with surplus status on assignment to Correctional Service. His home department remained with the RCMP.

[44] Mr. Tynes submits that under article 1.1.23, Correctional Service became the home department of the grievor. The WFA Directive defines the home department as:

*A home department is a department or agency declaring an individual employee surplus.*

[45] During the secondment period Mr. Ward's home department at all times was the RCMP. It was the RCMP which extended his surplus status. Under the assignment agreement, it was clear that the RCMP was to remain the home department. Correctional Service did not agree to give him indeterminate status. The status that he retained was as a result of his original employment with the RCMP, his home department. It is evident

that Correctional Service did not do anything to become the home department of the grievor. It is also evident that the RCMP did not at any time consider Correctional Service to be the home department for the grievor. He was also aware of his situation. He was a party to the secondment agreement. He was aware that each extension carried with it the same conditions as the original agreement.

[46] The secondment agreement was a temporary agreement that was extended. It was not a term appointment. Under the WFA Directive, Correctional Service could only become the home department if it had appointed Mr. Ward as a term employee. In my view that sort of appointment as a term employee only occurred after he was laid off by the RCMP.

[47] Counsel for the employer argues that effective June 30, 1994, Mr. Ward was laid off by the RCMP. As of that date Mr. Ward was no longer a surplus employee. He became a laid-off person under the WFA Directive. A laid-off person is defined in the directive as:

*A laid-off person is a person who has been laid off pursuant to PSEA 29(1) and who still retains a reappointment priority under PSEA 29(3).*

[48] At no time, during the secondment period or during the term appointments, did Correctional Service offer an indeterminate appointment to the grievor. It was not required to do so during the secondment because the RCMP was the only department able to extend his surplus status.

[49] Mr. Tynes argues that Mr. Ward's employment with Correctional Service after January 1993 was not an extension of the secondment agreement. Instead, he had term appointments under the Public Service Employment Act.

[50] I do not agree with this assertion. The secondment agreement was for a specified period of time. All parties were aware of the provisions of the agreement. It was agreed that at the end of each secondment, Mr. Ward would be reinstated to his substantive position at the RCMP. Either party could terminate the agreement at any time. Mr. Ward did not question the agreement or its conditions during his secondment period.

[51] After the RCMP laid him off, he began his appointment with Correctional Service effective July 1st. He remained in that role for some time. At no time did Mr. Ward question the conditions stipulated by Correctional Service in their offer of June 30, 1994.

[52] It is my conclusion that Mr. Ward was not appointed as a term employee with Correctional Service, until July 1, 1994. Rather, before that date, there was an agreement between the RCMP and Correctional Service under which Mr. Ward was assigned to the Westmorland Institution. Correctional Service had no obligation to protect the indeterminate status and surplus priority of the grievor pursuant to article 1.1.24. He was assigned to the Westmorland Institution for the successive secondment periods. During this time his surplus status with the RCMP did not change. Effective on the day after he was laid off by the RCMP, he was hired as a term employee by Correctional Service at the Westmorland Institution.

[53] What occurred in this instance may appear unfair to the grievor. If he had started his term appointment with Correctional Service before his lay-off date, it is possible he would have retained his surplus status. However, under the WFA Directive, on July 1, 1994, Mr. Ward was no longer an indeterminate employee in the Public Service. His status then was that of a laid-off person. There was no connection between him and the RCMP. As a term employee with Correctional Service he was not at that time eligible for entitlements under the WFA Directive, since it does not apply to term appointees.

[54] For the above reasons the grievance of Mr. Ward is denied.

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Donald MacLean  
Board Member

MONCTON, N.B., March 28, 2000.