Date: 20190702

Files: 566-02-9895 to 9898

Citation: **2019 FPSLREB 63**

Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

JULIE CHRISTINE LAINEY

Grievor

and

TREASURY BOARD (Correctional Service of Canada)

Employer

Indexed as
Lainey v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

Before: Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Kim Patenaude, counsel

For the Employer: Marc Séguin, counsel

Heard at Québec, Quebec,

October 30 to November 1, 2018.

(FPSLREB Translation)

I. Introduction

[1] The grievor, Julie Christine Lainey, held a project manager, programs, position at the Correctional Service of Canada's ("the employer") Quebec Regional Headquarters in Laval, Quebec. It was classified at the WP-04 group and level ("the WP-04 position").

[2] On April 29, 2013, the employer informed the grievor of her surplus employee status with the guarantee of a reasonable job offer (GRJO), which had begun on November 30, 2012. That decision was made under Appendix D, on workforce adjustment ("the Appendix"), which is part of the collective agreement between the Treasury Board and the grievor's bargaining agent, the Public Service Alliance of Canada, for the Program and Administrative Services Group (all employees) bargaining unit that expired on June 20, 2014 ("the collective agreement").

[3] On June 17, 2013, the grievor filed two grievances, (1) that the employer did not make her a reasonable job offer under the workforce adjustment (WFA) provisions, and (2) that it breached the WFA provisions because it failed to advise her that her position had been abolished and that a decision was made on November 30, 2012, to declare her surplus.

[4] On July 9, 2013, the employer submitted to the grievor a list of 14 vacant WP-04 positions in the Quebec Region and consulted her before sending her a reasonable job offer.

[5] On July 11, 2013, the grievor filed a third grievance in which she alleged that the employer breached the WFA provisions since it did not advise her of the abolition of her position and of her surplus employee status when the new Aboriginal Initiatives sector was established in 2007 to 2008.

[6] On September 10, 2013, the employer offered the grievor a parole officer (PO) position at the Québec Parole Office. It was classified at the WP-04 group and level.

[7] On September 15, 2013, the grievor filed a fourth grievance in which she reiterated the allegations in her three previous grievances. But she also requested $20 000 in compensatory damages for the breaches of the WFA provisions and $20 000 as remedy for the damages that she incurred.

[8] On September 19, 2013, against her will, the grievor accepted the employment offer for the PO position (WP-04), effective October 8, 2013. She requested full training to acquire its essential qualifications.

[9] On October 25, 2013, the grievor resigned from her PO position.

[10] The four grievances were referred to adjudication on July 9, 2014, under s. 209(1)(a) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) as involving the interpretation or application of a collective agreement provision.

[11] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the former Board") to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *PSLRA* before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[12] On June 19, 2017, An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures (S.C. 2017, c. 9) received Royal assent and changed the name of the former Board and the title of the Public Service Labour Relations and Employment Board Act to, respectively, the Federal Public Sector Labour Relations and Employment Board and the Federal Public Sector Labour Relations and Employment Board Act.

[13] For the reasons set out in this decision, I find that the grievor showed that the 2012 WFA significantly affected her professional life, the consequences of which were not foreseeable or desirable. However, it was not shown that the Appendix was violated or that the employer did not respect the obligations it imposes.

II. Facts

[14] At the hearing, the grievor testified in support of her position. The employer called to testify Éric Cyr, who was the regional administrator, assessments and interventions, Quebec Regional Headquarters, from 2010 to 2016.

[15] The grievor explained that she had held her project manager, programs (WP-04), position from 1999 to 2007. She held the only position in the Quebec Region, in Laval. She was granted unpaid leave from April 24, 2007, to April 13, 2012, for her spouse's temporary relocation.

[16] Before she left, the grievor explained that she was the only employee in the Quebec Region who handled Aboriginal initiatives issues. There was only one Aboriginal program manager position in that region. Being Aboriginal, she had been recruited after completing her master's degree in anthropology to handle programs for Aboriginal offenders. Since that clientele had specific cultural needs, as the coordinator of programs and services for offenders both incarcerated and in the community, she would consider those needs so that the offenders were supported and that they received services appropriate to their needs. She was responsible for four programs. However, she was not in contact with offenders.

[17] The grievor benefitted from a spousal relocation priority for five years. After she left on unpaid leave, her workplace was restructured.

[18] Mr. Cyr explained that the Reintegration Division, in Laval, was divided in two in 2007 to 2008. One sector of the division was named Aboriginal Initiatives, and a regional administrator was appointed to manage it. In the years that followed, Brigitte Bouchard, Diane Archambault, and Cyndy Wylde occupied it successively. The other sector of the division kept the name of Assessments and Interventions, and a regional administrator was appointed to manage it. In October 2010, Mr. Cyr became that regional administrator.

[19] Mr. Cyr clarified that the grievor's position, classified WP-04, remained in the Assessments and Interventions sector even though her duties involving Aboriginal issues were transferred to the new Aboriginal Initiatives sector. The employer staffed positions in the new sector, namely, a regional administrator position and project

manager positions, at the AS-05 group and level. They were classified AS-05 as a matter of uniformity across the country.

[20] So, the grievor left Laval in March 2007, shortly before the Aboriginal Initiatives sector was established. She began to look for a new job in Québec, given her spouse's relocation there. She applied to several processes, including one carried out at the Department of Indian Affairs and Northern Development. She explained that on March 29, 2007, she was informed that the employer planned to abolish her position. Specifically, on March 29, 2007, a senior human resources advisor emailed her the following:

> [Translation]
>
> *Could you send me the contact information for the person responsible for the Department of Indian Affairs. I think that the time is right to inform them that we are preparing to declare you surplus. For the Commissioner, it would be easier to grant the request knowing that his counterpart from the other department knows about it.…*

[21] On April 2, 2007, the grievor emailed the following to the human resources advisor:

> [Translation]
>
> …
>
> *Another question: does the fact that you spoke to them mean that there will be no surplus declaration and that I will not have any salary protection (if ever that should work, of course)?*

[22] On the same day, April 2, 2007, the grievor received the following reply from the human resources advisor (at that time, the grievor had not yet left her position):

> [Translation]
>
> …
>
> *For you to benefit from the salary protection that you are entitled to, the surplus declaration is required. Regardless of whether or not you obtain the position, your substantive position will be abolished; therefore, we must protect your salary with respect to lower-level positions that may interest you.*

[23] On July 18, 2007, the grievor wrote to Brigitte Bouchard, Quebec Region, to ask her "[translation] whether it would be appropriate to meet in the next few days to discuss the situation of [her] position in the region (surplus or not) …".

[24] On October 1, 2007, the grievor wrote to Sylvie Fortier, the human resources advisor responsible for that sector in the Quebec Region. Her email referred to the length of her leave. She also asked if after one or two years and not receiving an offer, she could return to her position. Ms. Fortier replied to her as follows on October 2:

> [Translation]
>
> *You have to make sure that the employer has not abolished your position because after one year of leave, the employer has the right to replace you or to abolish your position. I suggest that you speak to your supervisor about it.*

[25] On October 9, 2007, the grievor emailed her supervisor, Sylvie Brunet-Lusignan, Regional Administrator, Reintegration and Programs, as follows:

> [Translation]
>
> *As you undoubtedly know, I am currently on unpaid leave for spousal relocation until next October 19.*
>
> *I would like to be informed of the situation for my position (project manager, aboriginal programs) and of the Region's intentions with respect to it.*
>
> …

[26] On October 12, 2007, the grievor received the following reply from her supervisor:

> [Translation]
>
> *In another email, you let me know that you would like a new extension of your unpaid leave; you state April 1 or September 1. You need to know that this type of leave cannot be unduly extended, which is why it is important to properly specify the timeline.*
>
> *Therefore, I would like you to indicate to me your intentions going forward. You still hold a position at the Regional Administration in Laval, as a project manager. Are you thinking of returning to Laval to occupy your position, or are you continuing to examine options in the Québec region?*

[27] Given that her position had not been abolished, the grievor requested an extension of her unpaid leave. She also advised her supervisor that she could return to work in Laval. On October 17, 2007, she emailed the following to her supervisor:

> [Translation]
>
> *Thank you for this telephone appointment.*
>
> *As discussed, I requested until April 16, 2008, therefore for one year. After that date, if I understand correctly, I will assess whether I will return to Laval or whether I will continue with the balance of my leave (four years).*
>
> *I would like to point out that I wished to permanently establish myself in Québec but that my spouse's situation has not been determined (a possibility of returning to Montreal), which is why I am not dismissing the option of resuming my position in Laval. On that point, I would appreciate receiving the Aboriginal Initiatives sector's new organizational chart when it becomes available.*
>
> *In the event that my spouse's situation becomes permanent or that I find a deployment to Québec (to CSC or elsewhere), my unpaid leave would end.*
>
> …

[28] The grievor never received the requested organizational chart. She testified that she had not been advised of the official establishment of the new Aboriginal Initiatives sector. She stated that she tried to obtain information on it but that she had received nothing.

[29] Mr. Cyr deduced from the emails that she knew that the new sector was in place.

[30] The grievor stated that she did not understand why she had not been invited to work in the new sector given that she had written that she had not ruled out the possibility of returning to Laval. In addition, her former duties had been filled by employees in the new sector. Similarly, she added that the project managers in fields other than Aboriginal (for example, in substance abuse, visible minorities, etc.) in Mr. Cyr's sector had all been promoted to WP-05 positions during her absence.

[31] Later, in December 2007, when the grievor learned that a staffing process was underway to fill the regional administrator, Aboriginal Initiatives (RAAI), position in Laval (AS-07), she emailed (via Hotmail) her application (her *curriculum vitae*). However, the employer never received it, and later on, she did not find the sent copy in

her Hotmail account. She explained that occupying the RAAI position was her career objective. She would have returned to Laval with her family to occupy that position.

[32] The grievor stated that she would have been interested in the RAAI position but that she had not been officially informed of the announcement that it was being staffed. As it was posted only internally, she did not have access to it because she did not have access to Publiservice. In addition, as it and the AS-05 project officer positions were at higher levels, she had not been referred to them via the priority system. She insisted that she had advised the employer in 2007 that she had not ruled out the possibility of returning to Laval.

[33] On January 25, 2008, the grievor wrote to her supervisor, stating her intention to extend her unpaid leave. The relevant parts of the letter read as follows:

> [Translation]
>
> …
>
> *After a two-month sick leave (February to April 2007), I requested unpaid leave for my spouse's relocation for April to August 2007. In August 2007, I requested an extension until October 2007, then an extension until April 2008.…*
>
> *Based on the fact that my spouse's situation is temporary, I would like to request an extension of my unpaid leave under clause 45.01 of the collective agreement for 4 years, i.e., from April 14, 2008, to April 14, 2012.*
>
> …

[34] On April 17, 2008, the Assistant Deputy Commissioner, Institutional Operations, sent the following letter to the grievor:

> [Translation]
>
> …
>
> *As the employment Act stipulates, we may proceed to post your position on the day after the extension of your unpaid leave, i.e., as of April 15, 2008.*
>
> *With this, we wish to inform you of our intention to resort to a notice of interest with deployment possibilities to staff your current position; that notice will be posted in the coming weeks.*

> *Do not hesitate to contact your manager or your Public Service Commission representative if clarifications are necessary.*
>
> …

[35] On July 10, 2008, the grievor asked the person newly appointed to the RAAI position in Laval (Brigitte Bouchard) whether her project manager position had been filled and if so, whether she held surplus employee status. The grievor wondered whether she had the right to retraining. She explained that she had been rejected in a PE-03 process because she did not have any human resources training.

[36] On July 22, 2008, Ms. Bouchard advised the grievor by email that her position was occupied by a person on secondment until September 30, 2008. The email included the following:

> [Translation]
>
> …
>
> *No, it is not a question of opening an Aboriginal division in the Québec region. As for filling your position, it is currently occupied on secondment until September 30, 2008. Between now and then we expect to proceed with the notice of posting with the possibility of deployment ….*
>
> *As to your surplus status, I refer you to Sylvie Fortier, who will be in a better position than I to answer your questions.*
>
> …

[37] On August 12, 2008, Ms. Fortier responded as follows to the grievor, who asked whether she could benefit from the training offered at the School of Public Service:

> [Translation]
>
> …
>
> *As you have a spousal relocation priority, you are not entitled to any training. And as a small clarification, if the employer fills your substantive position in a determinate manner, you will become a return from leave of absence priority (one year added to the leave already granted), but you also will not be entitled to training.*

[38] On August 20, 2008, the grievor emailed the following to Ms. Fortier:

> [Translation]
>
> *Hello again,*

> *How does an employee become surplus? Is it possible to change status and to change from a spousal relocation priority to surplus? I am trying to see whether in some way I could benefit from training, which would help me with my relocation options. Because a big problem on my cv is my training [a master's in anthropology], which is too specific.…*

[39] On the same day, Ms. Fortier responded as follows to the grievor:

> [Translation]
>
> …
>
> *The only way to become surplus is when the employer abolishes your position. This is the only type of priority that allows the employee to receive training with the goal of retraining him or her. In your case, management will not abolish your position because I think that instead, it will eventually be filled.*
>
> …

[40] On November 7, 2008, the grievor asked Ms. Fortier the following:

> [Translation]
>
> …
>
> *I spoke to Ms. Trudeau at the PSC, and we would like to know what is going on with my WP-04 project manager position at Regional Administration.*
>
> *Has it been filled? It is in the process of being filled and if so, as determinate or indeterminate?*
>
> …

[41] On the same day, Ms. Fortier responded as follows to the grievor:

> [Translation]
>
> …
>
> *In terms of staffing, I have not received any request from your manager to fill your position. However, you should address her since she is your manager, and I do not know all her HR plans. So, I invite you to communicate with S. Brunet-Lusignan for more information.*
>
> …

[42] On April 12, 2010, Cyndy Wylde, the new regional administrator, Aboriginal Initiatives, Quebec Region, emailed two others in that region about the grievor's position (project manager, programs), as follows:

> [Translation]
>
> *Hello to both of you,*
>
> *We would like to fill position 301-00-24453, which is currently classified WP-04. In all regions, this position is AS-05, and based on that fact, we would like to convert it to that classification here in Quebec.*

[43] On April 16, 2010, Marcelle Bouchard responded as follows to Ms. Wylde:

> [Translation]
>
> *Hello Cyndy,*
>
> *You will find attached the description of duties of Julie-Christine Lainey's position, position WP-04.*
>
> …
>
> *You state that you would like to convert this position to AS-05, as in the other regions. Do you have the title of the position in English? I could do the research to find the description of the AS-05 duties.*
>
> …

[44] On April 19, 2010, Ms. Bouchard forwarded the emails to Anne Joanisse at headquarters in Ottawa and wrote her the following:

> [Translation]
>
> *Bonjour Anne,*
>
> *The Regional Administrator of Aboriginal Initiatives wants to convert the WP-04 project manager - programs position to AS-05. Apparently, in the other regions, the position is AS-05; we are the only ones in Quebec to have a WP-04.*
>
> *Could you help me with this request?*
>
> …

[45] Mr. Cyr explained that however, the Regional Administrator of Aboriginal Initiatives later told him that the attempt to convert the WP-04 project manager, programs, position to AS-05 could not take place for a reason that he was unaware of.

[46] On January 25, 2012, the grievor wrote the following to Ms. Fortier:

> [Translation]
>
> *Next April, my priority period will end.*
>
> *According to the PSC, I must find out whether my position has been permanently filled.*
>
> *Do I still have to contact Sylvie Brunet-Lusignan? If so, do you have her email address??*
>
> …

[47] On the same day, Ms. Fortier responded as follows to the grievor:

> [Translation]
>
> *I know that S. Brunet-Lusignan retired in the last few months … I do not know who is replacing her because I am no longer the advisor responsible for that sector. I will forward your email to the other HR advisor, Karine Stiverne, but she is on training this week.*
>
> …

[48] On January 31, 2012, Karine Stiverne, the human resources advisor responsible for priorities, wrote the following to the grievor:

> [Translation]
>
> …
>
> *Actually, Ms. Brunet-Lusignan retired. Mr. Éric Cyr is replacing her on an acting basis. According to the system, your position was not filled on an indeterminate basis. You may contact Mr. Cyr if you have any questions.*
>
> …

[49] In February 2012, the grievor contacted Mr. Cyr. He was not aware of her situation or of the existence of her position.

[50] The grievor explained that for five years, given that she benefitted from a priority spousal relocation, she was informed of at least 100 work opportunities at the WP-03, WP-04, PE-03, and PE-04 groups and levels (positions deemed equivalent) in the public service. Then, 26 times, she did not qualify in a process, since she did not satisfy the essential qualifications required for the positions. She explained that in some cases, a condition of employment was that she hold a university degree in a

specific field that was other than her field of study (anthropology). In other cases, she did not pass a process step. She explained that in some cases, she did not apply because either the position announced was for a determinate period, and she wanted to find an indeterminate position, or the position required frequent travel and she could not travel, for family reasons.

[51] On March 20, 2012, the grievor asked Ms. Stiverne the following questions:

> [Translation]
>
> *Following-up on our telephone conversation, I have a few questions:*
>
> *The WP-04 project manager, Aboriginal programs, position that I occupied from 1999 to 2007, no longer exists following the establishment of a new division, Aboriginal Initiatives, and the establishment of new project manager positions, Aboriginal Initiatives, at the AS-05 level.*
>
> *The duties that I had from 1999 to 2007 are now assumed by the Aboriginal Programs division.*
>
> *The WP-04 program manager positions were replaced by AS-05 project manager positions, and only the WP-04 positions in the region are PO and CPO [correctional program officer] positions, for which I do not have the essential educational and experience requirements,*
>
> *I was told that my position had not been abolished and that it was not surplus; however, it likely does not appear in the organizational chart of the Aboriginal Initiatives division or in those of the Correctional and Operations programs. In addition, the position I will occupy on my return is not known.*
>
> *Considering this, I understand that I hold a position at the RA, but I would require more information to make an enlightened decision.*
>
> *The status and the number of my current position and the title of the position that I will occupy in the event of a return*
>
> …

[52] The grievor's leave ended on April 13, 2012, and she returned to work on April 16, 2012, to take up functions that had been eliminated.

[53] The grievor stated that on the day of her arrival, she was invited to occupy a cubicle. She filled out a form to obtain reliability status and administrative forms to be paid. However, she did not have access to a computer, did not have an email address or Internet access, and did not have any assigned files. She met Mr. Cyr, who asked

about her interests. She told him that she was very interested in projects affecting Aboriginals or ethnic minorities related to her anthropology discipline. However, he told her that he could not assign her those duties since they now fell to employees at the AS-05 (Aboriginal Initiatives sector) and WP-05 (Assessments and Interventions sector) groups and levels. There was no longer a project manager at the WP-04 group and level at the CSC. The WP-04 employees now worked in all the fields of operations. According to the grievor, Mr. Cyr stated that it was also not possible to transfer her to the Aboriginal Initiatives sector because it had no vacant position. In addition, her WP-04 group and level were below the AS-05 group and level.

[54] The grievor was aware that her position no longer existed, was no longer funded and would probably be abolished. She had been informed that because of the cuts, it was possible that she could be declared surplus and that she could receive an offer for a PO position somewhere. However, she was aware that the CSC and other departments had already refused her application 26 times for positions that she said were "[translation] in the field" and classified at the WP-04 group and level or equivalent on the grounds that she did not satisfy the essential qualifications for those positions (education and experience).

[55] The grievor explained that she remained at a hotel in the Laval region for the first two days of her return to work. Her former duties had been close to her heart, given her anthropology studies, but after two days in the cubicle, with nothing to read and no work to do and finding it difficult, she requested permission to take unpaid leave for personal reasons. She did not think that it would be wise to immediately move her family from Québec to Laval. She was on unpaid leave after that.

[56] As for Mr. Cyr, he stated that he met the grievor on April 16, 2012, that he assigned her to a cubicle, and that he asked her about her interests. He explained to her the duties in his division. For example, he explained that it handled correctional programs, education, and employability training, and that his section offered advice on managing institutional or community cases, administrative segregation, inmate transfer, and ethnocultural services. As his section was involved in all those fields, he wanted to see how he could offer her duties appropriate for her.

[57] Mr. Cyr stated that he met with the grievor twice in two days. He did not assign her specific duties. However, he explained that she had told him that her former duties falling under another sector saddened her, that her family was in Québec (and that office was in Laval), that her position's abolition worried her, and that she planned to take another personal leave. Therefore, she asked to use all her personal leave at once. Afterward, she applied for unpaid leave to take care of her family.

[58] On April 26, 2012, the grievor wrote to the regional deputy commissioner to state that during her absence, her WP-04 project manager position had lost funding and had fallen into disuse and that the Programs and Operations Division had no other WP-04 positions, only some at the WP-05 and WP-06 group and levels. So, she asked the following questions:

> [Translation]
>
> …
>
> *How is it that my substantive position … no longer exists and that I was not officially informed in writing?*
>
> *How is it that my position was not reclassified like the other project manager positions in the region?*
>
> *How is it that I was not invited to apply to a process, if necessary, to also evolve at the CSC and to eventually apply to other positions?*
>
> …
>
> *… I had a telephone conversation with Mr. Éric Cyr, RA, Programs and Operations (who can be found in my position). He informed me that he does not have a vacant position in his division; however, he is prepared to offer me duties equivalent to a WP-04 position.*
>
> *I met with Mr. Cyr on Monday, April 16, of this year. We discussed my interests and competencies so that he would be able to assign duties to me. However, they were not determined, and no file is currently assigned to this position. I spent two days in the region, during which I was able to observe that I was "surplus" and that the files should be reorganized within the programs and operations team, to find me work ….*
>
> *In addition, my thoughts are as follows: in the event of budget cuts to the region, since my position has not received funding for several years and I do not have any assigned files, there is a good chance that my status will be declared surplus and that I will be*

> *relocated to an institution. As I live in the Québec region and a move would be involved … these factors are to be considered.*
>
> …
>
> *Is the CSC not bound to favour transparent practices and to inform its employees of any change or consequences related to their positions?*
>
> *In fact, I was never informed of the true status of my position or of the consequences of restructuring the Programs Division on it; i.e., the chance that my services would no longer be required. I never had the choice of maintaining my connection with the public service and ending my unpaid leave.*
>
> *In other words, I find that I have approximately $10 000 to pay to the Office of the Receiver General for a position that no longer exists.*
>
> …

[59] On May 28, 2012, the Deputy Commissioner, Quebec Region, replied to the grievor, sketching a portrait of the events that occurred from 2007 to 2012. The following are some things not already reported but noted in the letter:

> [Translation]
>
> …
>
> *Until recently, your position fell under the regional administrator, correctional programs, position. A request was made to change the hierarchical relationship. Since January 2012, your position has reported to the regional administrator, assessments and interventions, position. It was not abolished because you have always held this position.*
>
> …
>
> *As to the arrears that you must reimburse to the retirement pension, death benefit, and disability insurance funds, the reviews show that you have some amounts to reimburse … As for reimbursing the death benefit as well as the disability insurance, they must be reimbursed for the entire period of your unpaid leave.*
>
> *I remind you that the CSC's responsibility in your situation is to help you as much as possible ensure your continuity of public service employment in a position at a level equivalent to or lower than your substantive WP-04 position. If you wish to maintain your CSC employment, management will try to find you a position in your mobility region, to the extent possible.*
>
> …

I would like to point out to you that it is up to senior management to decide whether an offer constitutes a reasonable job offer. In the current context, any offer at the same level as your substantive position, in your mobility region, could be considered a reasonable job offer.

Considering the facts in this matter, I find that even though management did not inform you in a timely manner of the changes affecting the duties of your position, the impact on your personal situation is limited. In fact, you were not available to work in Laval, the amount to reimburse in terms of pension would have been the same had you decided to resign in 2009 or 2010 during the implementation of the AS-05 positions, and the PSC presented you with employment opportunities for the duration of your unpaid leave.

…

[60] On June 11, 2012, the grievor responded by letter to the Deputy Commissioner of the Quebec Region. Among other things, she corrected certain facts and specified the following on the subject of the arrears of the disability and death benefits and added the following comment:

[Translation]

As for the pension fund arrears, it is true that the amount would have been the same had I resigned in 2009 or 2010 (since the amount to be paid is 3 months if the choice is made not to count the period of unpaid leave as part of a pension). But that is not so for the disability and death benefit arrears that must be paid in both the employee's and the employer's time for the duration of the leave at the cost of $114 per month x 60 months = $6840 approximately for the disability insurance fund, which would have been different had my leave been only for 2 years ($114 x 24 months = $2736).

…

By taking leave, I was aware of the possibility that I would not come back to the same job on my return, and I was ready to deal with that. The lack of transparency in this matter led me to write to you.

…

[61] In October 2012, the CSC's commissioner was informed that on her return from leave, the grievor would have no substantive position into which to return, even if the employer's intention was to provide her in the interim with meaningful work in the

framework of her competencies. At that stage, the Commissioner consented to formally declaring her a surplus employee, to resolve things.

[62] Specifically, a briefing note was sent to Commissioner Don Head. It was not dated, but it was accompanied by a memo from the Region dated October 19, 2012, confirming that because the division had been restructured and the Aboriginal Initiatives and Interventions sectors separated, the funding connected to the grievor's WP-04 project manager, programs, position had been interrupted. It is also stated that the duties associated with the position had been integrated into the regular duties of several positions that had been created in the Aboriginal Initiatives and the Correctional Programs sectors.

[63] The October 19, 2012, memo to Commissioner Head read as follows:

> [Translation]
>
> …
>
> *Ms. Julie-Christine Lainey is the incumbent of the only WP-04 project manager, programs, position in the Quebec Region. Ms. Lainey was on leave from April 2007 to April 2012 for the temporary relocation of her spouse.*
>
> *During her leave, a restructuring of the Correctional Programs Division was launched in the Quebec Region, and her position was deemed surplus with respect to needs. However, her surplus status was never made official because Ms. Lainey was already registered in the Public Service Commission's priority system for a spousal relocation priority. The Quebec Region decided not to abolish her position while she was on leave until she was appointed to a new position while she benefitted from a priority right based on her spouse's relocation, which did not occur. Her spousal relocation priority ended on April 13, 2012, and Ms. Lainey returned to work on April 16, 2012, to duties that had been suspended.*
>
> *CURRENT SITUATION:*
>
> *Ms. Lainey is currently on unpaid leave for personal reasons until November 30, 2012. On her return from leave, Ms. Lainey will no longer have a substantive position to return to. However, in accordance with the workforce adjustment rules, we will find her meaningful work within the limits of her competencies and her skills. The official declaration of the surplus nature of her position should now be the next step to normalize this situation.*
>
> *RECOMMENDATION:*

> *The departmental staffing unit reviewed this matter and recommends that you approve this exceptional situation, i.e., that you approve the Quebec Region's request to officially declare Ms. Lainey surplus and to provide her with a guarantee of a reasonable job offer.*
>
> *If you approve this request, please indicate as much below as well as on the attached briefing note, prepared by the Quebec Region.*

[64] In the briefing note to the Commissioner, the following recommendation was made to him: "[Translation] We recommend that Ms. Julie-Christine Lainey be declared surplus with a guarantee of a reasonable job offer." The Commissioner signed it near the words, "Approved by - Approuvé par:", and indicated the date as November 30, 2012.

[65] On the subject of the fact that the correspondence confirms that after the division was restructured and the Aboriginal Initiatives and Interventions sectors were separated, the funding connected to the grievor's position was interrupted, Mr. Cyr noted that before the 2012 cuts, it happened that positions were not funded, which was normal. They could be filled later. However, following the 2012 cuts and the Leclerc Institution's closing, a position review exercise took place. The grievor returned to work at that time. Her position was not funded, and her former duties no longer fell under her position. Thus, it is not surprising that her position had been declared surplus. However, before that critical time, not all the positions had been reviewed.

[66] On April 29, 2013, the employer informed the grievor of her surplus employee status with a GRJO, which had begun on November 30, 2012. The letter included the following:

> [Translation]
>
> *The Correctional Service of Canada was invited to review the structure of the Correctional Programs division. After the review, the division was restructured, and your position was abolished. This is to inform you of the repercussions that those changes will have on you and on your permanent employment.*
>
> *Thus, I inform you that your services in the project manager, programs, position, classified WP-04, position number 301-00-24453, are no longer required based on the lack of work or on the ending of a function. In accordance with section 64 of the Public Service Employment Act, you have been identified for the purposes*

> *of layoff, and your services are no longer required as of November 30, 2012.*
>
> *Your surplus employee status began on November 30, 2012.*
>
> *Pursuant to the Workforce Adjustment Directive, you were declared a surplus employee. Even though I do not have another position to offer you today, I am confident that placement opportunities will arise, and consequently, you will benefit from a guarantee of a reasonable job offer.…*

[67] Mr. Cyr explained why the delay occurred between the decision to declare the grievor a surplus employee on November 30, 2012, and the communication of that decision to her on April 29, 2013. He explained that the employer had adopted a guideline to follow each time it declared an employee surplus. Each employee who was advised of his or her surplus employee status, to the extent possible, had to receive at the same time a reasonable job offer, to reduce the stress and the anxiety created by announcing the status of the employee declared surplus. Another guideline was issued, which was that any equivalent job could be considered a reasonable job.

[68] Yet, in November 2012, the employer had still not identified what position it could offer the grievor. The ratio of inmates per PO had been revised downward (from 25 to 1 to 28 to 1). At that time, the CSC had a PO (WP-04) surplus, and before making a reasonable job offer to the grievor, the employer had to review all PO positions, to replace all the surplus POs. It took several months. Therefore, from November 2012 to April 2013, Mr. Cyr was in continuous communication with Human Resources, and together, they reviewed the different options. They reviewed the positions available at the WP-04 group and level, including PO, CPO, and Aboriginal Community Development Officer (ACDO) positions. In April 2013, even though they did not yet have on hand a list of possible positions for the grievor, they sent her a letter informing her of her status and of the fact that they were confident that they would find her a position and that accordingly, she would benefit from a GRJO.

[69] On May 21, 2013, the grievor reminded Mr. Cyr that she wanted to know what had become of a request she made a year earlier, in July 2012, on the subject of an alternation. He explained that that option was not feasible for her because she had received a GRJO and so was not entitled to an alternation. In an alternation, an employee who wants to leave the public service may request the surplus employee status of another employee. On the other hand, the surplus employee, who wants to

keep a job, offers his or her surplus employee status. However, a CSC guideline said to make a reasonable job offer to each surplus employee. In addition, Mr. Cyr explained that despite the guideline, it must be kept in mind that the grievor, who was surplus, did not necessarily want to keep a WP-04 position. Such a position had already been guaranteed to her but did not suit her.

[70] On July 9, 2013, an acting regional manager of the Staffing and Recruitment section sent the grievor a list of 14 available positions, which she could choose to occupy. She stated that they all required meeting with offenders. She requested particulars about certain positions. Then, on July 24, 2013, the regional manager advised her that she was reserving for her the two positions in her region (Québec City) while awaiting her response. They were two positions in the operations field (a CPO position at the Donnacona Institution, and a PO position at the Québec office).

[71] On September 10, 2013, the employer offered the grievor the PO position at the Québec Parole Office. It was classified at the WP-04 group and level. It was noted in the letter that the offer constituted a reasonable job offer and that the deployment would end her "[translation] surplus with a guarantee of a reasonable job offer" priority status. The letter stated that if she refused the offer, and if no other job was found for her, she would be laid off six months after the date of her surplus employee status.

[72] The grievor explained that she did not understand exactly what this meant and that her union representative had strongly advised her to accept the position. What she understood was most important at that time was not to cut her employment relationship with the employer.

[73] However, on September 13, 2013, the grievor replied that she could not respond to the deployment offer for the reasons that follow. Her letter was addressed to Réjean Tremblay, Acting Regional Deputy Commissioner. She informed him of the following:

> [Translation]
>
> *This letter is in response to your September 10, 2013, letter, in which you made me a job offer as a parole officer at the Québec Parole Office, in accordance with the Workforce Adjustment Act, after the Workforce Adjustment Committee decided to declare my*

> *surplus status with a "reasonable offer guarantee", dated November 30, 2012.*
>
> *Your offer letter, obtained 10 months later, states that an answer was expected by next September 18 and that the duties were scheduled to begin next September 23, i.e., 2 working days after giving my answer.*
>
> *It is also stated that by accepting this offer, I should participate in two weeks of mandatory training for new employees, from November 25 to December 6, 2013, in the Montreal region.*
>
> *In a telephone exchange with Ms. Durenleau last September 12 in the afternoon, she informed me that a training session at the Québec office as well as the two weeks of training for new employees constituted my training to become a parole officer and that on my return, the PO work would have already begun because there is a lot of work to do.*
>
> *As you are aware, I do not have any experience in the operations field, even less so in duties involving direct intervention with inmates, whether in the context of an educational program or earlier employment. As I have training in anthropology (not recognized as a discipline relevant to the position) and eight years of experience in the field of correctional programs for Aboriginals, I doubt that two weeks of training for new employees will be sufficient to meet the essential requirements of the position and to adequately assume the duties and responsibilities related to it with everything that entails.*
>
> *Considering the preceding, I cannot respond to this offer and ask you, with all due respect, to send me a "reasonable" offer connected to my profile and my competencies so that I will be able to respond to an indeterminate deployment offer within the CSC.*
>
> …

[74] On September 17, 2013, Mr. Tremblay responded to the grievor as follows:

> [Translation]
>
> *This letter is in response to your letter … You ask that you be sent a "reasonable" offer to which you will be able to respond.*
>
> *The Correctional Service of Canada considers that the job offer that was made to you for a parole officer job at the Québec office is reasonable since the position offered is at an equivalent level and additionally, it is in your region. The two (2) weeks of training offered in the parole officer orientation program as well as ongoing training and support that will be offered to you in the course of employment will enable you to acquire the required experience. In addition, as with the newly hired POs, the number of cases assigned to you will gradually increase.*

> *We will give you until September 19 to inform us of your decision. It is important to know that if you fail to sign the reasonable job offer letter before that date, we will consider it a refusal on your part. In addition, considering that you have been aware of the positions available since July 9, 2013, and that several times, you had the opportunity to inform us of your choice, no other extension will be granted to you.*
>
> *In the event of a refusal, we wish to reiterate the importance of signing the Public Service Commission's "consent" form so that that organization will be able to submit your application to other departments.*
>
> *Be aware that this is important to us, to allow you employment continuity within the federal public service.*

[75] Finally, after consulting her union, the grievor felt obliged to accept the PO position at the Québec Parole Office. Then, on October 8, 2013, she showed up at work. Despite the warm welcome she received from the person responsible for the POs, she felt that the other POs were surprised and did not understand why she received an indeterminate appointment when other POs in determinate positions were waiting for one. She felt that she was taking a place that belonged to them. She was paired with another PO and was given a workload involving exchanges with Aboriginal offenders.

[76] The grievor explained that she was not equipped to satisfy the requirements for the position. During the three days that she showed up at work, she said that she felt distress, fear, anguish, and despair. The grievor is very petite, and she explained that she had concerns and worries about her safety. She feared the reaction of the offenders in the event that they had consumed drugs or were hostile toward her. She also feared the possibility of being taken hostage. She stated that during her three days at work, she was gripped with fear and had palpitations. Her breathing was more rapid, and her body was frozen with fear. At the hearing, she collapsed and burst into tears when remembering the fear, which gnawed at her stomach.

[77] On October 11, 2013, the grievor emailed the CSC's commissioner to inform him of her concerns about her inability to occupy her position.

[78] The grievor left work at that point. Since she felt unable to continue, she resigned on October 25, 2013. In her resignation letter of that date, she stated that she did not have the essential competencies for this position. She stated the following:

[Translation]

…

In the days that followed, I came to realize that not only did I not have the experience but also, I did not have the profile necessary to work directly with offenders. Therefore, I thought that I did not belong there.

Given the urgent needs at the Québec office and for personal reasons, I am ready to cede my place to someone competent who will be able to immediately assist the Québec office.

In the event that advice in Aboriginal matters is necessary, it would be my pleasure to help you.

…

[79] On the topic of the grievor's resignation, Mr. Cyr stated that by leaving her new job before receiving her training, she did not do her part and did not agree to be trained for the position. As for the risk assessment for a new employee in a PO position, Mr. Cyr stated that the initial two weeks of training offered, in addition to the ongoing training as well as coaching, ensured employee safety. A PO's mandate is to assess the risks an offender poses to the community. The PO monitors an offender's parole, interacts with the offender's employer and the community about the offender, etc. He added that employees newly appointed to PO positions as well as students could fulfil PO duties safely and without difficulty.

[80] Mr. Cyr added that during the training, new POs are informed in particular about the Commissioner's directives, applicable legislation, community safety regulations, issues with the Parole Board of Canada, and drafting reports. He added that they acquire essential basic training to access the necessary information and to use it adequately.

[81] On November 26, 2013, the Commissioner sent a letter to the grievor in which he stated that the Director, Conflict Management, had contacted her to better understand her concerns. However, he added the following:

…

[Translation]

After a review, I note that the Quebec Region has made every effort to present you with a position constituting your reasonable

> *job offer. In addition, you have had the chance to define the geographical region in which you wish to be placed and to choose from a list of positions presented to you. Efforts have also been made to offer you the support, training, and guidance needed to exercise your duties. However, after a few days, you left the job and, until now, your absence has still not been justified.*
>
> *I have also been informed that you wrote to Ms. Odette Duranleau on October 25, 2013, to submit a letter of resignation to her, for personal reasons. Despite the guidance and our efforts to offer you employment continuity within the Correctional Service of Canada, I deem it reasonable that your resignation be accepted by the management of the East-West District.*
>
> …

[82] On December 3, 2013, the Acting Director of the East-West District of Québec accepted the grievor's resignation.

[83] On April 7, 2014, the grievor wrote to the Minister of Public Safety and Emergency Preparedness to express her concerns with the WFA carried out in 2012. She stated that she was discouraged because the employer sought a payment of $8201.91 for her disability insurance (and death benefits), which she had to reimburse, given her five-year unpaid leave.

[84] On May 27, 2014, Scott Harris, Assistant Commissioner, Communications and Engagement Sector, sent the following letter to the grievor:

> [Translation]
>
> *The Honourable Steven Blainey, Minister of Public Safety and Emergency Preparedness, asked me to respond to your correspondence dated April 7, 2014, in which you express your concerns with the workforce adjustment in 2012.*
>
> *I was informed that the Correctional Service of Canada (CSC) abolished your substantive position of project manager (WP-04) during your period of unpaid leave from April 24, 2007, to April 13, 2012, for your spouse's temporary relocation. However, only on your return from leave did the CSC inform you that your position had been abolished following a restructuring carried out during your absence.*
>
> *Given that you benefitted from a regulatory priority during your five-year leave, and confident that you could be placed in another position following the offers that the Public Service Commission of Canada (PSC) submitted, during the restructuring, the CSC opted not to cancel the priority right that you benefitted from already to*

> *immediately declare your position surplus and therefore give you a new priority right when you were still on leave. However, as none of the other offers that the PSC submitted was accepted during your leave and priority period, consequently, you were informed on your return of the abolition of your position.*
>
> *I am advised that despite the fact that you were informed that your position had been eliminated during the restructuring, and before contemplating the final measure of declaring you an employee with a legal priority right, for several months, the CSC attempted to find you a position within its organization for which you were qualified, while considering your needs as well as those of the CSC. These steps proved unsuccessful; therefore, the CSC officially designated your position "surplus" to the CSC's needs in November 2012.*
>
> *The CSC then made every effort to present you with a reasonable job offer for you as a surplus employee. I was informed that you had the opportunity to specify the geographical region in which you wanted to be placed and to choose 1 of 14 positions that were submitted to you. A preliminary analysis had been done to ensure that you were qualified for all those positions or that a short retraining period would enable you to meet all the required qualifications. Cleary, efforts were made to offer you the support, training, and guidance necessary to carry out new duties.*
>
> *I was advised that after several months of research and efforts, you accepted a parole officer position. However, just a few days after starting in your new position on October 8, 2013, you left your duties for reasons of illness, without providing the CSC with a medical note justifying your absence. You then resigned on October 25, 2013.*
>
> *In light of the preceding, I can ascertain only that despite the guidance and the efforts made to offer you employment continuity within the CSC in a position for which you were qualified and situated in the geographic zone of your choice, the efforts were fruitless.*
>
> *Even though your resignation may not be the desired outcome, the decision remains yours, and we respect it.*

…

[85] On July 24, 2014, the employer informed the grievor that her debt to the Crown amounted to $8201.91.

[86] In the interim, on June 17, July 11, and September 15, 2013, the grievor filed the four following grievances:

1. In the grievance numbered 51047 (file 566-02-9895), she alleged that the employer did not make her a reasonable job offer pursuant to the WFA

provisions. As a corrective measure, she requested that she be declared a surplus employee.

2. In the grievance numbered 51048 (file 566-02-9896), she alleged that the employer breached the WFA provisions because it failed to immediately advise her of a decision made on November 30, 2012, to abolish her position and to declare her surplus.

3. In the grievance numbered 51216 (file 566-02-9897), she alleged that the employer breached the WFA provisions since it did not advise her of the abolition of her position and of her surplus employee status after establishing the new Aboriginal Initiatives sector.

4. In the grievance numbered 51650 (file 566-02-9898), she reiterated the allegations made in her three first grievances and requested $20 000 in compensatory damages for the breaches of the WFA provisions and $20 000 as remedy for the damages that she incurred.

III. Issues

1. Did the employer breach the Appendix by failing to abolish the grievor’s position in 2008 after the new Aboriginal Initiatives sector was established and by not assigning her surplus employee status then?

2. Did the employer make a reasonable job offer to the grievor under the definition of “reasonable job offer” in the Appendix?

3. Did the employer breach clause 1.1.6 of the Appendix by advising the grievor only on April 29, 2013, of the decision made on November 30, 2012, to abolish her position and to declare her surplus?

IV. Analysis

[87] The grievor argued that I should consider the following, which are the relevant provisions of the Appendix involving WFA:

> ***Objectives***
>
> *It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment.*
>
> *To this end, every indeterminate employee whose services will no longer be required because of a workforce adjustment situation and for whom the deputy head knows or can predict that employment will be available will receive a guarantee of a reasonable job offer within the Core Public Administration. Those employees for whom the deputy head cannot provide the*

guarantee will have access to transitional employment arrangements (as per Parts VI and VII).

Definitions

…

***Lay-off notice** (avis de mise en disponibilité) - is a written notice of lay-off to be given to a surplus employee at least one (1) month before the scheduled lay-off date. This period is included in the surplus period.*

…

***Surplus employee** (employé-e excédentaire) - is an indeterminate employee who has been formally declared surplus, in writing, by his or her deputy head.*

…

***Opting employee** (employé-e optant) - is an indeterminate employee whose services will no longer be required because of a workforce adjustment situation, who has not received a guarantee of a reasonable job offer from the deputy head and who has one hundred and twenty (120) days to consider the options in section 6.3 of this Appendix.*

…

***Guarantee of a reasonable job offer** (garantie d'une offre d'emploi raisonnable) - is a guarantee of an offer of indeterminate employment within the Core Public Administration provided by the deputy head to an indeterminate employee who is affected by workforce adjustment. Deputy heads will be expected to provide a guarantee of a reasonable job offer to those affected employees for whom they know or can predict that employment will be available in the Core Public Administration. Surplus employees in receipt of this guarantee will not have access to the options available in Part VI of this Appendix.*

…

***Reasonable job offer** (offre d'emploi raisonnable) - is an offer of indeterminate employment within the Core Public Administration, normally at an equivalent level, but which could include lower levels. Surplus employees must be both trainable and mobile. Where practicable, a reasonable job offer shall be within the employee's headquarters as defined in the Travel Directive. In alternative delivery situations, a reasonable offer is one that meets the criteria set out under Type 1 and Type 2 in Part VII of this Appendix. A reasonable job offer is also an offer from a FAA Schedule V employer, providing that ….*

…

Laid-off person *(personne mise en disponibilité) - is a person who has been laid-off pursuant to subsection 64(1) of the PSEA and who still retains an appointment priority under subsection 41(4) and section 64 of the PSEA.*

…

Surplus priority *(priorité d'employé-e excédentaire) - is an entitlement for a priority in appointment accorded in accordance with section 5 of the PSER and pursuant to section 40 of the PSEA; this entitlement is provided to surplus employees to be appointed in priority to another position in the federal public administration for which they meet the essential requirements.*

…

Lay-off priority *(priorité de mise en disponibilité) - a person who has been laid-off is entitled to a priority, in accordance with subsection 41(5) of the PSEA with respect to any position to which the PSC is satisfied that the person meets the essential qualifications; the period of entitlement to this priority is one (1) year as set out in section 11 of the PSER.*

…

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 Core Public Administration.*

…

Surplus status *(statut d'employé-e excédentaire) - an indeterminate employee has 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, until his or her surplus status is rescinded, or until the person resigns.*

…

Part I

Roles and responsibilities

1.1 Departments or organizations

1.1.1 *Since indeterminate employees who are affected by workforce adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that they are treated equitably and, whenever possible, given every reasonable opportunity to continue their careers as public service employees.*

1.1.2 *Departments or organizations shall carry out effective human resource planning to minimize the impact of workforce*

adjustment situations on indeterminate employees, on the department or organization, and on the public service.

…

1.1.6 *When a deputy head determines that the services of an employee are no longer required beyond a specified date due to lack of work or discontinuance of a function, the deputy head shall advise the employee, in writing, that his or her services will no longer be required.*

Such a communication shall also indicate if the employee:

(a) is being provided with a guarantee from the deputy head that a reasonable job offer will be forthcoming and that the employee will have surplus status from that date on;

or

(b) is an opting employee and has access to the options set out in section 6.3 of this Appendix because the employee is not in receipt of a guarantee of a reasonable job offer from the deputy head.

Where applicable, the communication should also provide the information relative to the employee's possible lay-off date.

1.1.7 *Deputy heads will be expected to provide a guarantee of a reasonable job offer for those employees subject to workforce adjustment for whom they know or can predict that employment will be available in the Core Public Administration.*

1.1.8 *Where a deputy head cannot provide a guarantee of a reasonable job offer, the deputy head will provide one hundred and twenty (120) days to consider the three options outlined in Part VI of this Appendix to all opting employees before a decision is required of them. If the employee fails to select an option, the employee will be deemed to have selected Option (a), twelve (12) month surplus priority period in which to secure a reasonable job offer.*

…

1.1.14 *Deputy heads shall apply this Appendix so as to keep actual involuntary lay-offs to a minimum, and a lay-off shall normally occur only when an individual has refused a reasonable job offer, is not mobile, cannot be retrained within two (2) years, or is laid-off at his or her own request.*

…

1.1.31 *Departments or organizations shall provide surplus employees with a lay-off notice at least one (1) month before the proposed lay-off date if appointment efforts have been unsuccessful.*

> ***1.1.32*** *When a surplus employee refuses a reasonable job offer, he or she shall be subject to lay-off one (1) month after the refusal, but not before six (6) months have elapsed since the surplus declaration date. The provisions of Annex C of this Appendix shall continue to apply.*
>
> ***1.1.33*** *Departments or organizations are to presume that each employee wishes to be redeployed unless the employee indicates the contrary in writing.*
>
> [*Sic* throughout]
>
> [Emphasis in the original]

A. Issue 1: Did the employer breach the Appendix by failing to abolish the grievor's position in 2008 after the new Aboriginal Initiatives sector was established and by not assigning her surplus employee status then?

[88] The grievor alleged that the employer breached the Appendix since in 2008, it did not advise her of the abolition of her position during the establishment of the new Aboriginal Initiatives sector. She argued that she should have been declared a surplus employee at that time, under the Appendix. Had that been done, either she would have received a reasonable job offer then, which was very different from the one in 2012, or she would have been declared an opting employee without a reasonable job offer. Therefore, she would have benefitted from certain advantages tied to the WFA, like a retraining allowance.

[89] Specifically, with respect to the Appendix violation, the grievor argued that on October 19, 2012, and then on May 27, 2014, the employer confirmed that once the new Aboriginal Initiatives sector had been established, the funding for her unique position had been interrupted. Later, it was declared surplus.

[90] However, the employer decided not to officially abolish her position in 2008 because the grievor was already registered in the priority system, for her spouse's relocation. The employer was waiting for her appointment under that priority. According to her, the employer breached clause 1.1.6 of the collective agreement by failing to declare her position surplus when the new sector was established.

[91] The grievor referred me to *Kreway v. Canada Customs and Revenue Agency*, 2004 PSSRB 172 at paras. 57 to 72, in support of her position. In that decision, the grievor's position, classified AS-04, had been transferred to another city and reclassified one level higher. The grievor said that a team leader position classified at

the PM-04 group and level interested him, and the employer made no qualifications on that subject or on his competencies. It first told him that he would be assigned to another position regardless of the WFA Appendix, given that its opinion was that the appendix did not apply in his case. During that period, the PSSRB rendered a decision in another case on the application of the Appendix. The decision stated that indeed, the Appendix applied. The employer then sent the grievor a letter informing him that the Appendix applied to him. Yet, the adjudicator determined that the employer had breached clause 1.1.6 of the collective agreement since it had recognized that Mr. Kreway's situation required applying the WFA provisions. Therefore, the adjudicator concluded that he should have been declared surplus on November 1, 2001, and it authorized him to take advantage of the WFA provisions at that time. Paragraphs 59 to 64 of the decision read as follows:

> *[59] It is obvious that the employer agreed Mr. Kreway's situation was one where the WFA applied. I therefore have no difficulty in concluding that, effective November 1, 2001, Mr. Kreway should have been declared surplus and been able to avail himself of the provisions of the WFA at that time.*
>
> *[60] The bargaining agent submits that the fact that this did not occur means the employer violated the provisions of the collective agreement.*
>
> *[61] The provisions of the WFA Appendix entitle affected employees to receive a letter advising them that their services are no longer required (section 1.1.6). This letter creates certain options for the employee and, on November 1, 2001, Mr. Kreway did not receive such a letter. He was entitled to receive one and, therefore, the employer violated the provisions of the collective agreement.*
>
> *[62] When Mr. Kreway did receive the letter pursuant to the WFA (dated May 13, 2002) it stated, in part:*
>
> > … However, as there are no vacancies equivalent to your current group and level, we are currently considering placing you in a lower level position with salary protection.
>
> *[63] Had the employer adhered to the collective agreement, this letter would have been written in November 2001. The review the employer made of vacant equivalent positions was done in May 2002. What it should have done, in my view, was review the vacancies as they existed* ***in November 2001****, then write Mr. Kreway the letter pursuant to the WFA provisions.*
>
> *[64] No evidence was presented to me about the vacancies that existed on November 1, 2001. Perhaps there was another AS-*

> *04 position available that would have been offered had the WFA letter been sent out, as it should have been. I simply do not know that, based on the evidence presented to me so far.*
>
> [Emphasis in the original]

[92] The grievor argued that in this case, the employer breached clause 1.1.6 of the collective agreement in the same way since in 2008, it should have recognized that her situation required applying the WFA provisions. In 2008, the employer should have decided to declare her surplus, and she should have been authorized to take advantage of the WFA provisions.

[93] The grievor also referred me to *Roessel v. Treasury Board (Canadian Heritage)*, [1997] C.P.S.S.R.B. No. 24 (QL) at para. 102. In it, at a meeting in January 1995, the grievors had been informed that their regional office would reduce its workforce by about 50%, that there would be no possibility of promotion or advancement for three years, and that those who wanted to should begin to look for work outside the public service. On learning that one of two positions at her level would be eliminated, Ms. Roessel accepted a job offer outside the public service. Thus, in July 1995, she asked the employer to declare her position surplus and to pay her in lieu of the unexpired portion of her surplus priority, under the relevant provisions of the Workforce Adjustment Directive (WFAD) that was part of her collective agreement. The employer refused to declare her position surplus and to pay her a lump sum as she had asked. Her supervisor said that the employer intended to make her a reasonable job offer rather than lay her off. She filed a grievance contesting the employer's decision to not declare her surplus or to pay her a lump sum.

[94] At the final level of the grievance process, the National Joint Council (NJC) concluded that Ms. Roessel's position should have been declared surplus as she had requested. Even though the NJC granted her grievance and found that she should have been declared a surplus employee, her employer had then refused to pay her in lieu of the unexpired portion of her priority surplus period. Therefore, the Board Member determined that the employer had breached the WFAD by refusing to declare her position surplus in July 1995. The Board Member determined that had the employer done so, she would have been entitled to pay in lieu of the unexpired portion of her priority surplus period, under the employer's policy in effect at the time. The Board Member noted the following at paragraphs 102 and 103 of *Roessel*:

> *[102] If the employer had properly declared Ms. Roessel surplus in July, 1995, coupled with the fact that the grievor's function was being discontinued, Mr. Egan's memorandum of April 7, 1995, (Exhibit E-12) would have allowed her to receive a cash-out at that time. The key element of Exhibit E-12 reads ….*
>
> *[103] Ms. Roessel was not treated equitably under subsection 1.1.1 of the WFA since the employer refused to declare her surplus and refused to give her a cash-out under subsection 7.2.2 of the WFA.…*

[95] In addition, the employer did not make her a reasonable job offer in the six months following July 1995. Accordingly, the Board Member ordered it to pay to her the equivalent of six months' pay in lieu of the priority surplus period.

[96] In this case, the grievor argued that the decision not to declare her surplus in 2008 was a similar arbitrary decision. Had the employer declared her surplus, as it should have in 2008, specifically in November 2008, which is the moment when her position was no longer occupied, clause 1.1.6 of the collective agreement would have enabled her to receive from the deputy head either a reasonable job offer (in 2008, the job offers would have been different from 2012 when the WFA and the Deficit Reduction Action Plan occurred) or opting employee status with 120 days to review the three options in Part VI of the Appendix and to make a decision. She could also have participated in an alternation program during the 120-day opting period.

[97] The grievor added that instead of abolishing her position in November 2008 (when it was no longer occupied), at the very least, the employer should have done so in October 2010, i.e., the moment Mr. Cyr discovered her unfunded position.

[98] Therefore, had the grievor been declared surplus at one of those moments, she would have either received or not received a GRJO. If not, she could have chosen to benefit from a statutory priority in which she should have kept her surplus employee status until she was appointed to another indeterminate position, whether she was laid off or decided to resign. That way, she would have benefitted from a statutory rather than a regulatory priority. She would have been a public servant, and the deputy head would have advised that her services were no longer required but that she had not yet become subject to layoff.

[99] The grievor argued that had it not been for the employer's arbitrary decision in 2008 or 2010, she would have made different choices and would not have incurred an $8201.91 debt to the Crown. Specifically, her protection under the disability insurance regime (Sun Life) had been automatically maintained during her five-year unpaid leave. After three months, the cost of it corresponded to the entire amount of the monthly premium (both her and the employer's shares).

[100] The grievor does not consider it fair that that amount must be reimbursed since the employer breached its obligation to declare her surplus in 2008 or 2010. She asked that the debt be erased for the time in which her position should have been abolished and in which she should have been declared surplus. She filed in evidence an email that she received from Human Resources on December 10, 2007. In it, an employer representative explained to her that the amount that she had to reimburse to the employer was $1463.52 per year. Over five years, at one point, it was $7317.60. According to a letter sent to her on July 24, 2014, the amount is now $8201.91.

[101] To determine the relevant damages, the grievor asked that I order the employer to put her back in the situation that she would have been in during the relevant period when the new Aboriginal Initiatives sector was established and when her position should have been declared surplus. According to her, in 2008 or in 2010, given that the Deficit Reduction Action Plan was not in effect, had the employer abolished her position and declared her surplus as it should have, it would have concluded that there was no equivalent position; her duties had been transferred to employees at the AS-05 group and level. It would not have offered her a GRJO. Therefore, she would have been declared an opting employee. Three options would have been offered to her: a surplus employee priority for a 12-month period, a transition support measure, or an education allowance.

[102] The grievor also insisted on the fact that the situation was very different in 2012 because the employer had decided that it would make reasonable job offers to all surplus employees, and only field and not management positions were available. Yet, she was a project manager who had never occupied a position in the field.

[103] The grievor requested six months' salary, as in *Roessel*, under clause 1.1.32 of Appendix D of the collective agreement, which reads as follows:

> ***1.1.32*** *When a surplus employee refuses a reasonable job offer, he or she shall be subject to lay-off one (1) month after the refusal, but not before six (6) months have elapsed since the surplus declaration date. The provisions of Annex C of this Appendix shall continue to apply.*

[104] The grievor also requested damages for the arbitrary and bad-faith treatment that she suffered. She brought to my attention the following decisions, which address the issue of arbitrary and bad-faith treatment: *Public Service Alliance of Canada v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 10; *Bonia v. Treasury Board (Royal Canadian Mounted Police)*, 2002 PSSRB 88; *Choinière v. Treasury Board (Department of Fisheries and Oceans)*, 2018 FPSLREB 36; and *Legros v. Treasury Board (Canada Border Services Agency)*, 2017 FPSLREB 32.

[105] In *Choinière*, the Board determined that the employer acted arbitrarily, since it breached its policies by not offering the grievor retraining. It ordered the employer to offer the grievor a training period.

[106] In addition, in *Legros*, the Board found that the evidence showed blatant bad faith from the employer towards the grievor. It described the bad faith as follows:

> *[55] Once it was established that the grievor was entitled to an alternation, Ms. Beaudry did everything in her power to prevent one from taking place. The arbitral award and the fact that the employer allowed the first grievance did not change anything. The evidence shows blatant bad faith with respect to reviewing the proposed CVs. The addition of a requirement (EX4) that had never been part of the requirements of the grievor's position and that excluded external applicants was part of the same intention of making the alternation impossible….*

[107] For its part, the employer argued that the decision to abolish the grievor's position was made on November 30, 2012, not in 2008 or 2010. It was an official decision authorized and signed by the CSC's commissioner at that time on November 30, 2012.

[108] The grievor had already been registered in the Public Service Commission's priority system as a priority for her spouse's relocation. The Quebec Region decided not to abolish her position as long as she was on leave, until she was appointed to a new position in the context of her priority spousal relocation, which did not happen.

Therefore, in April 2012, she returned to work as an employee at the WP-04 group and level.

[109] The employer argued that Mr. Cyr explained that on his arrival in October 2010 as a regional administrator, assessments and interventions, in Quebec (Laval), he did not know that the grievor held a position on his team. After she called and informed him that she was on unpaid leave, Mr. Cyr requested a complete organizational chart for the division and saw her position on it. It had never been abolished. It was a unique position. Mr. Cyr knew that on her return, he would have to find her work.

[110] Mr. Cyr explained that in October 2010, no specific duties were connected to the grievor's position. However, her position existed, and she could have returned to work. He would have assigned her duties.

[111] The employer pointed out that the grievor returned to work for a few days, beginning on April 16, 2012. She and Mr. Cyr had discussions. He explained to her that he restored her position and that he found it useful to know her interests, as well as the duties that she wanted to perform. He spoke to her about the possible areas (case management, ethnocultural sector, inmate transfer, etc.). He aspired to make her work interesting and to offer her support.

[112] The employer also argued that the grievor was aware of the new Aboriginal Initiatives sector's establishment in 2007 and 2008. Therefore, the statement in her grievance numbered 51216 was inaccurate that stated that the employer did not advise her of the changes that occurred during the new Aboriginal Initiatives sector's establishment. Specifically, her email to her supervisor, dated October 17, 2007, shows that she was aware of the new sector being established. She wrote the following:

> [Translation]
>
> *I would like to point out that I wished to permanently establish myself in Québec but that my spouse's situation has not been determined (a possibility of returning to Montreal), which is why I am not dismissing the option of resuming my position in Laval. On that point, I would appreciate receiving the Aboriginal Initiatives sector's new organizational chart when it becomes available.*

[113] For those reasons, the employer argued that the grievor knew that the new sector was in the process of being established. Therefore, the employer requested that

her grievance numbered 51216 be dismissed, in which she alleged that it breached the WFA provisions since it did not advise her of the (presumed) abolition of her position during the new Aboriginal Initiatives sector's establishment.

[114] The employer also noted that the grievor's protection under the disability insurance regime (Sun Life) had been automatically maintained during her leave. After three months, that cost corresponded to the entire monthly premium amount (hers and the employer's shares). In response to her request that that debt to the Crown be erased on the grounds that but for the employer's arbitrary decision neglecting to declare her surplus, she would have made different choices in leaving the public service and would not have incurred the debt, it argued that she benefitted from that insurance during her leave. Had she fallen ill for a prolonged time, she would have been entitled to make a benefits claim. Thus, it is not possible to erase the debt.

[115] Similarly, the employer argued that the grievor benefitted from the coverage of the Supplementary Death Benefit Plan and that it was normal that she had to repay it.

[116] In addition, on the subject of damages that the grievor requested, the employer argued that when awarding damages is contemplated, the issue to decide is whether the breach of the collective agreement harmed the grievor, who should then be compensated by the payment of a certain amount. It added that that is specifically mentioned as follows in *Horner v. Treasury Board (Department of National Defence)*, 2012 PSLRB 33 at para. 46 (upheld in *Canada (Attorney General) v. Horner*, 2013 FC 605):

> *[46] I do not believe that, by deeming that the grievor maintained his original or designated hours of work until the notice period was satisfied and by characterizing all hours worked outside that schedule as overtime, I am imposing a penalty not contemplated by the collective agreement. I am remedying a breach of the collective agreement by putting the grievor in the position he would have been in had the breach not occurred, as nearly as I can. In my opinion, this is not different from the awards of deemed overtime that adjudicators frequently order to remedy missed overtime opportunities. As noted in para 10 of* Fanshawe College v. O.P.S.E.U., Local 110 *(1994), 39 L.A.C. (4th) 129, at 132:*
>
> > Where an award of damages is contemplated, the question is not whether the collective agreement precisely requires a payment of the kind sought, **but whether the breach of the**

> **collective agreement has caused harm to the grievor which should be compensated by a payment of a certain amount.**
>
> *Further, I believe that this is well within my remedial authority, as set out in subsection 228(2) of the* PSLRA.
>
> [Emphasis added]

[117] Therefore, the employer argued that the issue to decide is whether the collective agreement breach harmed the grievor, who should then be compensated by a payment of a certain amount. Yet, it argued that she did not submit any evidence of damages or harm suffered.

[118] As for the grievor's request for six months' salary in the application of clause 1.1.32, as in *Roessel*, the employer responded that clause 1.1.6 granted the deputy head the right to find that the services of an employee would not be required after a certain date based on a lack of work or the ending of a function. In such a case, the deputy head informs the employee in writing. Even though in some cases it could be that an affected employee does not obtain a guarantee of a reasonable job, it was not so in this case. Therefore, in effect, the grievor would not have been designated an opting employee as in *Roessel* because the employer provided a guarantee of a reasonable job to employees at the WP-04 group and level. Mr. Cyr's testimony confirmed that fact. Therefore, there is no basis on which to grant the grievor six months' salary, as in *Roessel*.

[119] Finally, the grievor responded that the RAAI position interested her in 2007 but that it interested her no longer in 2012. According to her, she should have been declared surplus in November 2008 (when her position was no longer occupied) or in 2010 (when Mr. Cyr discovered her unfunded position), for the same reasons as set out in *Kreway*.

[120] For the reasons that follow, I find that the employer did not breach the Appendix by failing to abolish the grievor's position in 2008 or in 2010 following the establishment of the new Aboriginal Initiatives sector and by not designating her a surplus employee status at that time.

[121] For me to find that the Appendix applied in 2008 or in 2010, the grievor had to show that a final decision to abolish her position had been made at that time.

[122] It is true that in 2007, the grievor's project manager, programs (WP-04 group and level), position was not transferred to the new Aboriginal Initiatives sector. It remained in the Programs and Operations Division while the duties connected to it were transferred to the new sector. In addition, the evidence shows that when the person who occupied the grievor's position on secondment ceased to occupy it, nobody was deployed to or occupied it afterward. Specifically, in November 2008, the grievor was advised that her manager had not requested to fill her position.

[123] Yet, nor had the grievor's position, which was unique, been abolished. Specifically, it was not shown that a final decision to abolish the position had been made and communicated at that time. Therefore, I cannot find that the situation satisfied the definition of WFA, which, in the collective agreement, reads as follows:

> ***Workforce 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.*

[124] In this case, the evidence does not support the existence of a decision made in 2008 (or in 2010) that the grievor's services would no longer be required after the establishment of the new Aboriginal Initiatives sector, based on a lack of work or otherwise. Similarly, contrary to the situation in *Kreway*, in 2008 or in 2010, the employer did not recognize that her situation required applying the WFA provisions.

[125] In *Kreway*, the Board determined that had the employer respected the terms of the Appendix, the surplus employee letter would have been written in November 2001. Yet, in May 2002, the employer established the list of equivalent positions available. The Board stipulated that the employer should have prepared the list of vacant positions in November 2001 and then sent Mr. Kreway the letter provided for in the WFA provisions.

[126] However, there is a major difference between the facts in *Kreway* and this case. In *Kreway*, the evidence supported the employer's decision to consolidate the regional internal auditor positions (Mr. Kreway's substantive position) in the Edmonton office at the end of 2001. It resulted in the reclassification of positions at the AS-05 level and required holding a process. It was also provided that the local office that the internal

auditors who failed the process reported to would be responsible for finding them different positions. Mr. Kreway received an email on March 5, 2001, informing him of the restructuring. Then, on October 18, 2001, he received another email, indicating that the internal auditor positions were to be consolidated in Edmonton as of November 1, 2001. Therefore, the evidence supported the existence of a decision made in 2001 that the services of the AS-04 auditors like Mr. Kreway were no longer required following the restructuring and the consolidation of the regional internal auditor positions at the Edmonton office. In addition, the employer in that matter had officially recognized that the Appendix applied.

[127] In this case, during the grievor's unpaid leave, a restructuring of the Correctional Programs Divisions had been launched in the Quebec Region, which meant that her position remained in the Assessments and Interventions sector and that her Aboriginal issues duties were transferred to the new Aboriginal Initiatives sector. However, she did not receive surplus employee status. Specifically, in 2008, she had already been registered in the PSC's priority system as a priority for her spouse's relocation, and her leave had been extended until April 14, 2012. The Quebec Region decided not to abolish her position and not to cancel the priority right that she then benefitted from and that was in effect from April 14, 2008, to April 14, 2012. The employer foresaw that she would be appointed to a new position in the context of her priority spousal relocation, but that did not happen. Yet, in the interim, her position was not abolished.

[128] Therefore, the evidence does not support that a decision was made in 2008 (or in 2010) according to which the grievor was a surplus employee whose services were no longer required and that based on that, the Appendix applied. Thus, the facts in both cases differ in the absence of such a decision.

[129] For all those reasons, I find that it was not shown that the employer breached the Appendix by failing to abolish the grievor's position in 2008 or in 2010 after the new Aboriginal Initiatives sector was created and by not assigning her surplus employee status at that time.

B. Issue 2: Did the employer make a reasonable job offer to the grievor under the definition of "reasonable job offer" in the Appendix?

[130] The grievor alleged that the employer did not make her a reasonable job offer under the WFA provisions.

[131] The grievor argued that the 14 job offers that she received did not satisfy the criteria for a reasonable job offer set out in the Appendix. She stated that during the five years in which she was granted a regulatory priority for her spouse's relocation, the CSC continually considered her applications for WP-04 PO and CPO positions and that every time, her application was rejected because she did not meet the essential qualifications.

[132] The grievor also argued that a brief training of two weeks would not have been enough to enable her to perform the duties of those positions.

[133] Specifically, on September 10, 2013, the employer offered the grievor a PO position (WP-04) at the Québec Parole Office. It was noted in the letter that the offer constituted a reasonable job offer and that the deployment could end her priority status , which was "[translation] surplus with guarantee of a reasonable job offer". The letter stated that if she refused the offer and that no other job was found for her, she would be laid off six months after the date of her surplus employee status.

[134] On September 13, 2013, the grievor informed Mr. Tremblay, the acting regional deputy commissioner, in writing that she did not have "[translation] any experience in the field of operations, even less so in duties involving direct intervention with inmates, whether in the context of a study program or previous employment". She added the following:

> [Translation]
>
> …
>
> *… As I have training in anthropology (not recognized as a discipline relevant to the position) and eight years of experience in the field of correctional programs for Aboriginals, I doubt that two weeks of training for new employees will be sufficient to meet the essential requirements of the position and to adequately assume the duties and responsibilities related to it with everything that entails.*

…

[135] In the circumstances, the grievor advised the employer that she could not respond to the offer and asked the following: "[translation] … with all due respect, to send me a 'reasonable' offer connected to my profile and my competencies so that I will be able to respond to an indeterminate deployment offer within the CSC."

[136] However, Mr. Tremblay told her that the CSC would give her until September 19, 2013, to inform him of her decision. He added that it was important that she know that unless she signed the letter with a reasonable job offer before that date, the CSC would consider it a refusal on her part.

[137] Therefore, the grievor felt obliged to accept the PO position in Québec. She did not understand the related consequences if she refused. The union recommended that she accept a job offer at the CSC so that she could continue her public service career.

[138] Thus, the grievor accepted the position against her will. She showed up for the job on October 8, 9, and 10, 2013. After that, she left because she felt unable to perform the duties of the position. She resigned on October 25, 2013.

[139] The grievor argued that the employer had wrongly interpreted and applied the definition of "reasonable job offer", which reads as follows in the Appendix:

> ***Reasonable job offer*** *(offre d'emploi raisonnable) - is an offer of indeterminate employment within the Core Public Administration, normally at an equivalent level, but which could include lower levels. Surplus employees must be both trainable and mobile. Where practicable, a reasonable job offer shall be within the employee's headquarters as defined in the Travel Directive. In alternative delivery situations, a reasonable offer is one that meets the criteria set out under Type 1 and Type 2 of Part VII of this Appendix. A reasonable job offer is also an offer from a FAA Schedule V employer, providing that ….*

[140] The grievor argued that the Appendix states that a reasonable job offer is normally made at an equivalent level but that if a position of an equivalent level is not adapted to the affected employee, the Appendix does not preclude making a job offer for a similarly classified position. She submitted that a position at the AS-05 group and level was similar, given that her project manager duties had been classified at the AS-05 group and level during her absence. She insisted on the fact that the

jurisprudence supports finding that the parties are free to determine what is reasonable, on a case-by-case basis (see *Nesic v. Treasury Board (Health Canada)*, 2016 PSLREB 117 at para. 76).

[141] Specifically, in *Nesic*, Health Canada (HC) had declared that the grievor's services were no longer required. Under the WFA provisions of the relevant collective agreement, the grievor became a surplus employee. At the end of his year as a surplus employee, he was laid off. He did not find a job in the federal public service during his year of priority as someone laid off. The grievor submitted two grievances in which he alleged that HC had breached the collective agreement's WFA provisions. In the first grievance, he challenged the employer's decision not to offer him a GRJO. In the second grievance, he pointed out that the employer had not respected the collective agreement when contemplating the retraining options relative to him. The respondent argued that the decision to offer retraining only in reasonable job offer (RJO) situations was justified by the WFA provisions when they were read in their entirety and that it was not reasonable to offer retraining for positions classified at considerably lower levels.

[142] In *Nesic*, the panel of the Board found that by applying an arbitrary rule directed at offering training only for positions classified at the same or a lower level, HC had breached the collective agreement, since it had unduly limited the definitions of "GRJO" and "RJO". In doing so, it had not ensured that the grievor, as an affected employee, had every reasonable opportunity to pursue his public service career.

[143] The grievor pointed out that at paragraph 73 of that decision, as follows, the Board noted that decisions about reasonable job offers should be made case by case:

> *[73] RJO determinations had to be made on a case-by-case basis. What is reasonable in one situation may not be reasonable in another. The preferred practice was to provide RJOs at a level equal to that of the employee's then-current position. However, the collective agreement recognized that in some situations, it was reasonable to offer a job at a lower level. In Public Service Alliance of Canada, at para. 61, the Board stated as follows: "… the use of the word 'could' clearly indicates a possibility that a job offer may be at a lower level and that it should not be discarded prematurely."*

[144] In this case, the grievor argued that it was not reasonable to offer her a PO or CPO position since she was not qualified for them. In addition, she pointed out that in two weeks, it would not have been possible for her to obtain the qualifications required for the positions. In her testimony, she stated that she clearly did not have the necessary skills and qualities, i.e., the composure, confidence, and aplomb, to occupy such a position. She stated that she felt that she would be caught off guard in the event of a difficulty with inmates and that two weeks of training would not have remedied the problem. She insisted on the fact that her previous position had been as a project manager, which did not require inmate contact.

[145] The grievor pointed out that she had demonstrated that the Regional Administrator of Aboriginal Initiatives, Quebec Region, had attempted to convert her position classified at the WP-04 group and level to one classified at the AS-05 group and level, because in the other regions, the project manager duties fell under positions classified at the AS-05 or WP-05 group and level. Only her position in Québec remained at the WP-04 level. Thus, she argued that the employer should have explored the option of offering her a position classified at the AS-05 or WP-05 group and level. The duties in those positions were much more consistent with her former duties. In addition, the pay scales for the WP and AS groups were comparable to her position's pay scale. An employee at the AS-05 group and level receives somewhat higher pay than one at the WP-04 group and level.

[146] In turn, the employer argued that the job offer that was made to the grievor for a PO job at the Québec office was reasonable, because it was at a level equivalent to hers and in addition in the region of her choice. It pointed out that for five years, she had unsuccessfully sought a job in that region and that finally, she was offered one.

[147] It pointed out that the Appendix's objectives mention specifically that the employer's policy is to optimize job opportunities for indeterminate employees in a WFA situation by ensuring that "… wherever possible, alternative employment opportunities are offered to them. This should not be construed as the continuation of a specific position or job but rather as continued employment."

[148] Mr. Cyr also stated that when the grievor returned to work in April 2012, during their discussions, she never showed interest in returning to work in a PO position. Rather, she asked why she had not been designated an opting employee.

[149] The employer added that on September 17, 2013, Mr. Tremblay informed the grievor that she would receive two weeks of training in the parole officers' orientation program. It also informed her that training and ongoing support would be offered to her during employment, which would enable her to acquire the necessary experience.

[150] In addition, Mr. Cyr's opinion was that the grievor had the ability to carry out a PO's tasks, given her learning skills. Among other things, she held a master's in anthropology. For example, Mr. Cyr stated that when he was a student, he had performed part of the duties assigned to POs. With the help of the training and coaching offered to him, he had performed his duties without a problem. According to him, the grievor did not qualify for a PO job in the past because she did not want such a position.

[151] Therefore, according to the employer, the grievor had no reason to state that she did not have the skill to occupy a PO position and that accordingly, no training could have provided her with the necessary skills. According to Mr. Cyr's statements, the training offered in the parole officers' orientation program and the ongoing training and support would have enabled her to acquire the necessary competencies and experience.

[152] The employer added that the grievor did not give herself a chance to work as a PO and to become familiar with working with offenders. She showed up at the office for only two or three days, and a few weeks after her appointment, she resigned from her position despite the training, support, and coaching guarantee that she had received.

[153] The employer added that even though the grievor would have liked to obtain a position in the new Aboriginal Initiatives sector (AS-05), it was not possible because all positions in that section had been filled.

[154] The employer referred me to *Public Service Alliance of Canada v. Treasury Board (Department of Citizenship and Immigration)*, 2018 FPSLREB 74. In that case, the

employer had decided to relocate a Vegreville office to Edmonton, in Alberta, for several reasons. Yet, for different reasons, about 50 employees decided that they would not follow their jobs to Edmonton, and they so advised the employer. They had asked that they be allowed to access options and benefits under the WFA appendix of their collective agreement.

[155] However, despite the fact that it knew that those employees would not follow their jobs, the employer decided to offer them GRJOs in the new Edmonton office, which denied them, under the terms of the Appendix, certain advantages linked to the WFA to which they otherwise could have had access. After that decision, the employees were declared surplus and subject to being laid off. Even though they were admissible to the layoff benefits, they were not able to access other options and WFA advantages, like a retraining allowance.

[156] The union filed a grievance contesting that decision and alleged that it was unreasonable. The Board determined that the employer had breached the voluntary departure programs provision (clause 6.2) of the Appendix, but it dismissed the union's allegations that the employer had breached the relocation provisions (Part III) and the retention payment (clause 6.5.7).

[157] The employer pointed out that paragraphs 55 to 59 of that decision were relevant. In them, the Board referred to a decision of the Federal Court, Trial Division, in *Canada (Attorney General) v. Edwards*, 1999 CarswellNat 3168, 106 A.C.W.S. (3rd) 466 (T-105-98), which heard the application for judicial review of a challenge to what was "reasonable" in a GRJO in which an employee had declined a request to take a new position at the same level but in a reorganized office in the same community as her former position. The paragraphs read as follows:

> *[55] Counsel for the union submitted that the fact situation and collective agreement in this case are different. However, I find the gravamen of that decision helpful. The Court considered whether the grievor's personal circumstances and opposition to the offer made it unreasonable. Upon considering the applicable contract language then in place, the Court found the following at page 6:*
>
> …

> In this case, the offer was one of indeterminate employment with the Public Service at an equivalent level. The offer was within the employee's headquarters. The fact the respondent [grievor] did not want the job, that another employee found the job unstable … are irrelevant considerations. 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".…
>
> …
>
> *[56] This aspect of the decision was upheld on appeal; see Edwards v. Attorney General of Canada, [2000] F.C.J. No. 645 (C.A.)(QL).*
>
> *[57] While Edwards was decided based on a different collective agreement and upon a fact situation in which a grievor was being relocated to a new position within her same headquarters area, nevertheless, I share the Court's sentiment as to its reasons.*
>
> *[58] I find that the argument of the union's counsel that the employer essentially owed the employees better and more equitable treatment (per clause 1.1.1) necessarily leads to the equivalent of an ersatz standard of care being created. If the Board recognized such a thing, it would allow a grievor an avenue to seek to overcome clear collective agreement language when they feel their own personal, subjective circumstances are unfavourably affected by the employer's otherwise valid action allowed by the collective agreement. I don't accept this submission.*
>
> *[59] All the testimony from the grievor's witnesses was very sincere and challenging for each one to share. However, none of the challenging circumstances that they faced are the responsibility of the employer under the collective agreement.*

[158] Similarly, the employer submitted that even though the grievor opposed the offer that she received, it did not make the offer unreasonable. Therefore, it did not breach the appendix in question.

[159] In response, the grievor stated that even though Mr. Cyr stated that because of her learning capacity (she has a master's in anthropology), she would have been able to acquire the competencies necessary to occupy a PO position (WP-04), the CSC and other departments refused her applications 26 times on the grounds that she did not satisfy the essential qualifications for that or an equivalent position. She added that she had been repeatedly told that she did not hold a diploma in a field of study

relevant to the position. Therefore, it was unreasonable to consider that she would satisfy the essential qualifications for that position after two weeks of training.

[160] I find that this situation is analogous to the one in *Edwards*. Even though the WFA that was done in 2012 significantly affected the grievor's professional life, the consequences of which were not foreseeable or desirable, her personal situation and her opposition to the offer that she received did not make it unreasonable.

[161] According to the terms of the Appendix, the employer is expected to provide a GRJO to affected employees, which means that they remain surplus employees until they are provided with at least one reasonable job offer.

[162] The definition of "reasonable job offer" compels the employer to consider the following objective and verifiable factors, which are set out in it: (1) it is an offer of indeterminate employment in the core public administration; (2) the offer is normally at an equivalent level, without excluding job offers at lower levels; (3) the surplus employee must be mobile and trainable; (4) to the extent possible, the employment offered is found within the employee's headquarters, according to the definition in the National Joint Council's *Travel Directive*.

[163] Thus, the first criterion of the definition requires that it be an offer of indeterminate employment in the core public administration. In this case, this criterion was satisfied. The offer was for an indeterminate position within the public service.

[164] The second criterion of the definition requires that the offer be at an equivalent level, without excluding job offers at lower levels. In this case, the offer that was made and accepted was at an equivalent level. Therefore, this criterion was also satisfied.

[165] I note that in *Nesic*, the Board interpreted and applied this criterion of the definition to find that decisions about reasonable offers of employment should be made case by case. As for Dr. Nesic, the employer had failed to explore positions classified at lower levels before deciding not to offer Dr. Nesic a GRJO. Yet, this criterion provides that even though the job offer is normally at an equivalent level, the employer must not exclude job offers at lower levels.

[166] Therefore, in *Nesic*, the Board found that the employer should have explored positions classified at lower levels before deciding not to offer the grievor a GRJO. The Board added that decisions about reasonable offers of employment should be made case by case. In *Nesic*, a job offer for a position with a classification that was three levels lower was justified and reasonable given the restricted medical licence that Dr. Nesic held.

[167] In this case, the offer made was at a level equivalent to the position the grievor held. She would have liked to receive an offer aligned with her profile and her competencies. She considered that only such an offer would have been reasonable. Yet, this is not a criterion in the definition of “reasonable job offer”. It was not negotiated and incorporated into the Appendix of the collective agreement.

[168] The third criterion of the definition is that the surplus employee must be mobile and trainable. The fact that the grievor did not want the position and that she considered that in the short, medium, and long terms, she would be unable to satisfy its essential qualifications are subjective considerations not included in the definition of “reasonable job offer”. As stated in Edwards: “Nothing in the definition implies that the employer is bound to work out a working relationship ‘fully acceptable to both parties’ …”.

[169] Rather, according to the terms of this third criterion, the employee must be mobile and trainable. In this case, the grievor should have agreed to consider work of a different nature. If she wanted continued employment with the employer, according to the Appendix, she had to be open to retraining and to increasing her areas of competency. In the event that following the training, she had not been able to accomplish her new work, she could have filed a grievance under Part IV of the Appendix if she felt that she had not received enough training. That part is about employee retraining.

[170] The fourth criterion is that to the extent possible, the employment offered is within the employee’s headquarters, according to the definition in the *Travel Directive*. In this case, the position offered was in the region that the grievor had chosen.

[171] Therefore, nothing in the definition implies that a job offer is unreasonable because the employee does not want it or thinks that he or she does not have the necessary skills to perform the duties of the position. Finally, I would like to add that had the grievor continued in her employment with the employer and that if a medical condition had prevented her from performing some of her duties, and if medical evidence supported the condition, she and the employer could have considered an accommodation. However, this is no longer relevant because she resigned from her position on October 25, 2013.

[172] Therefore, I find that it was not shown that the employer failed to make a reasonable job offer to the grievor under the definition of "reasonable job offer" in the Appendix.

C. Issue 3: Did the employer breach clause 1.1.6 of the Appendix by advising the grievor only on April 29, 2013, of the decision made on November 30, 2012, to abolish her position and to declare her surplus?

[173] The grievor argued that the employer did not advise her in a timely manner of the decision made on November 30, 2012, to abolish her position and to declare her surplus. She added that the decision not to advise her of this fact was arbitrary and unfair.

[174] She argued that clause 1.1.6 of the Appendix gave her the right to receive a reasonable job offer from the deputy head at that point or, if none existed, opting employee status with 120 days to review the three options in Part VI of the Appendix and to make a decision. She could also have participated in an alternation program during the 120-day opting period.

[175] Once more, clause 1.1.6 of the Appendix provides as follows:

> ***1.1.6*** *When a deputy head determines that the services of an employee are no longer required beyond a specified date due to lack of work or discontinuance of a function, the deputy head shall advise the employee, in writing, that his or her services will no longer be required.*
>
> *Such a communication shall also indicate if the employee:*
>
> *(a) is being provided with a guarantee from the deputy head that a reasonable job offer will be forthcoming and that the employee will have surplus status from that date on;*

> *or*
>
> *(b) is an opting employee and has access to the options set out in section 6.3 of this Appendix because the employee is not in receipt of a guarantee of a reasonable job offer from the deputy head.*
>
> *Where applicable, the communication should also provide the information relative to the employee's possible lay-off date.*

[176] The grievor argued that the employer violated clause 1.1.6 because it failed to advise her in a timely manner of the abolition of her position and of the decision made on November 30, 2012, to declare her surplus.

[177] The employer argued that on April 29, 2013, it advised the grievor of the abolition of her position and of the decision made on November 30, 2012, to declare her surplus. It added that when possible, the Appendix requires the employer to provide affected employees a GRJO, which means that they remain surplus until they receive at least one reasonable job offer.

[178] The employer added that Mr. Cyr had explained the reason for the delay between the decision to declare the grievor surplus on November 30, 2012, and the communication of that decision to her on April 29, 2013. It explained that the guideline that the employer had adopted was that each employee who had been advised of his or her surplus employee status had to receive at the same time, if possible, a reasonable job offer, to reduce the stress and anxiety associated with the unexpected end of employment. Another guideline was that any equivalent job could be considered a reasonable job.

[179] Yet, in November 2012, the employer still did not know whether a position was available for the grievor. At the CSC, a surplus of employees existed at the WP-04 group and level, and before making her a reasonable job offer, the employer had to review all PO and CPO positions, deploy all the surplus employees, and determine whether any unfilled positions remained. It took several months. Therefore, from November 2012 to April 2013, Mr. Cyr communicated with Human Resources many times. Together, they examined the options of positions classified WP-04 for the grievor, including PO, CPO, and ACDO positions. In April 2013, even though Mr. Cyr and the relevant human resources representative did not yet have in hand a precise list of positions available for the grievor, they thought that some positions remained

available and that they could send her the letter informing her of her surplus employee status with a GRJO.

[180] For the reasons that follow, I find that the employer did not breach clause 1.1.6 of the Appendix by delaying advising the grievor of the November 30, 2012, decision to abolish her position and to declare her surplus.

[181] I note that clause 1.1.6 does not specify the period in which the letter informing employees of their surplus employee status must be sent.

[182] In this case, in October or November 2012, the Commissioner received a briefing note with the following recommendation: “[Translation] We recommend that Ms. Julie-Christine Lainey be declared surplus with a guarantee of a reasonable job offer.” The Commissioner signed it near the words, “Approved by - Approuvé par:”, and indicated the date as November 30, 2012.

[183] According to the terms of the Appendix, the employer was expected to provide a GRJO to the grievor, if it knew of or could predict employment availability.

[184] Yet, the employer took a few months to see how it could distribute the different positions classified WP-04 among the surplus employees at the WP-04 group and level. In April 2013, it had not identified exactly the position that it would offer to the grievor, but the situation became clearer as the days and months passed, and it realized that it could offer her a position classified at the WP-04 group and level. Therefore, it found that it was appropriate to send her a GRJO. Then, in July 2013, it was able to provide her a list of available positions.

[185] Nevertheless, I note that the five-month delay (from November 30, 2012, to April 29, 2013) did not undermine the maintenance of the grievor’s employment relationship with the employer. It was intended to ensure that she was given a GRJO. An analysis of the regional availability of PO and CPO positions was performed during that same period, which made it possible to send her the letter in April 2013 advising her of her surplus employee status and the GRJO. It is true that analyzing the unfilled positions took some time. However, the employer sent her the letter as soon as it saw that it could make her a GRJO, even though it was not yet able to offer her a specific

position. Then, when the regional analysis of the positions was completed on July 9, 2013, the employer sent her the list of the 14 available positions.

[186] Therefore, the employer complied with the requirement stipulated in clause 1.1.6 to send the required letter to the grievor, even if it reached her on April 29, 2013. The important thing is that the employment relationship between the grievor and the employer was maintained between November 30, 2012, and April 29, 2013. Even though her new surplus employee priority entitlement began on the day on which the deputy head declared her surplus, it was due to end only on the effective date of her layoff. Yet, she was not laid off since she was deployed to another CSC position indeterminately.

[187] The grievor also submitted that she was entitled to receive a reasonable job offer from the deputy head on November 30, 2012, or, if none existed at that time, opting employee status. On that subject, I note that clause 1.1.6 stipulates that the letter must indicate whether a GRJO is possible. It does not stipulate that a job offer must be made at the same time.

[188] In this case, the Commissioner's intention was very clear on November 30, 2012. He approved the recommendation that the grievor be declared "[translation] surplus with a guarantee of a reasonable job offer". In the circumstances, I cannot find that, as the grievor alleges, a GRJO was not possible at that time and that had there not been a delay, she would have been declared an opting employee. On the contrary, the employer's intention at that time was clearly to offer her a guarantee of a reasonable job, under the guideline adopted at the CSC, in accordance with the objective of the Appendix, which is to optimize job maintenance and to ensure that to the maximum extent possible, the employer offers its employees other job opportunities.

[189] For all of the above reasons, I find that it was not shown that the employer breached clause 1.1.6 of the Appendix by advising the grievor on April 29, 2013, of the decision made on November 30, 2012, to abolish her position and to declare her surplus.

[190] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[191] The grievances are dismissed.

July 2, 2019.

Nathalie Daigle,

a panel of the Federal Public Sector Labour Relations and Employment Board