Date: 20250414

Files: 566-02-38298 and 38299

Citation: 2025 FPSLREB 37

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

JOHN ZALEWSKI

Grievor

and

TREASURY BOARD
(Royal Canadian Mounted Police)

Employer

Indexed as
Zalewski v. Treasury Board (Royal Canadian Mounted Police)

In the matter of an individual grievance referred to adjudication

Before: David Olsen, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Dayna Steinfeld, counsel

For the Employer: David Perron, counsel

Heard by videoconference,
November 8 and 20, 2023, and January 26, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

A. Introduction

[1] John Zalewski ("the grievor") began working for the Royal Canadian Mounted Police's ("the employer" or RCMP) K Division Food Services operation in Edmonton, Alberta ("K division"), on October 1, 2009, as a kitchen helper in a GS-FOS-02 position.

[2] On May 10, 2011, the employer wrote to all employees of K division headquarters to advise that the Food Services operation (i.e., the cafeteria service) would be replaced with a coffee and sandwich service to be operated by a private contractor and that the hot meal service in the cafeteria would end on January 1, 2012. After that, two employees were to provide the coffee and sandwich service until renovations were completed to accommodate a new vendor. In fact, the Food Services operation did not close until 2015.

[3] On July 6, 2011, the employees working in the Food Services operation were again advised that the employer would close the cafeteria. The letter addressed to the grievor stated that although the employer did not have another position to offer at that time, the employer was confident that there would be alternative employment for him in the public service. Accordingly, he would be provided with a guarantee of a reasonable job offer (GRJO) within the public service under the "Workforce Adjustment Directive" ("the directive") and that as a consequence, he would not be eligible for any of the options that the directive provided.

[4] In December 2011, the employer advised the grievor that due to the limited GS-FOS positions in the public service, his reasonable job offer (GRJO) would be located in Regina, Saskatchewan, at the RCMP's training academy ("the Depot"). He was advised that details of his new position and relocation entitlements would be provided to him prior to the closure of the Food Services unit. He was also advised that he would continue to be in surplus status until he was actually presented with the offer and that the Public Service Commission (PSC) would continue to market him in with Edmonton area. He was also advised that the employer intended to continue operating the food services until approximately midyear 2012.

[5] On March 2, 2015, the employer obtained approval from the RCMP's commissioner ("the commissioner") to rescind the GRJO that had been provided to the grievor and instead give him access to the options under the directive on the basis that few opportunities existed in the GS-FOS group. The briefing note also stated that the grievor had informally expressed a preference for the options over relocation. It added that the bargaining agent at the national level was consulted and that it stated that it would support providing options to the grievor, should the RCMP decide to proceed in that manner. The note also advised the commissioner that implementation of a vendor operated service was delayed by unexpected requirements and resource limitations.

[6] On March 27, 2015, the grievor was advised that the employer could no longer provide him with a GRJO and that he had 120 days to consider and decide from the options in the workforce adjustment (WFA) appendix ("the WFA appendix") to the directive in the collective agreement; the one in effect at the relevant time was between the Treasury Board and the Public Service Alliance of Canada ("the bargaining agent" or PSAC) for the Operations Services group that expired on August 4, 2014 ("the collective agreement").

[7] On July 25, 2015, which was the grievor's last day to select the option that he wanted, a bargaining agent representative emailed a completed options form to the employer. The grievor had selected Option B, which was the transition support measure. It consisted of 36.83 weeks of salary together with his resignation.

[8] The same day, the grievor filed a grievance in which he alleged that the employer violated the WFA appendix by not placing him in an acceptable indeterminate position. The grievance was denied at all levels of the grievance procedure.

[9] The bargaining agent took the position that there was no written agreement at the national level that it would support providing options to the Grievor.

[10] While the parties disputed many issues between them, they nevertheless agreed on the framework by which they wished the board to address this grievance. As framed by the parties, the four issues to be dealt with in this decision are the following:

1) Did the employer meet its obligation under the WFA appendix to provide the grievor with a GRJO? What constitutes providing a GRJO? Particularly, was it open to the employer to switch him from being a surplus employee with a GRJO to being an opting employee?

2) Assuming that doing so was not open to the employer under the WFA appendix, was the grievor estopped from arguing that the collective agreement was breached, based on the bargaining agent's purported agreement to switch him from the GRJO to being an opting employee?

3) Did the employer meet its obligation under the WFA appendix to maximize employment opportunities for him as an indeterminate employee affected by a WFA?

4) Did the grievor meet his obligations under the WFA appendix by actively seeking alternative employment, seeking information about entitlements and obligations, and providing timely information to his employer and to the PSC to help him redeploy, and did he seriously consider the job opportunities that were presented to him? If not, does this failure warrant the dismissal of the grievance?

[11] For the reasons that follow, I find that the employer did not meet its obligations under the WFA appendix to provide the grievor with a GRJO.

[12] I conclude that it was not open to the employer, under the collective agreement and the WFA appendix, to switch the grievor from being a surplus employee with a GRJO to being an opting employee.

[13] I conclude that given the collective agreement wording that sets out a comprehensive detailed process by the parties to collective bargaining, the employer was not authorized under its residual managerial rights to switch the grievor from being a surplus employee with a GRJO to being an opting employee.

[14] I conclude that the strict requirements of the doctrine of estoppel have not been satisfied and that the grievor was not estopped from arguing that the collective agreement was breached based on the bargaining agent's purported agreement at its national level to switch him from having a GRJO to being an opting employee.

[15] I conclude that the employer met its obligations under the WFA appendix to maximize employment opportunities for the grievor as an indeterminate employee affected by a WFA.

[16] I conclude that the grievor met his obligations under the WFA appendix by actively seeking alternative employment, seeking information about entitlements and

obligations, and providing timely information to his department and to the PSC to help him redeploy and that he seriously considered the job opportunities that were presented to him. As an opting employee, he seriously considered the options that were presented to him and communicated his choice of options to the employer in writing and in a timely way. There is no ground to dismiss the grievance on the basis that the Grievor meet his obligations under the WFA.

[17] That being said, my decision is not without reservations, and I have set out my concerns later in this decision.

[18] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40; *EAP2*) also came into force (SI/2014-84). Under s. 393 of the *EAP2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continued under and in conformity with the *PSLRA* as it was amended by ss. 365 to 470 of the *EAP2*.

[19] 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, changing the name of the PSLREB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board", which in this decision refers to the current Board and any of its predecessors), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

II. Overview, including the parties' agreed statement of facts and the background facts that arose from the evidence

[20] The parties prepared a joint book of documents that they agreed to tender into evidence on consent, except for the following: Tabs 6 to 14, 19, and 87.

[21] The parties remained free to introduce additional documentary evidence and reserved the right to make arguments about the reliability, meaning, use, weight, and probative value of that evidence during the course of the hearing.

[22] The bargaining agent called one witness, the grievor.

[23] The employer called two witnesses:

1) Bryan Morlidge, Information Management Officer, Northwest Region Strategic Planning, responsible for the Food Services operation at K division and to whom the employees working in the operation reported, including the grievor.
2) Michelle Revet, a former manager in Public Services Human Resources who took over responsibility for the grievor's Human Resources (HR) file in 2014-2015.

[24] The bargaining agent and employer are the parties to the collective agreement.

[25] The grievor began working for the employer on October 1, 2009, as a kitchen helper in a GS-FOS-02 position at K division.

[26] The key activities of the kitchen helper position are preparing items and condiments for a sandwich bar on short-order days; cleaning and preparing vegetables; sanitizing, washing, and restocking dishes; and cleaning equipment and preparation areas.

[27] The grievor was hired as a dishwasher. Most of the time, the dishwasher's duties included helping other people in the front and the back of the kitchen. The dishwasher also delivered food, operated the cash register, and cleaned tables.

[28] Before 2009, he occupied a number of positions. He was an account manager in Alberta and northern British Columbia for three years.

[29] He was the manager of the Polish Hall banquet facility in Edmonton. He worked with a Polish newspaper and was an immigration advisor.

[30] He came to Canada in 1987. He spent three years as a camp manager. He worked for different companies. He was responsible for food supply, food quality, accommodation, safety, and environmental issues.

[31] In Poland, he completed senior high school as well as two years of hotel management. He completed a sales and marketing program at a college in Alberta.

[32] As of the date of the hearing, the grievor had been working in a CR-03 position with Service Canada since July 11, 2022.

A. The events that led to the need for the WFA - the decision to close the cafeteria

[33] Mr. Morlidge's office was responsible for the real property group and was the secretariat for the employer's kitchens located in Edmonton and Calgary, Alberta.

[34] He was responsible for doing the analysis for K division that led to closing the kitchen operation in 2015.

[35] The RCMP patterns itself after the military. A mess, which means an eating area in the military, is part of that pattern. In 1999 to 2000 at K division, there was a full kitchen operation and two lounges. One lounge was for officers, and the other had general seating.

[36] K division is the headquarters for the province of Alberta. Several hundred people worked there. The food operation had a full industrial kitchen, and the messes had a seating area for 160 employees. K division is not located in the downtown Edmonton area but is next to the old airport.

[37] Across the street from K division are an A&W restaurant and a large mall. The mall has about 39 food operations, including a full-service Tim Hortons restaurant.

[38] Using K division's Food Services operation was an option for employees. Students on travel status could use it too.

[39] The employer paid its staff 60% more than did the competition. The Food Services operation was losing $150 000 to $200 000 per year, in terms of cost against revenue. It was a time of austerity, and there was an expectation that operations would save money.

[40] After meeting with clients, none could give him a solid reason for continuing the Food Services operation, except for serving coffee and muffins. Students would come for lunch but would not come for dinner. He started to look at whether the operation was still needed and concluded that it was not.

[41] The following employees worked in the Food Services operation. There was a manager-senior cook classified GS-FOS-07, a junior cook classified GS-FOS-05, three kitchen helpers classified GS-FOS-02, and three servers GS-FOS-02. The grievor's position was called a janitor pot/dishwasher and was classified GS-FOS-02.

[42] The employees working in the Food Services operation reported to the manager-senior cook who was responsible for running the kitchen and the food operation.

[43] In April 2011, Mr. Morlidge recommended to the senior officers that the in-house kitchen operations be closed, and that K division bring in a vendor to provide sandwiches, muffins, and coffee. It was to be a much smaller physical operation. The then-present kitchen operation was overcrowded.

[44] Mr. Morlidge referred to his email titled "Food Services Implementation Plan" and dated April 15, 2011, which he sent to HR. It was the start of the process. The email referred to a meeting held the day before at which he outlined the recommendation to close the kitchen operations and to bring in a vendor. The email outlined the broad strokes of an implementation plan, namely, step one, announce, consult, plan, and arrange; step 2, reduce internal services once a supply arrangement was in place; and step 3, a coffee and sandwich vendor.

B. The WFA

[45] By email dated May 10, 2011, Mr. Morlidge wrote to all employees of K division to advise them that the headquarters cafeteria service would be replaced with a coffee and sandwich service to be operated by a private contractor, that the hot meal service in the cafeteria would end on January 1, 2012, and that after that date, two employees would provide the new coffee and sandwich service until renovations were completed to accommodate a new vendor.

[46] The email also stated that every effort was being made to find the cafeteria staff members employment within the public service.

[47] Mr. Morlidge referred to an email titled "Workforce Adjustment - Food Services 'K' Division, Procurement & Contracting Services NWR" and dated May 6, 2011, from M.E. (note that some names are anonymized in this decision) that was sent to him and one other person. M.E. was the manager of HR. She was his contact with respect to the directive.

[48] He had advised HR about the proposed closure so that it could advise the bargaining agent. He had already met with the personnel and with the bargaining agent local president.

[49] In its email, HR advised of the requirements under the directive that the employer had to formally notify the bargaining agent as soon as possible after a WFA-related decision was made. HR had prepared a summary of the business case and related matters, such as the timing of the WFA process and the affected and surplus letters and whether employees would be provided a GRJO.

[50] Mr. Morlidge was advised that if the email met his approval, it would be forwarded to the director of the Labour Relations Policy Centre in Ottawa, Ontario, who would formally notify the bargaining agent of the WFA decision, as well as the Staffing Policy Centre.

[51] The email also raised concerns about whether the RCMP would be able to provide all four GS-FOS-02 employees with GRJOs, due to the lack of available GS-FOS-02 positions or equivalent in the Edmonton area. The evidence is more particularly set out in the discussion of whether the employer met its obligations under the WFA appendix by providing a GRJO.

[52] He was referred to the notes of a meeting dated May 3, 2011. He was asked who wrote them. He replied that they came from HR. The meeting was about the Food Services operation employees. He attended with the bargaining agent's president, Deb Stangrecki; M.M., an HR consultant for food services; and M.E., an HR manager.

[53] He was asked when he first had discussions with the bargaining agent. He stated that shortly after the all-employee meeting, he had a hallway conversation with the local president and invited her to a meeting with the staff.

[54] He stated that he believed that the notes dated May 3, 2011, were of the official meeting.

[55] He was asked for the bargaining agent's reaction. It was not surprised; it was aware of the austerity push at the time. It was concerned for the staff and was concerned that the employer follows the directive.

[56] He was referred to an email dated April 12, 2011, from M.E. to G.P. and titled "DEC Meeting - WFA Food Services". It contains a calculation of the cost of buying out all the employees in the Food Services operation, including the transition support measure multiplied by the salary level. Each year of delay resulted in the buyout costs increasing.

[57] On June 1, 2011, Mr. Morlidge emailed the employees working in the Food Services operation, including the grievor, to advise them that the employer would give them official notification of WFA status ("the surplus letters").

[58] On July 6, 2011, employees working in the Food Services operation received a letter advising them that the employer would close it. The letter addressed to the grievor guaranteed that he would be provided with a GRJO within the public service, and because he was so guaranteed, he was not eligible for any of the options or to participate in the alternation process described in Part VI of the WFA appendix. He was also advised that his position had been identified as surplus due to the discontinuation of the function at his location and that in accordance with the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13) and the WFA provisions of his collective agreement, he had been accorded surplus status effective July 7, 2011.

[59] The letter also stated that while no other position was offered at that time, the regional director was confident that there would be alternative employment for him in the public service, that the letter was a guarantee that he would be provided with an RJO within the public service, and that accordingly, he was not eligible for any of the options or to participate in alternation.

[60] The grievor confirmed that he received the letter dated July 6, 2011, from the regional director of the RCMP, Assets and Contracting Services.

[61] Mr. Morlidge was asked why at that time the grievor was told that there was a GRJO. He stated that the plan was to provide the grievor with another GS-FOS job within a year.

[62] The hot meal service was to end as of January 1, 2012. As the service would be downgraded, Mr. Morlidge's expectation was that a good number of people would find other jobs by January 1, 2012. He anticipated the need to use term employees to

continue the downgraded service. That is what triggered the surplus letters at that time.

[63] Mr. Morlidge was referred to a PowerPoint presentation dated July 7, 2011, which HR presented to the kitchen staff on that date that outlined the WFA process and a description of a GRJO. He was asked whether the grievor asked questions. He said that he did not recall.

[64] The grievor recalled attending a WFA information session that HR presented on July 7, 2011. The HR advisor, M. R. was listed as one of the presenters. He recalled everyone from food-service operation being present. He did not recall ever having a one-to-one meeting with the HR advisor.

[65] The grievor was registered as a priority person with the PSC on July 11, 2011.

[66] The grievor understood that he would have priority registration for appointment to a position at his level and that he would have to apply along with others for a CR-04 position, which would have been at a higher level.

[67] After he received the July 6, 2011, letter, the grievor continued to work full-time in the Food Services operation until the date of its closure, July 31, 2015. Between January 2012 and July 31, 2015, the operation continued to run with a minimum of staff, which included him. During that period, he acted for periods as a GS-FOS-07 while the chef was on leave. Between 2012 and 2015, not all chef functions were being done, such as administrative tasks, ordering, and menu planning. During that period, the grievor also acted in a CR-04 position at Crime Stoppers from August 15 to December 9, 2011.

[68] On September 15, 2011, the grievor wrote to Mr. Morlidge, to advise that he had completed courses and training in harassment awareness and security awareness and individualized instruction modules (an introduction to the judicial process, being a police witness in a judicial process, the *Canadian Charter of Rights and Freedoms* ("the *Charter*"), Aboriginal and First Nations awareness, and "TIP SOFT", an introduction to software), that he was in the process of completing training with the Canadian Police Information Centre (CPIC), and that he was scheduled the following week for Police Reporting and Occurrence System (PROS) training. He also mentioned his interest in taking other courses or training, as required.

[69] On October 11, 2011, the grievor wrote to Mr. Morlidge, to advise that he had completed training in effective listening and questioning techniques.

[70] By letter dated December 1, 2011, M.A., Regional Director, Northwest Regional Assets & Contractor Services, advised the grievor that the employer intended to continue the Food Services operation until approximately mid-year 2012, that due to the limited GS-FOS positions in the public service, his GRJO would be located in Regina at the Depot, that he would continue to be in surplus status until he was presented with a GRJO, and that the PSC would continue to market him in the Edmonton area. The letter stated that his surplus period would continue until he was appointed or deployed to another indeterminate position or until he resigned.

[71] The letter also advised him that if he refused a GRJO at any time during his surplus period, he would be subject to layoff, in which case he would receive a 30-day layoff notice and would be entitled to layoff priority status for 1 year.

[72] As of December 14, 2011, all but three of the Food Services operations employees had been appointed to indeterminate positions in the Edmonton area or the K division headquarters or had resigned.

[73] The grievor completed the PROS and CPIC training courses on December 31, 2011, along with other online courses. Between January and March of 2012, Mr. Morlidge arranged for the grievor to complete a “Competency/Personal Assessment” with the PSC’s Staffing and Assessment Services.

[74] In an email exchange in January and February of 2014, Mr. Morlidge and the grievor discussed assessing the grievor’s Polish diplomas.

[75] When the grievor expressed his interest, the employer did not discourage him from applying to take over the Food Services operation under the Employee Taking Over Program, and he did so, on June 11, 2014. The employer also encouraged him to apply for other work, as the decision to close the Food Services operation was final.

[76] On March 2, 2015, a briefing note to the commissioner sought approval to rescind the GRJO provided to the grievor and instead give him access to the options in clause 6.3 of the WFA appendix. It stated as follows:

…

> *The employees continue to be marketed as priority persons in Edmonton within the RCMP and core Public Service. Few opportunities exist in the GS-FOS group and* [redacted] *employees have limited transferable skills for other groups, especially administrative positions that are typical of most government enterprises.* [redacted] *failed to qualify on numerous selection processes.*
>
> …

[77] It was also noted that delays had been incurred in implementing the vendor operated service by unexpected requirements and resource limitations.

[78] As of March 2, 2015, all employees of the Food Services operation, except for the grievor and Chef Richard Tront, had obtained employment within K division headquarters in Edmonton or had resigned.

[79] By letter dated March 27, 2015, R.B., Corporate Management Officer, wrote to the grievor to advise him that the employer could no longer provide a GRJO and that he had 120 days from the date of the letter (i.e., July 25, 2015) to consider and decide from the options in the WFA appendix. He was also advised that if he felt aggrieved by the application or interpretation of the Workforce Adjustment agreement that he may bring a grievance in accordance with established protocol.

[80] On May 12, 2015, Mr. Morlidge emailed the grievor, reminding him of the opting period.

[81] On June 10, 2015, Mr. Morlidge emailed the grievor, reminding him that the deadline for opting was July 25, 2015. He mentioned that he had not received a meeting request to discuss the opting choices.

[82] On June 30, 2015, Mr. Morlidge emailed all K division employees, advising that the cafeteria services at K division headquarters had ended on June 30, 2015.

[83] On July 13, 2015, Mr. Morlidge emailed Ms. Revet, in Human Resources and advised that the grievor did not see any benefit from the proposed meeting.

[84] On July 25, 2015, which was not a scheduled workday for the grievor and was the final day to submit his choice of option, Mr. Morlidge emailed him and stated this: "John, I haven't received your opting form. Have you sent it? Call me on my cell, and I can swing by to pick it up from you today."

[85] On July 25, 2015, Deborah Harrington, the new local president of the bargaining agent, emailed the grievor's completed option form to Mr. Morlidge.

[86] In an email exchange from July 23 to 31, 2015, Ms. Harrington and Ms. Revet discussed the WFA process for the grievor. Ms. Harrington stated as follows:

> …
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> *It was also indicated that Mr. ZALEWSKI would be immediately offered (*on Monday, July 27, 2015*) a RJO position at Depot if he did not sign option B or C. It was advised and implied that he would be terminated in 30 days if he selected option A and refused the RJO. In reference to this information and the recent FOS "anticipatory" position posted to the government job board (jobs.gc.ca) for Regina Kitchen, the kitchen staff in Regina were not aware of any current vacant positions.*
>
> …

[87] Ms. Revet replied to Ms. Harrington, stating that the "Depot does indeed have a FOS-02 vacancy which they were prepared to offer John as a RJO." The grievor had several discussions with Mr. Morlidge about the position in Regina.

[88] When he completed the option form, the grievor selected Option B, the transition support measure. Because he selected Option B, his resignation was effective July 31, 2015.

[89] The grievor received $28 182.32 as a transition support measure, which represented 36.83 weeks of his salary.

C. The grievance

[90] The grievor filed this grievance on July 25, 2015, in which he alleged that the employer violated the WFA appendix by not placing him in an acceptable indeterminate position. The Grievor also accused the employer of engaging in threatening behaviour, bullying, encroachment on personal space and private life and forcing him to resign.

[91] At the opening of the hearing counsel for the Grievor advised that although the Grievor would not be withdrawing the allegations of inappropriate behaviour on the part of the employer the Grievor would not be focusing on those obligations during the hearing.

[92] The bargaining agent referred the grievance to adjudication on April 24, 2018.

III. Approach to the evidence

[93] The evidence with respect to whether the employer met its obligation under the WFA appendix to provide a GRJO and whether it was open to it to switch the grievor from being a surplus employee with a GRJO to being an opting employee, and the evidence with respect to whether the grievor was estopped from arguing that the collective agreement was breached based on the bargaining agent's purported agreement to switch him to being an opting employee, is so interrelated that I will review the evidence on both issues together.

A. Mr. Morlidge's evidence

[94] Mr. Morlidge referred to an email titled, "Workforce Adjustment Food Services K Division Procurement and Contracting Services NWR" and dated May 6, 2011, from M.E. to himself and one other person. M.E. was the manager of HR. With respect to a GRJO, the email noted as follows:

> …
>
> … At this point it is not known whether the RCMP will be able to provide all 4 of the GS-FOS-02 employees with a GRJO due to the lack of available GS-FOS-02 positions or equivalent level positions (i.e. CR02 Level) in the Edmonton area. It may be reasonable to anticipate that 2 of the 4 GS-FOS-02's may qualify on higher-level positions due to previous and on-going acting opportunities at higher levels. The RCMP may also consider the provision of retention payments or the options to some of the GS-FOS-02's. The RCMP anticipates providing a GRJO to the Senior and Junior Cook incumbents.
>
> …
>
> [*Sic* throughout]

[95] Mr. Morlidge stated that the default is a GRJO. If the employer cannot offer one, then it moves to the options. They knew that if they were to make GRJOs, they would have to be over a wide geographic area.

[96] They looked within the RCMP. In 2011-2012, the CR-04 classification was considered a broad type of job. Positions in that classification were entry level and required little experience. They thought that the GS-FOS-position incumbents could move to the CR-04 positions, although that turned out not to be the case as an

appointment to a CR-04 would have constituted a promotion for the GS-FOS-02 employees. They were unsure as to what counted as a GRJO and its scope.

[97] He was asked about the staff positions available for the Food Services operation employees within the Edmonton area or elsewhere. He stated that there was a Canadian Forces Base and that Edmonton had correctional institutions.

[98] The women's institution had no GS-FOS-02 positions. The men had no GS-FOS-02 positions, only GS-FOS-05 and 07 positions.

[99] The Department of National Defence (DND) had GS-FOS-02 positions in Edmonton, but they were term positions to be backfilled for military cooks. In Wainwright, Cold Lake, and Suffield, Alberta, GS-FOS-02 indeterminate positions were available.

[100] Mr. Morlidge testified that he spoke with the food services units at all those institutions. He noted that the Depot was interested in their kitchen helpers, the GS-FOS-02s. However, none of the staff were interested in relocating to Regina. The only person interested was the GS-FOS-05 employee, who wanted to go to the east coast.

[101] He was asked about the difference between a GS-FOS-02 and 05. A GS-FOS-02 is a kitchen helper who also serves, cleans, and washes dishes. A GS-FOS-05 is a cook who prepares food and has completed a formal trade certification. A GS-FOS-02 may do some basic cooking. A GS-FOS-07 is the chef or manager responsible for managing the operation and doing the menu planning.

[102] Mr. Morlidge was referred to a PSC document titled, "Priority Clearance Request Volumes (Staffing Activity) by Location and Group/Level". It outlined the number of indeterminate staffing actions at the GS-FOS-02 group and level that occurred in all departments in Alberta, the Northwest Territories, and Nunavut for the period from January 1, 2010, to July 6, 2011, namely, 14, and a similar document for the same period for all departments on a national basis, namely, 46 (42 English essential and 4 French essential).

[103] He stated that there was not much action for these jobs, either for appointments or appointment processes.

[104] The purpose of pulling these statistics was to help determine whether the employer should make GRJOs or go to the options. The statistics very much reinforced the idea that the GRJOs might have to be at the Depot.

[105] The employer had jobs in Regina. Having priority surplus status, the employees would have received clearance to be referred to other GS-FOS-02 positions both in Alberta and nationally.

[106] Mr. Morlidge was referred to his email to the regional director in which he recommended a national area of referral, to ensure that that the personnel were aware of all opportunities to remain in the public service, based on the low numbers of staffing actions for GS-FOS positions over the past 18 months. The regional director approved his recommendation.

[107] Mr. Morlidge referred to a letter dated December 1, 2011, from the regional director to the grievor titled “Addendum to Surplus Status Letter”. It was further to the letter that the grievor received on July 7, 2011, in which he was informed of his surplus status. He was advised that management intended to continue the Food Services operation until approximately mid-year 2012.

[108] He was also advised that due to the limited number of GS-FOS positions in the public service, his RJO would be located at the Depot. He was advised that details of his new position and relocation entitlements would be provided before the Food Services operation closed.

[109] He was also advised that he continued to be in surplus status until he was presented with a GRJO and that the PSC would continue to market him in the Edmonton area.

[110] Mr. Morlidge was asked about the grievor’s reaction to the letter. In conversations over the months, he was not surprised. The grievor asked questions about the size of the Depot’s operation. The kitchen operation was bigger; it served up to 1000 per sitting. He remembered giving the grievor a sales pitch on the Depot in which he explained that business conferences were held there, which would have been right up the grievor’s alley.

B. Ms. Revet's evidence

[111] Ms. Revet was not involved with the grievor's HR file in 2011. She took over responsibility for it in 2014-2015.

[112] The grievor was declared surplus in 2011. In December 2011, he was advised that his GRJO would be in Regina. It did not appear practicable. It was not in Edmonton. She spoke with the bargaining agent.

[113] She looked into the PSC's database, to see how many times other GS-FOS-02 positions were referenced.

[114] To give the grievor a meaningful role in the RCMP, it was determined that there were no opportunities for him in the RCMP in Edmonton. Looking for CR-02 equivalencies was considered. However, the PSC advised that the GS-FOS-02 and the CR-02 classifications are not equivalent. A CR-01 position would have been equivalent; however, there were none.

C. The bargaining agent's submissions - what constitutes a GRJO?

[115] The issue in this case is different from the issue that more commonly arises, which is whether a job offer provided to an employee meets the standard of being a GRJO. Instead, in this case, there can be no dispute that at no point during the over four-year period when the grievor was a surplus employee did he receive any GRJO.

[116] There can be no question that no GRJO was ever made. So, the question is whether the grievor could have been switched to being an opting employee after receiving a GRJO.

D. Analysis

[117] Given the bargaining agent's position that this case is different in terms of the issue that more commonly arises, since the grievor did not actually receive a GRJO, it is not contested that if a job offer at the Depot been made, it would have met the GRJO standard. Moreover, the evidence is clear that on a balance of probabilities, given the lack of GS-FOS-02 jobs or equivalent both locally in Edmonton and nationally, had an offer of a GS-FOS-02 job at the Depot been made, it would have met the standard of reasonableness. The evidence is clear that the employer did not provide the grievor with a GRJO.

[118] On the issue of the employer's change to the options track, the evidence reveals that had the grievor selected Option A, he would have been offered a RJO GS-FOS-02 job at the Depot in July or August 2015.

IV. Whether the grievor could be switched to being an opting employee after having received a guarantee of a reasonable job offer.

A. The grievor's evidence

[119] The grievor was referred to a briefing note to the commissioner dated February 27, 2015, that was obtained through an access-to-information request. The briefing note is titled "Access to Workforce Adjustment Options". The HR chief sought the commissioner's approval to provide public service employees who had been provided a GRJO with access to the options set out in the WFA appendix. The note set out the background to the recommendation to close the Food Services operation at the K division headquarters building ("the building") and stated that the employees had been advised that their services would be discontinued and that they had been provided with a GRJO.

[120] The briefing note stated that all employees but the grievor and one other employee had found alternative employment.

[121] It referenced the December 1, 2011, letter that had advised the employees that they would be provided with GRJOs at the Depot's mess after the Edmonton Food Services operation closed. It then noted that that was outside the employees' headquarters area and that it would require employer-paid relocation.

[122] The note then set out the employees' current status. It stated that they continued to be marketed as priority persons in Edmonton within the RCMP and the core public service. Few opportunities existed in the GS-FOS group, and the employees had limited skills transferable to other groups, especially for the administrative positions that are typical of most federal government enterprises. The grievor failed to qualify on numerous selection processes.

[123] The grievor responded that that statement was very hurtful and untrue. From the very beginning, he never had access to an RJO. He was not given any opportunity to participate in a staffing process and did not agree that he failed to qualify in many such processes. He reiterated that he has many years of experience in which he developed transferable skills as a graphic design manager and as a photographer. He

referred to his acting CR-04 appointment to Crime Stoppers. He was never given the opportunity to job shadow or to be selected to a new position, although others had received that opportunity.

[124] The note went on to state that an RJO, if practicable, was to be within the employee's headquarters area. However, in this case, no RJOs could be made in Edmonton. As a definitive decision had been made to close the Food Services operation, management could proceed with providing the employees an RJO in Regina. It was noted that the Depot's mess had a vacant GS-FOS-02 position for the grievor.

[125] The note stated that the employees had informally expressed a preference for the options over relocating. It also stated that the bargaining agent was consulted at the national level and that it would support providing options to the employees should the RCMP decide to proceed in that manner.

[126] It was recommended that the GRJO be rescinded and that the employees be provided with the options set out in clause 6.3 of the WFA appendix. The commissioner approved the recommendation on March 2, 2015.

[127] The grievor was asked whether he had any meetings with the bargaining agent about switching from a GRJO to the options set out in the WFA appendix. He recalled a joint meeting with the bargaining agent and Ms. Revet. He did not recall any meeting solely with the bargaining agent in which switching from a GRJO to the options was discussed.

[128] Switching from a GRJO to the options was not discussed solely with any employer representative. He was asked whether the bargaining agent and the employer discussed it. He stated that he had no information that that took place.

B. Mr. Morlidge's evidence

[129] Mr. Morlidge was asked how the change from a GRJO to providing options came about. Nothing concrete was happening with respect to a number of the staff finding other positions. Keeping the staff around would not help. Management started making job offers. One employee retired. The cook and the grievor both said that they would not go to Regina.

[130] He did not recall who raised the suggestion, either him or Ms. Harrington (the bargaining agent's local president), about switching from a GRJO to the options. He stated: "If this is what we wanted to do, we would have to go to the Commissioner of the RCMP."

[131] Two people named "Deb" were at various points in time the president of the local of the bargaining agent. (Note that Deb Stangrecki was the local president at the material time. Deb Harrington took over only in late spring 2015). Mr. Morlidge's evidence was that either she, Ms. Harrington or Mr. Morlidge said, "Can we give them the options?" The other replied: "Great idea."

[132] During cross-examination, Mr. Morlidge was referred to his October 7, 2015, notes in response to the grievance, in particular to the part that reads as follows:

> …
>
> *All processes and actions have been in accordance with the WFA, with the exception of the supplementary offer of the Options. This extraordinary measure (featuring PS Staffing requesting permission to do so from the Commissioner) was taken to support the remaining employees who had expressed a desire not to relocate but had not been able to locate alternate local employment after 4 years of surplus priority.*
>
> …

[133] He was asked to confirm that the supplementary offer of the options was not prescribed in the WFA. He replied that it was a grey area. It was also not prohibited.

[134] With respect to the question of whether it was permissible to go to the commissioner to change from a guaranteed RJO to the options, he noted this: "If the expectation of the WFA is that if you start down one path you must stick to it is correct, I may have erred and the WFA does not allow the flexibility to accommodate people. That was a grey area. Let's not force them into relocating. It was not strictly mandated."

[135] He was asked about his discussions with the bargaining agent about rescinding the RJO and offering the options. He could not recall whether a conversation took place in late 2014 or early 2015. It was a hallway discussion. It was not put in writing. The question was whether it could be done.

[136] Conversations would have occurred after that. There were emails that discussed whether the switch was possible. The local of the bargaining agent preferred the options. He did not remember whether the idea was its or his.

C. Ms. Revet's evidence

[137] Ms. Revet, the HR manager, testified that she had no involvement with the grievor when he was declared surplus in 2011. She was involved later.

[138] She spoke to management and confirmed that the kitchen would close. It took a prolonged period. The grievor was declared surplus in 2011. In December 2011, he was advised that his GRJO would be in Regina. It was not practicable. It was not in Edmonton. She spoke with the bargaining agent.

[139] She looked into the PSC's database to see how many times other GS-FOS-02 positions had been referenced.

[140] There were no opportunities for the Grievor in Edmonton. They considered placing the Grievor in a CR-02 position which they believed was equivalent to his GS-FOS-02 position. However, the Public Service Commission advised that they were not equivalent. There were no CR-01 positions available.

[141] They are moving forward to provide the grievor with a GRJO in Regina. They informally advised him that he had to be mobile. He had said that he would not accept a position in Regina.

[142] The local of the bargaining agent asked if anything could be done.

[143] If he did not accept the GRJO, he was to be laid off. It did not seem fair. It would have been reasonable only if he could have been given the options.

[144] Ms. Stangrecki said that she talked to the grievor. She said that she would talk to the bargaining agent at its national level. She said that it was supportive.

[145] The deputy head agreed, and management issued the options to the grievor.

[146] Mr. Morlidge was the direct contact for her and updated her.

[147] One of her roles was to facilitate matters with the bargaining agent. Ms. Stangrecki was the president. They spoke once or twice a month. A bargaining agent-

management meeting was held once a month. Ms. Stangrecki was retiring during the stages of finalizing the options letter. Ms. Harrington was to take over.

[148] She was asked whether she remembered any conversations. She recalled that it was not practicable for the grievor to stay in Edmonton. He had refused an appointment to DND in Wainwright. She recalled talking about the closure. She remembered the GS-FOS-02 position in Regina, where they could really have used his help.

[149] Once an official closing date for the kitchen was chosen and it became necessary to move, Ms. Stangrecki asked if anything could be done to avoid layoffs. She was asked why the grievor did not receive a GRJO in 2011. She did not know if that was the wisest decision. It might have been wiser to offer him the transition support measure.

[150] The employee requested the options. Ms. Stangrecki pushed it. Ms. Revet worked with corporate Labour Relations (LR). They (presumably representatives of the local) spoke to PSAC at its national level.

[151] The discussion with Ms. Stangrecki took place in December 2014 and January 2015. They talked about it often. She said that the bargaining agent was supportive. She talked to the grievor and other employees.

[152] A meeting was held with the grievor and the bargaining agent at which the options were presented, as set out in the March 27, 2015, letter.

[153] She was sure that management would have explained how it had exhausted the search for vacant GS-FOS-02 positions in the local area and explained that the only RJO was in Regina. The grievor did not object. She asked if there were any questions. She would have explained all three options. She did not recall him disagreeing.

[154] In discussions with labour relations she learned that Corporate labour relations talked with PSAC's national level before management provided the options letter. She was asked who else was involved in the discussions. Those involved for the grievor were Ms. Stangrecki and Ms. Harrington. Mr. Morlidge represented management.

[155] She stated that Mr. Morlidge was a direct contact and he provided her with updates.

[156] She was referred to the briefing note to the commissioner. She stated that only the deputy head had the authority to offer the options. She and corporate LR wrote the briefing note offering the options in February 2015.

[157] Gord Cook prepared the briefing note. The employees had informally expressed their preferences for the options. This information came from Ms. Stangrecki, who advised her that she had informally spoken with the grievor.

[158] There is a passage in the briefing note to the effect that the national union was consulted and would support providing options to the employees should the RCMP decide to proceed in this manner.

[159] Ms. Revet stated that she shared the statements in the briefing note with Ms. Stangrecki.

[160] The employees' then-current status came from staffing on the management team as well as the information that there were no other food-service operations at the RCMP in Edmonton.

[161] At the end of February or early March 2015 she advised the bargaining agent that the deputy head had approved the options.

[162] She was referred to the letter dated March 27, 2015, to the grievor that advised him that the PSC could no longer provide him with a GRJO and that as a result, he had 120 calendar days to consider and decide on one of the three options provided for in the workforce adjustment agreement.

[163] She stated that she would have gone through the elements of the letter with the grievor, describing the 3 options namely: option A 12-month surplus priority; option B- transition support measure and option C- education allowance.

[164] Ms. Revet referred to an email dated July 10, 2015, from DR ZP, HR consultant with the employer that states:

> *We may be jumping the gun on this one, but we would like to have a letter of offer drafted for our FOS-02. Our office can draft the letter of offer but we'll need a position [number] …*
>
> *…*

> *The priority is exploring other priorities (John Zalewski) but we want to be prepared with a letter of offer for July 27.*
>
> …

[165] Ms. Revet stated that the employer had a vacant FOS-02 position in Regina at the depot that they were prepared to offer the Grievor as an RJO.

[166] She was referred to an email dated July 15, 2015, from Ms. Stangrecki. Ms. Stangrecki asked her if the Grievor took option A was he entitled to one-year salary? Ms. Rivet was surprised as she thought the whole purpose of their previous discussions was to get the options for the Grievor. If the Grievor selected option A he would be offered a reasonable job offer at Depot in Regina and if he refused the offer his employment would be terminated. She replied to this effect to Ms. Stangrecki and advised her that she thought this was the agreement all along because they (the union) didn't want the RJO and the employer would provide the options instead so that the Grievor could have access to the transition support measure.

[167] Ms. Stanrecki replied: "… Just couldn't remember all of the details, as I have a lot of my brain right now!!"

[168] She was referred to an email dated July 21, 2015, from Ms. Harrington signed as president of the local addressed to Mr. Morlidge. The email refers to Ms. Harrington's understanding that discussions had taken place between Mr. Morlidge and the Grievor with regards to a guaranteed reasonable job offer regarding a FOS-02 Position in Regina. She requests details of the position number, location and anticipated availability and start date.

[169] She also requests to be advised of the training that had been provided to the Grievor, resume writing, job interview techniques/skills etc. as well as details of any retraining the Grievor had been provided for any other opportunities including a list of dates and times he was made available from his substantive position. She requests that the information be provided as soon as possible due to the fast-approaching date by which the Grievor was required to make his decision.

[170] Somehow, this email made its way to Ms. Revet. She replied, requesting that Ms. Harrington speak with the bargaining agent as to why the options were subsequently offered. She stated that GRJOs were first extended in 2011. Management offered the

options in good faith and at the request of the bargaining agent and employees. She also advised that only if it were practicable would an RJO be offered in the headquarters area. It was not practicable, as there were no other GS-FOS-02 positions in Edmonton.

[171] She was asked what the grievor would have had to do to apply for the CR-04 position. She advised that he would have had to self-refer to the posting.

[172] Management believed that the switch from the guaranteed RJO to the options was done in full cooperation with the bargaining agent and that with the change to the bargaining agent local's management executive, it was prepared to talk with the new president.

[173] She was asked whether between March 27, 2015, which was the date of the options letter, and Ms. Harrington's email the bargaining agent complained about the switch from the GRJO to the options. She replied that it did not.

[174] Ms. Harrington advised her that the local had been in contact with the bargaining agent at the national level and was advised that there was no written agreement identified other than the WFA appendix. She stated that the only way to alter that agreement was through negotiations with PSAC.

[175] Ms. Harrington also advised that management had implied that the bargaining agent was not negotiating in good faith and that it was always its intent to negotiate in good faith. Due diligence meant ensuring that employees' rights were being upheld. It was indicated that the bargaining agent approached management to retract the GRJO letter and to issue an options letter. Ms. Revet was asked to clarify which bargaining agent representative approached management and when.

[176] Ms. Revet stated that it had been worked out through the former local president, Ms. Stangrecki. The directive does not talk about changing a GRJO to the options. It does not say that it cannot be done.

[177] In an email dated July 31, 2015, she pleaded with Ms. Harrington to attend a meeting of all parties to openly discuss their concerns and questions in a more productive manner, as opposed to through email. She provided the grievor's priority number and when he was entered into the PSC's Priority Information Management System (PIMS) and confirmed that the Depot did indeed have a GS-FOS-02 vacancy that

it was prepared to offer him. She requested her to direct questions about the bargaining agent's actions to her RVP or USGE president. She copied Ms. Stangrecki on the email.

[178] After the grievor accepted the buyout option, she recalled speaking with Ms. Harrington.

[179] The bargaining agent presented the grievance to Mr. Morlidge on July 27, 2015.

[180] During cross-examination, she stated that she and Ms. Stangrecki consulted. She was asked if she possessed any records of their discussions. She stated that she did not and that eight years had passed.

[181] She was asked to confirm that she testified that they spoke at least once a month. She replied that she had a lot of conversations with Ms. Stangrecki.

[182] She stated that they did not have any record of communicating an agreement to provide the options to the grievor. She stated that Ms. Harrington advised her that there was no written agreement and that that was the only way to negotiate with the bargaining agent at its national level.

[183] She was asked if there was any record before March 24, 2015, the date of the letter. She stated that Ms. Stangrecki gave her a verbal.

[184] She believed that Mr. Cook had a discussion with the bargaining agent at the national level. She was asked whether that would be a question for Mr. Cook.

[185] She stated that she presented the letter to the grievor in person. It reflected the decision to switch from the GRJO to the options. She was asked to confirm that the decision had already been made. She stated that the deputy head made the decision.

[186] She said that Mr. Cook would have drafted the letter and that he would have relied on others.

D. The bargaining agent's submissions

[187] Was it open to the employer to switch the grievor from being a surplus employee with a GRJO to being an opting employee?

[188] The backdrop to this case is the stated objectives in the WFA appendix; namely, as a matter of policy, the employer is to maximize employment opportunities for indeterminate employees affected by a WFA by ensuring that whenever possible, they are provided alternative employment opportunities.

[189] To maximize employment opportunities, every indeterminate employee whose services will no longer be required because of a WFA and for whom the deputy head knows or can predict that employment will be available will receive a GRJO within the core public administration. Those employees for whom the deputy head cannot provide the guarantee have access to transitional employment arrangements.

[190] The structure of the WFA appendix is to establish a process under which employees whose services may no longer be required because of a WFA are termed "affected employees". Affected employees may then be formally declared "surplus". Once so declared, they have surplus status until, in accordance with the WFA appendix, they are laid off, indeterminately appointed to another position, it is rescinded, or they resign. While employees have surplus status, they have surplus priority entitlements, which give them the entitlement to be appointed in priority to another position in the federal public administration for which they meet the essential requirements.

[191] When they are declared surplus, employees are advised that either the deputy head guarantees that a GRJO will be forthcoming or that they are opting and have access to the options in the WFA appendix from which they must choose 1, within a 120-day opting period. There are 3 options: (A) a 12-month surplus priority period in which to secure an RJO, failing which the employee will be laid off; (B) a transition support measure, under which the employee must resign but will receive a cash payment calculated based on years of service; or (C) an education allowance plus a transition support measure. Opting employees also have access to alternation, which is a process through which an opting employee who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave it.

[192] Despite the fact that on July 6, 2011, the employer declared the grievor a surplus employee with a GRJO and that it reaffirmed his status on December 1, 2011, at no point over the more than four years of the grievor's status as a surplus employee did the employer provide him with a GRJO.

[193] Instead, the employer switched the grievor to being an opting employee and still did not provide him with an RJO, despite having one prepared, which left him to select from the three options, only one of which gave him any measure of income security.

[194] There can be no question that no GRJO was ever made. So, the question is whether the grievor could have been switched to being an opting employee.

V. The meaning of "guarantee"

[195] This question turns on the plain language of the collective agreement and the meaning of the word "guarantee". On both that language and meaning, the only possible answer is that the employer had to provide the grievor a GRJO and that it had no ability to rescind the GRJO to instead make him an opting employee.

[196] Based on a review of the employer's authorities, it appears that there is no dispute about the relevant principles of collective agreement interpretation. To determine the true meaning of a collective agreement article, the normal meaning must be attributed to each word, unless that results in an absurdity. One cannot interpret the meaning of the words used in isolation from the other clauses of the WFA appendix. When interpreting the requirements of the WFA appendix, the normal meaning will ordinarily govern, and the words being interpreted cannot be considered in isolation from the other provisions of the appendix.

[197] The guiding principle of the WFA appendix is maintaining indeterminate employees' employment.

[198] A WFA can have serious repercussions on affected indeterminate employees. That is clear from reading the WFA appendix's objectives and its clauses 1.1.1 and 1.1.2. That is why it is important that the rules and directives that the employer put in place comply with the WFA appendix and be followed in such an exercise. So, the WFA appendix must be examined, to consider the ordinary meaning of the words and the appendix as a whole.

[199] When examining the words of the WFA appendix, it is clear that the word "guarantee" must be given its ordinary meaning. That is consistent not only with the principles of collective agreement interpretation but also with the requirements of the appendix as a whole. It establishes two separate and distinct tracks for surplus employees — those with a GRJO, and those without one. On interpreting the word

"guarantee" within the context of the appendix as a whole, it becomes apparent that the two separate tracks are distinct and parallel. Once an employee is placed on the GRJO track, it is their only available track. It never intertwines or crosses the opting track, and an employee cannot be switched from the GRJO to the opting track.

[200] To allow for cancelling a GRJO would be contrary to the WFA's spirit and intent and would make the guarantee meaningless.

[201] While the employer will submit cases to argue that the objectives provide no substantive rights, there can be no question that they perform a very important function to help with the interpretive exercise — they provide an express statement of the parties' intent (see *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at paras. 50 and 51), and they inform as to the meanings of all the WFA appendix clauses, which must be considered together and in context.

[202] The definitions section makes it clear that only employees who have not been given a GRJO will be given access to the options.

[203] The definition of "guarantee of a reasonable job offer" expressly provides that **surplus employees who receive one will not have access to the options available in Part VI of the WFA appendix**.

[204] Conversely, the definition of "opting employee" is an indeterminate employee whose services will no longer be required because of a WFA situation, **who has not received a GRJO from the deputy head**, and who has 120 days to consider the options in clause 6.3 of the WFA appendix.

[205] By definition, both of "guarantee of a reasonable job offer" and "opting employee", an employee cannot be opting if they received a GRJO. The definitions confirm that there are two separate tracks, and an employee can only ever be placed on one of them.

[206] As in the 2015 PSAC case of *Public Service Alliance of Canada v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 10 ("*PSAC 2015*"), at para. 56 similarly, the meaning of "guarantee" and the question of whether an employee can be switched from a GRJO to an opting employee cannot be answered in isolation from clause 1.1.6 of the WFA appendix, which establishes that the surplus communication shall indicate

if the employee (a) is being provided with a guarantee from the deputy head that an RJO 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 clause 6.3 of the appendix **because the employee has not received a GRJO from the deputy head.**

[207] Other provisions contain similar confirmation that there were only two separate tracks.

[208] Tellingly, nothing in the WFA appendix states that the employer can switch an employee from having received a GRJO to being an opting employee. Despite the very detailed processes for all aspects of a WFA, there is absolutely no language about switching from one track to the other. In the face of the clear language of the appendix as a whole, which plainly provides for an employee to **either** receive a GRJO **or** be made an opting employee, the only conclusion to be drawn is that an employee must be made a surplus employee with a GRJO or an opting employee and that there is no ability to switch an employee from a GRJO to an opting employee.

[209] One would have to distort the plain language of the collective agreement beyond an absurdity to arrive at an interpretation that would allow the employer to rescind a GRJO and switch an employee in receipt of one to being an opting employee.

[210] The authorities support further reading the plain language of collective agreements. See *Public Service Alliance of Canada v. Treasury Board (Department of Citizenship and Immigration)*, 2018 FPSLREB 74 ("*PSAC 2018*"), *Lainey v. Treasury Board (Correctional Service of Canada)*, 2019 FPSLREB 63, and *Nesic v. Treasury Board (Health Canada)*, 2016 PSLREB 117.

VI. Review of the evidence

[211] The employer had no ability to rescind the GRJO and switch the grievor to being an opting employee. And it is apparent from the evidence that the employer was aware of it.

[212] In cross-examination, Mr. Morlidge explained that the "base assumption" under the WFA is that an employee will receive a GRJO and that the employer has to demonstrate that it cannot guarantee that job "before we can move to the options". As Mr. Morlidge explained in direct examination, "When there is a declaration of surplus, management has two options — either GRJO or they give the options under the WFA."

In cross-examination, he expanded on this to say that "clearly, the expectation of the WFA is you start down one path and you stick to it."

A. The employer's submissions

[213] The employer offers an alternative narrative. Throughout the process at issue, it acted in good faith, to the grievor's benefit.

[214] The grievor did not help himself under the WFA appendix.

[215] The switch from the GRJO to the options was done in consultation with the bargaining agent, to the grievor's benefit.

[216] The grievor did not wish to relocate.

[217] The bargaining agent's position is that the WFA appendix offers zero flexibility. The employer's position is more flexible. It can be difficult for the employees involved. There is a need for creative solutions through which the parties can reach an agreement to improve labour relations.

[218] The employer described the issues as follows:

- did it violate the WFA appendix by changing the grievor from receiving an RJO to being an employee with options;
- did it have an agreement with the bargaining agent; and
- did it have the right to switch the grievor's status under the management rights provision?

[219] The grievor had the burden of establishing that the employer contravened the collective agreement. See *Public Service Alliance of Canada v. Treasury Board (Department of Veterans Affairs)*, 2013 PSLRB 165 ("*PSAC 2013*") at para. 67.

B. Brief background facts

[220] In early 2011, Mr. Morlidge analyzed the kitchen operations at K division and concluded that they were not sustainable.

[221] Mr. Morlidge met with the employees, HR, and the bargaining agent local president, Ms. Stangrecki, on May 3, 2011, to discuss what to do with the employees.

[222] Mr. Morlidge was the information manager and was involved in hiring the grievor. He was involved in the decision to close the operation and was the employer's representative in those discussions. He later became the bargaining agent's president.

[223] He was forthright and honest in his evidence, and he volunteered information that might not have helped his case. He outlined his efforts to help the grievor.

[224] Ms. Revet was more focused. She had conversations with the bargaining agent in 2015 to switch from an RJO to the options.

[225] With the passage of time, memories fade. Her testimony was consistent with the documentation and contemporaneous notes.

[226] Both the employer and the bargaining agent agree on the general collective agreement interpretation principles.

[227] Article 1 of the collective agreement sets out the general principles, namely, to maintain harmonious relations between management and the bargaining agent. Clause 1.02 refers to a shared desire to work for the well-being of employees and to ensure effective working relationships at all levels of the public service. There is a sense of management and the bargaining agent working harmoniously and collaboratively, which really happened in this case. The best solution was to offer the grievor the options letter.

[228] The objectives set out in the WFA appendix do not create substantive rights. See *Chênevert v. Treasury Board (Department of Agriculture and Agri-Food)*, 2015 PSLREB 52 at para. 150.

C. The switch to the options

[229] Counsel referred to the letter dated March 27, 2015, which advised the grievor that the commissioner could no longer provide him with a GRJO and that as a result, he would be given one of the three options provided for in the WFA appendix.

[230] Neither the grievor nor the bargaining agent challenged the switch from the GRJO to the options until the end of July 2015. No meetings were requested during that time.

VII. Did the employer and the bargaining agent agree to permit the employer to revoke the GRJO and offer the grievor the options?

A. The employer's submissions

[231] With respect to the discussions between the bargaining agent representatives and management on the switch from the GRJO to the options, nothing in the evidence is inconsistent. One of the parties suggested the switch, and the other party was on board.

[232] Switching to the options required the commissioner's approval. Counsel referred to the briefing note to the commissioner dated March 2, 2015, which states, "The employees have informally expressed a preference for Options over relocation. The national union was consulted and would support providing Options to the employees should the RCMP decide to proceed in this manner." Why would that information be included in the briefing note was it not true?

[233] Counsel referred to an email dated March 12, 2015, from Mr. Morlidge to the grievor in response to an email from the grievor about his then-present position with the Food Services operation and his options. Mr. Morlidge replied in part with this: "You have advised you do not wish to relocate, so we are working on changing to giving you the Options described in the section 6 of the WFA Appendix to the Collective Agreement."

[234] The grievor did not respond to the letter. Nor did the bargaining agent. This was consistent with the grievor's position that he did not want to relocate.

[235] The grievor was given the options letter on March 27, 2015, and was given six months to make a decision. There was no opposition to the change until the 11th hour.

[236] Counsel referred to an email exchange between Ms. Revet and Ms. Stangrecki dated July 15, 2015. Ms. Stangrecki asked whether if the grievor chose Option A, he would be entitled to one year of salary.

[237] Ms. Revet replied that if he chose Option A, he would be offered a position at the Depot, and that if he refused, he would be terminated. The only way to ensure some salary if he did not want the Depot job was to select Option B and receive the transition support measure. She advised that she thought that that was the agreement all along with the bargaining agent because he did not want the RJO and that the

employer would provide the options instead, so that he could access the transition support measure.

[238] Ms. Stangrecki replied that she just could not remember all the details, as she had a lot on her mind at that time.

[239] At that point, the parties did not disagree on the switch from the GRJO to the options. The disagreement arose on July 21, 2015, shortly after the bargaining agent's leadership changed.

[240] The WFA appendix is silent on whether once a GRJO has been made, it can be changed instead to an offer of the options. There is a sense in the appendix that management and the bargaining agent were able to work together, to provide an optimal solution to the grievor and to secure him some money. It was not done unilaterally. There was no evidence of bad faith. The parties had the flexibility to achieve this solution.

1. Management's rights

[241] In the further alternative, the employer relies upon its management's rights to switch from the GRJO to the options. Article 6 of the collective agreement sets out the management rights.

[242] Brown and Beatty, *Canadian Labour Arbitration*, 5th ed., chapter 4.39, states as follows:

> *Perhaps the most pervasive and significant example of the importance of a contextual approach has been where the issue pertains to management's traditional right to change the enterprise, and direct the workforce, and establish wage rates. Traditionally it was said that management is free to do as it sees fit subject to any express terms providing otherwise, or legislative restrictions, and subject to any estoppel which may arise, or any duty to act fairly and in a matter which does not jeopardize the integrity of the bargaining unit.*

[243] *Brescia v. Canada (Treasury Board)*, 2005 FCA 236, was an appeal of a Federal Court decision that dismissed an application by Canadian Grain Commission employees for the judicial review of the employer's decision to place them on temporary off-duty status without pay due to a lack of work during the winter of 2000,

as the Canadian Wheat Board decided not to ship grain by rail through Thunder Bay, Ontario.

[244] The employees argued that the employer had no authority under the *Financial Administration Act* (R.S.C., 1985, c. F-11), the *Public Service Employment Act* (R.S.C., 1985, c. P-33), or the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35) to unilaterally place full-time indeterminate employees on off-duty status without pay.

[245] The Court determined that the powers conferred on the Treasury Board under the *Financial Administration Act* and the applicable collective agreement were grants of authority that allowed the Canadian Grain Commission to place the employees on off-duty status without pay. The Court stated as follows at paragraph 50:

> *[50] I find that the wide powers conferred on the Treasury Board and its delegates under paragraphs 7(1)*(e)* and 11(2)*(a)* and (*d)* of the FAA and clauses 6. 01 and 25.01 of the applicable collective agreement are grants of authority which allowed the Commission to place the appellants on an off-duty status without pay. Specifically, the Treasury Board under paragraph 7(1)*(e)* is given authority over "personnel management in the public service of Canada, including the determination of the terms and conditions of employment of persons employed"; under paragraph 11(2)*(a)*, it may provide for their effective utilization; under paragraph 11(2)*(d)*, it may determine and regulate the pay, the hours of work and leave, and any matters related thereto. These last words would cover the procedure followed for the release and the recall of employees. Morever [sic], under the Agreement, the managerial responsibilities remain unrestricted, unless provided to the contrary. The employee is given no guarantee with regard to his minimum or maximum hours of work.*

[246] *Peck v. Parks Canada*, 2009 FC 686, involved a judicial review application of the decision made by the final-level delegate to Parks Canada's chief executive officer that denied Mr. Peck's classification grievance. In dismissing his application, the Court stated at paragraph 33 as follows:

> *[33] Parks Canada's authority to set terms and conditions of employment, including classification is unrestricted. As noted by this Court in* P.S.A.C. *v.* Canada (Canadian Grain Commission), *[1986] F.C.J. No. 498, at p. 9, "… the employer in its management functions may do that which is not specifically or by inference prohibited by statute". See also* Brescia v. Canada (Treasury Board), *2005 F.C.A. 236.*

[247] The WFA appendix is silent with respect to switching from a GRJO to the options. Management exercised its managerial rights when it made the switch. The bargaining agent's interpretation does not allow for any flexibility in WFA matters.

[248] With respect to the impact of the switch on the grievor, had he taken option A, he would have been provided with an offer of the Depot position, which was always available. Instead, he opted for 36 weeks of salary.

B. The bargaining agent's reply argument

[249] The briefing note to the commissioner stated that the bargaining agent had been consulted at its national level and that it would support providing options to the employees should the RCMP decide to proceed that way.

[250] The bargaining agent was not copied on that document at its national level. At that level, it disputed that there was an agreement.

[251] The letter to the grievor dated March 12, 2015, which stated that he had advised that he did not wish to relocate, and that work was being done so that he could be switched to the options, was not sent to the bargaining agent.

[252] Ms. Revet referred to discussions with the bargaining agent. The grievor had no recollections of many discussions. The letter dated March 27, 2015, which formally advised him of the switch to the options, was not copied to the bargaining agent.

[253] The grievor reached out to the bargaining agent within the opting period. A different representative raised questions. Confusion ensued. Ms. Harrington responded, and Ms. Stangrecki was copied on the correspondence.

[254] Ms. Stangrecki was not called to testify on the employer's behalf. It subpoenaed her, but it chose not to call her.

[255] The bargaining agent was not silent; it objected through filing a grievance.

[256] The cited cases involving the WFA appendix may be distinguished, as they all dealt with issues of mobility and the reasonableness of the job offer.

[257] Should the employer wish to have more flexibility in exercising its rights under the WFA appendix, it must negotiate them in collective bargaining. The parties have

negotiated to constrain those rights in the appendix; they chose to structure the GRJO as a guarantee and cannot rely on the management-rights doctrine to avoid that obligation.

[258] The employer can do something in good faith. The motive does not matter as long as it does not contravene the collective agreement.

C. Analysis

1. The issue

[259] The issue is stated as follows:

- Was it open to the employer under the collective agreement and the WFA appendix to switch the grievor from being a surplus employee with a GRJO to being an opting employee?

[260] The essential facts are not in dispute. By a letter dated July 6, 2011, the grievor was guaranteed that he would be provided with a GRJO within the public service under the directive and as a consequence would not be eligible for any of the options provided under the directive. In December 2011, he was advised that due to the limited GS-FOS positions in the public service, his GRJO would be located in Regina.

[261] On March 2, 2015, the employer sought the RCMP commissioner's approval to rescind the guarantee of a reasonable job offer given to the grievor and to give him access to the options under the WFA appendix on the basis that few opportunities existed in the GS-FOS group.

[262] The briefing note also stated that the grievor had informally expressed a preference for the options over relocation. The note also stated that the bargaining agent was consulted at the national level and that it stated that it would support providing options to the employees should the RCMP decide to proceed in that manner.

[263] The commissioner approved the recommendations, and on March 27, 2015, the grievor was advised that the employer could no longer provide him with a GRJO and that he had 120 days to consider and decide from the options in the WFA appendix. He was not provided with a GRJO and selected one of the options.

[264] The WFA appendix is part of the collective agreement. The objectives set out in it are as follows:

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.	*L'Employeur a pour politique d'optimiser les possibilités d'emploi pour les employé-e-s nommés pour une période indéterminée en situation de réaménagement des effectifs, en s'assurant que, dans toute la mesure du possible, on offre à ces employé-e-s d'autres possibilités d'emploi. On ne doit toutefois pas considérer que le présent appendice assure le maintien dans un poste en particulier, mais plutôt le maintien d'emploi.*
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).	*À cette fin, les employé-e-s nommés pour une période indéterminée et dont les services ne seront plus requis en raison d'un réaménagement des effectifs et pour lesquels l'administrateur général sait ou peut prévoir la disponibilité d'emploi se verront garantir qu'une offre d'emploi raisonnable dans l'administration publique centrale leur sera faite. Les employé-e-s pour lesquels l'administrateur général ne peut fournir de garantie pourront bénéficier des arrangements d'emploi, ou formules de transition (parties VI et VII).*

[265] The term "guarantee of a reasonable job offer" is defined in the WFA appendix as follows:

Guarantee of a reasonable job offer … — 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	*Garantie d'une offre d'emploi raisonnable* […] *— Garantie d'une offre d'emploi pour une période indéterminée dans l'administration publique centrale faite par l'administrateur général à un employé-e nommé pour une période indéterminée touché par le réaménagement des effectifs. Normalement, l'administrateur*

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.

général garantira une offre d'emploi raisonnable à un employé-e touché pour lequel il sait qu'il existe ou qu'il peut prévoir une disponibilité d'emploi dans l'administration publique centrale. L'employé-e excédentaire qui reçoit une telle garantie ne se verra pas offrir le choix des options offertes à la partie VI du présent appendice.

[266] The term "reasonable job offer" is defined in the WFA appendix as follows:

Reasonable job offer … —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 I and Type 2 in Part VII of this Appendix.…*

Offre d'emploi raisonnable […] — *Offre d'emploi pour une période indéterminée dans l'administration publique centrale, habituellement à un niveau équivalent, sans que soient exclues les offres d'emploi à des niveaux plus bas. L'employé-e excédentaire doit être mobile et recyclable. Dans la mesure du possible, l'emploi offert se trouve dans la zone d'affectation de l'employé-e, selon la définition de la Directive sur les voyages d'affaires. Pour les situations de diversification des modes de prestation des services, une offre d'emploi est jugée raisonnable si elle satisfait aux critères établis aux catégories 1 et 2 de la partie VII du présent appendice* […]

[267] Part VI of the WFA appendix supplies these options to employees:

6.1 General

6.1.1 *Deputy heads will be expected to provide a guarantee of a reasonable job offer for those affected employees for whom they know or can predict that employment will be available. A deputy head who cannot provide such a guarantee shall provide his or her reasons in writing, if so requested by the employee. Employees in receipt of this*

6.1 Généralités

6.1.1 *Normalement, les administrateurs généraux garantiront une offre d'emploi raisonnable à un employé-e touché pour lequel ils savent qu'il existe ou ils peuvent prévoir une disponibilité d'emploi. L'administrateur général qui ne peut pas donner cette garantie indiquera ses raisons par écrit, à la demande de l'employé-e.*

guarantee will not have access to the choice of options below.	*L'employé-e qui reçoit une telle garantie ne se verra pas offrir le choix des options ci-dessous.*
…	[…]
6.3 Options	***6.3 Options***
6.3.1 *Only opting employees who are not in receipt of the guarantee of a reasonable job offer from the deputy head will have access to the choice of options below ….*	***6.3.1*** *Seul l'employé-e optant qui ne reçoit pas une garantie d'offre d'emploi raisonnable de son administrateur général aura le choix entre les options suivantes* […]

[268] In *PSAC 2015*, in the context of interpreting the WFA appendix, the Board stated as follows at paragraph 54: "To determine the true meaning of an article in the collective agreement, the normal meaning must be attributed to each word, unless it results in an absurdity." And at paragraph 56, interpreting the term "Reasonable Job Offer", it stated, "A collective agreement must be interpreted in its entirety (see *Chafe*, at para 50 and 51). Each word must be given its ordinary meaning unless to do so would result in an absurdity or unless the agreement defines them in a special way or context."

[269] In *Choinière v. Treasury Board (Department of Fisheries and Oceans)*, 2018 FPSLREB 36, again in the context of interpreting the WFA appendix, the Board stated as follows at paragraph 153: "In a workforce adjustment context, one of the guiding principles is maintaining the employment of indeterminate employees." It stated this, at paragraph 159:

> *159 A workforce adjustment can have serious repercussions on affected indeterminate employees. That is clear from reading the WFAA's objectives and its clauses 1.1.1 and 1.1.2. That is why it is important that the rules and directives that the employer put in place be compliant with the WFAA and be followed in such an exercise.…*

[270] Applying the principle of interpretation that a collective agreement article must be given its ordinary meaning unless that meaning results in an absurdity, it is clear that the use of the word "guarantee" in the definition of "guarantee of a reasonable job offer" and in the context of the objectives and the express definitions of the directive imposes an obligation on the employer to make a GRJO once it has guaranteed that the

employee will receive one. This interpretation accords with the WFA's focus on maintaining the employment relationship as the primary goal.

[271] The WFA appendix is lengthy and sets out a process that is very detailed in establishing procedures for all aspects of a WFA. It has no provision that empowers the employer to resile from its GRJO or contractual obligation by rescinding the guarantee to an employee of a GRJO.

[272] Other provisions in the WFA appendix confirm the irrevocable nature of the GRJO once it is given. The definition of GRJO states, "Surplus employees in receipt of this guarantee will not have access to the options available in Part VI of this Appendix." This reinforces the proposition that the employer cannot switch from a GRJO to the options. Conversely, an "opting employee" is defined as one who has not received a GRJO from the deputy head.

[273] The following authorities provide further illustrations of a GRJO's nature.

[274] In *PSAC 2018*, the employer decided to relocate an immigration-case-processing centre from Vegreville, Alberta, to Edmonton. The employer informed the staff that all the employees would be able to keep their jobs in the new Edmonton location. Approximately 50 employees requested that they be given access to the options, as they did not wish to move to Edmonton. The employer decided to guarantee them RJOs and to deny them the options. The bargaining agent grieved arguing that issuing GRJO's was unreasonable.

[275] At paragraph 4, the Board stated that "… the department decided to make them guarantees of a reasonable job offer (GRJO) in the new Edmonton office, which, by a rule in the collective agreement, denied them some WFA benefits that they could otherwise have accessed." Paragraph 13 states that "… the deputy head can provide the employee with either a GRJO or access to the options set out in clause 6.4."

[276] The Board concluded that it was not unreasonable for the employer to issue a GRJO for a position that the employees had indicated that they did not want and would not accept, even though the employees did not have access to the options under the WFA appendix.

[277] The employer also argued that article 1 of the collective agreement sets out the general principles of the relationship between the bargaining agent and management,

namely, to maintain harmonious relations, and that clause 1.02 refers to a shared desire to work for the well-being of employees and to ensure effective working relationships at all levels of the public service. That article reflects a sense of management and the bargaining agent working harmoniously and collaboratively, which happened in this case when the grievor was offered the options letter.

[278] In my view, while article 1 and clause 1.02 are important for setting out the general principles of the parties' relationship, they are aspirational and do not authorize the parties to amend or waive obligations that are clearly set out in the collective agreement.

2. The management rights clause

[279] The employer argues that as the WFA appendix is silent with respect to switching from a GRJO to the options, management exercised its residual rights when it made the switch and that it relied on its broad powers to set the general administrative policy for the federal public service as well as personnel management that are enshrined in statute, along with the managerial rights clause in the collective agreement.

[280] The Board succinctly summarized that position in *PSAC 2013*. It had to determine whether contracting out certain duties of customer service agents, which resulted in reducing those positions, violated the collective agreement.

[281] When it dismissed the grievance, the Board stated at paragraph 83 in part as follows:

> *83 … section [sic] 7 and 11.1 of the* FAA *grants [sic] the employer broad power to set the general administrative policy for the federal public service, organize the federal public service, and determine and control the personnel management of the federal public service. Paragraph 7(1)(b) of the* FAA *grants the employer the exclusive authority on all matters relating to "… the organization of the federal public administration or any portion thereof, and the determination and control of establishments therein…". I agree with its submission* [the employer] *that in exercising this function, including contracting out services, the employer may do anything that is not specifically or by inference prohibited by statute or the collective agreement.…*

[282] In my analysis, I have determined that the WFA appendix is a comprehensive, detailed process that the parties to collective bargaining agreed to. While it does not expressly prohibit the employer from switching a surplus employee who has received a GRJO to the options, the use of the word "guarantee", as well as the other provisions discussed earlier, certainly create more than an inference that such a switch is prohibited under the collective agreement.

VIII. The doctrine of estoppel

A. The employer's argument

[283] In its book of authorities, the employer notes that *Canadian Labour Arbitration*, at chapter 2.47, sets out the basic elements of the concept of equitable estoppel. That concept is well developed at common law and has been expressed in the following way:

> …
>
> *The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance has been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word.*
>
> *One arbitrator has summarized the doctrine in the following terms:*
>
> *It is apparent that there are two aspects of the doctrine as thus stated. There must be a course of conduct in which both parties act or both consent and in which the party who later seeks to set up the estoppel is led to suppose that the strict rights will not be enforced. It follows that the party against whom the estoppel is set up will not be allowed to enforce his strict rights if it would be inequitable to do so. The main situation where it would be inequitable for strict rights to be upheld would be where the party now setting up the estoppel has relied to his detriment.*
>
> …

[284] Thus, the essentials of estoppel are a clear and unequivocal representation, particularly when it occurs in the context of bargaining, which may be made by words or conduct or in some circumstances may result from silence or acquiescence, intended for the party to rely on to whom it was directed although that intention may

be inferred from what reasonably should have been understood, some reliance in the form of some action or inaction, and a detriment resulting from that reliance. However, it has been held that as long as it is apparent that the arbitrator understood and applied the doctrine of estoppel, it is not necessary to analyze each part of it separately.

[285] There is evidence that the employer and the bargaining agent had the conversation. There is no evidence from Ms. Stangrecki. She did not testify that it did not occur. It went to the commissioner. There was silence. Only six months later, at the 11th hour, did opposition appear.

[286] The employer relied upon the bargaining agent's representation to its detriment.

[287] In *Brock University v. BUFA* (2014), 243 L.A.C. (4th) 240, the Brock University Faculty Association ("the association") grieved that the employer had violated the collective agreement by failing to provide liability insurance, including legal representation, for the grievor when she faced discrimination allegations before a human rights tribunal. The employer argued that it was entitled to rely on a lack of a complaint from the association as an indication that it accepted the policies in place, which excluded liability insurance and defence costs. The arbitrator stated at paragraph 72 as follows:

> *72 The difficult issue for adjudicators in cases involving estoppel is not the principle; instead, it is the application of the principle to the facts. In that regard, the key is determining if a promise was made and what the details of the promise are. This is particularly difficult in situations of collective bargaining, given the passage of time, the dynamics of bargaining and the myriad of issues that the parties deal with in that context. When an arbitration hearing is held years later, it is often challenging to piece together what was said, in what context and what was intended. Further, it is not just words that can establish an estoppel. The 'representation' that is necessary to form the foundation of an estoppel can be manifested by "word, by silence, by deed or by omission", see Hamilton Health* Sciences, *supra. In that case, a union's knowledge of a situation without challenge over a longstanding period estopped it from challenging it later. In Uniroyal Goodrich Tire Manufacturing, supra, an issue arose with regard to the history of excluding "lifestyle" drugs from coverage under the parties' prescription drug plan. Extensive evidence was called by both parties that resulted in Arbitrator O'Neil concluding that there was insufficient evidence to find that there had been a "shared special meaning to the term 'drugs' for those parties. Even though Arbitrator O'Neil*

> *could accept the employer's evidence that it told the union what it intended and the union did not object, Arbitrator O'Neil was left with only the language in the collective agreement. She concluded that it would require "clear and cogent" evidence to establish any meaning other than that reflected in the terms of the contract itself. This was not an estoppel case, but it is significant in setting the context for the kinds of evidence expected in a situation where one party is asking for the evidence of bargaining history to affect the application of collective agreement language. Similarly, other arbitrators and the courts have demanded "unambiguous" or "precise" words or conduct to form the basis of an estoppel: see* Telus Communications, Nor-Man Regional Health Authority, *and* Ontario Power, supra.

[288] The arbitrator continued at paragraph 73 as follows:

> *73 In the case at hand, the Employer relies on the fact that the Association did not respond with questions or objections to the fact that its liability insurance covered only bodily injury or property damage and excluded Human Rights coverage once this was revealed in the course of negotiations. Silence in response to the provision of information can be interpreted as being agreement in some contexts. This was considered in* DHL Express (Canada) Ltd., supra, *where it was shown that a party may be deemed to represent a particular position or fact through acquiescence or silence in circumstances where the failure to speak would amount to a representation. This occurs where one can infer an obligation to speak in order to prevent a misrepresentation.…*

[289] The arbitrator concluded on the facts that the defence of estoppel was complete. However, it was a moot point, given that the arbitrator concluded that the employer in that case failed to reasonably and fairly exercise its managerial discretion when it decided not to provide legal assistance to the grievor and allowed the grievance in part.

[290] The switch from the GRJO to the options should have triggered a response from the grievor that it was not acceptable. The employer relied upon the lack of response to its detriment.

B. The bargaining agent's submissions

[291] The bargaining agent argued that, as it understood the employer's position to be, this argument applies only to the issue of rescinding the grievor's GRJO and providing him with the options and not to any of the breaches of the WFA appendix.

[292] Absolutely fundamental are the clear legal requirements for establishing an estoppel. The employer cannot meet its onus of proving that the requirements for estoppel are made out in this case; see *Dubé v. Canada (Attorney General)*, 2006 FC 796.

[293] *Dubé* involved a judicial review application of a decision by the assistant deputy minister of the Department of Human Resources and Skills Development. A central issue was whether the employer failed to carry out its alleged commitment to give the applicants recall priority in off seasons. On judicial review, the applicants argued that the minister erred by failing to find that there was an undertaking to give the applicants recall priority and that the alleged commitment gave rise to promissory estoppel.

[294] The Federal Court confirmed that the following key principles apply to the doctrine of promissory estoppel:

> …
>
> *[45] The doctrine of promissory estoppel was set out in* Maracle v. Travellers Indemnity Co. of Canada, *[1991] 2 S.C.R. 50. At page 57, Sopinka J. said the following:*
>
> > *The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on the representation, he acted on it or in some way changed his position. In* John Burrows Ltd. v. Subsurface Surveys Ltd., *[1968] S.C.R. 607, Ritchie J. stated, at p. 615:*
> >
> > > *It seems clear to me that this type of equitable defence cannot be invoked unless there is some evidence that one of the parties entered into a course of negotiation which had the effect of leading the other to suppose that the strict rights under the contract would not be enforced, and I think that this implies that there must be evidence from which it can be inferred that the first party intended that the legal relations created by the contract would be altered as a result of the negotiations.*
> >
> > *This passage was cited with approval by McIntyre J. in* Engineered Homes Ltd. v. Mason, *[1983] 1 S.C.R. 641, at p. 647. McIntyre J. stated that the promise must be unambiguous but could be inferred from circumstances.*

> *[46] In short, according to the case law, such a promissory estoppel cannot exist unless there is an express or implied promise the effects of which are clear and precise.…*
>
> *[47] In order to meet the requirements of the doctrine of promissory estoppel, the applicants must offer evidence showing that:*
>
> > *(1) by its words or actions the Department made a promise to give the applicants priority designed to alter their legal relations and encourage the performance of certain acts;*
> >
> > *(2) on account of that commitment, the applicants took some action or in some way changed their positions.*
>
> *…*
>
> *[52] Having read the applicants' statements, I am of the view that the evidence does not support the existence of an unambiguous promise, the effects of which are clear and precise. Firstly, I note that in their respective affidavits the applicants are vague about the details of the alleged commitment. For example, Mr. Dubé did not name the manager who gave him the assurance of priority. Also, the applicants did not name the departmental representative who is said to have confirmed for them the purpose or effect of the "Guidelines" document. In addition, the applicants did not mention the dates on which the Department allegedly made these statements and gave these assurances.*
>
> *…*
>
> *[55] Evidence of a commitment is critical in establishing the validity of an allegation based on the principle of promissory estoppel. In short, I consider that the conclusions drawn by the applicants from certain passages in the "Guidelines" document and Ms. Tanguay's letter to the effect that such a commitment existed are not sufficient evidence to support an application of the doctrine of promissory estoppel.*
>
> *…*

[295] The Board applied the principles in *Dubé* in *Paquet v. Treasury Board (Department of Public Works and Government Services - Translation Bureau)*, 2016 PSLREB 30. The grievance was against a decision by the Department of Public Works and Government Services to recover 278.125 hours of annual leave. The grievor argued that the employer made representations that led her to believe that she was entitled to all the annual leave in question and that over a period of nine years, it did not correct the error. The Board stated as follows:

> *…*
>
> *[42] The principle of estoppel is twofold. First, a promise must have been made, in word or in conduct, to the grievor that the employer*

would waive granting her leave credits as set out in the collective agreement; second, based on that promise, she had to have taken leave without knowing that she was not entitled to it, which prejudiced her because she had to return it.

[43] In Canada (Attorney General) v. Lamothe*, 2008 FC 411, the Federal Court indicated the following about conduct or words:*

…

> The conduct or promise on which the party alleging estoppel relies must be "unequivocal". For example, R.B. Blasina, the adjudicator in *Abitibi Consolidated Inc. and I.W.A. Canada, Local 1-424* (2000), 91 L.A.C. (4th) 21, stated:
>
> In other words, an estoppel will arise when a person or party, unequivocally by his words or conduct, makes a representation or affirmation in circumstances which make it unfair or unjust to later resile from that representation or affirmation. The unfairness or injustice must be more than slight. It does not matter whether the representation or affirmation was made knowingly or unknowingly, or actively or passively. The representation is taken to have that meaning which reasonably was taken by the party who raises the estoppel.

…

[44] In their submissions, both parties also referred me to one of my decisions, i.e. Prosper*, at para. 28, which reiterates the following estoppel statements in Brown and Beatty,* Canadian Labour Arbitration*, 4th edition, at paragraph 2:2211:*

> The concept of equitable estoppel is well developed at common law and has been expressed in the following way:
>
> The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance has been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word.

…

[45] Thus, it appears from that statement that a representation must be clear and unequivocal.…

…

[296] *Chafe*, which the employer cited, confirms the necessity of the following:

…

> *75 Estoppel requires at the very least two facts:*
>
> *1. one party to a contract makes a representation to the other party that it will not insist upon a particular right available to it under that contract, and*
>
> *2. the other party changes its position in reliance upon that representation ….*
>
> *76 … there was no evidence that the Treasury Board or the employer … said or did anything to the effect that it would interpret article 27 of the collective agreement in the manner contended for [sic] by the grievors.…*

…

[297] Again, *Brock University* sets out confirmation of the need for the party asserting estoppel to establish a clear and unequivocal promise. At paragraph 72, the arbitrator accepted the need for "clear and cogent" evidence to establish an estoppel or "unambiguous" or "precise" words or conduct.

C. The application to the facts in this case

[298] There is no question that there must be clear and compelling evidence of a promise. And in this case, the evidence falls far short of that.

[299] The bargaining agent argued that it had no agreement with the employer to switch from a GRJO to the options in the context of whether there was an estoppel.

D. A review the evidence surrounding the issue of a purported agreement

[300] Ms. Revet testified that the switch to the options came about because of the discussions she had with Ms. Stangrecki, who was the bargaining agent's regional vice-president at the time. Ms. Stangrecki was not a representative of the national of the bargaining agent nor was there any evidence that she had any authority to agree to an interpretation of the workforce adjustment appendix on behalf of the national office of PSAC.

[301] Mr. Morlidge's differed from Ms. Revet's from his perspective. He said that it might have been his idea but that either he or in his words "one of the Debs" (he could not remember which one or the last name of the other person named Deb who was a bargaining agent representative) came up with it. And he stated that he was "pretty confident" that it occurred in a hallway discussion that he had with "one of the Debs".

[302] So, the employer's evidence conflicts on this point. There is no clear and compelling evidence of who discussed even the idea to switch to the options. To be frank, the analysis could stop here, because the employer had the onus of making out the requirements for estoppel, and its witnesses gave inconsistent evidence about the alleged facts that would ground the estoppel. But much more supports the conclusion that the employer could not meet its onus.

[303] There is no documented record of any discussions between the employer and the bargaining agent, never mind of an actual agreement, as Ms. Revet and Mr. Morlidge acknowledged in cross-examination. Although the parties address the issue of the bargaining agent's authority over the collective agreement and the requirement to consult with the bargaining agent at the national level in such matters, neither party referred to the concomitant obligation to do the same with respect to the Treasury Board, given that it is the other signatory to the collective agreement.

[304] Ms. Revet testified that she talked with Ms. Stangrecki about switching the grievor from a GRJO to the options and that they both "went away to consult, to see if switching to the options could be done". Ms. Revet described ongoing discussions about the situation with the grievor in which Ms. Stangrecki asked questions about what would happen, whether he would be laid off, and why he would not at least have access to the transition support measure, to which Ms. Revet said that she replied that it was because he received a GRJO and not the options. Ms. Revet testified that at some point, she raised the idea of switching him to the options,but said that she had never experienced that before. At that point, clearly, there was no agreement, as at most, the evidence is that both parties had to consider if it could even be done.

[305] While Ms. Revet's testimony confirmed that her understanding was that Ms. Stangrecki then "pushed it up to the [bargaining agent's] national level", Ms. Revet confirmed in cross-examination that after that point, there is no record of Ms. Stangrecki ever communicating the bargaining agent's agreement to the idea of switching to the options.

[306] Ms. Revet testified that she spoke to Ms. Stangrecki frequently, at least once but usually twice a month, and that both of them attended the Union-Management Consultation Committee. She agreed that she "had a lot of conversations with Ms. Stangrecki about a lot of things, from 2013, when [she] started, forward."

[307] When asked in direct examination about when the discussion with Ms. Stangrecki about the switch would have occurred, Ms. Revet volunteered that her memory on it was "really fuzzy" as it had occurred almost eight years before.

[308] But even more significantly, Ms. Revet agreed that there was no record of any discussion with the bargaining agent at the national level about switching to the options and no record in writing from before the March 27, 2015, letter about the switch.

[309] All that Ms. Revet could provide in terms of the details of the alleged discussions in which Ms. Stangrecki purportedly agreed to offering the options is that she and Ms. Stangrecki "**would** have talked about it often" and "**would** have told [her] that yes, the union was supportive". She described the so-called agreement as "Deb Stangrecki then basically gave the nod to move forward." What does that mean? What was said exactly to express a promise or agreement from the bargaining agent, and when? And why does this account differ so drastically from Mr. Morlidge's? Even in her direct evidence, when she was asked squarely about the details of those discussions, Ms. Revet only speculated. She volunteered that she "could not say with 100% confidence" but that she "believed" that corporate LR discussed it with their counterparts at PSAC's national level. But again, she had no knowledge of any record of those discussions.

[310] Even when the bargaining agent asked her directly, in writing, at the time of these events, Ms. Revet did not document which of its representatives approached management on this issue and on what dates.

[311] And at the time, the bargaining agent advised in writing that it had received contact at the national level and that it was advised that there was no written agreement other than the WFA appendix. So, in fact, the only documentation is that there was no agreement.

[312] From the record of communications, it is clear that the bargaining agent at the national level never agreed to the switch. When Ms. Revet discussed Ms. Stangrecki's email in which she sought clarification about the meaning of Option A and whether the grievor would receive one year of salary, Ms. Revet testified that she was surprised at receiving it from Ms. Stangrecki because she thought that the whole point was to provide access to the options so that he could obtain the transition support measure.

[313] And again, when she received the July 22, 2015, email from Ms. Harrington, Ms. Revet testified that she was confused because that communication was not consistent with an agreement having been reached to switch to the options.

[314] Even at that time, Ms. Revet clearly recognized that the bargaining agent's communications were not consistent with an agreement having been reached.

[315] And it is clear from Ms. Revet's evidence that at most, the grievor was involved in the discussions only once the options letter was prepared and presented. He confirmed that he never discussed with anyone switching from the GRJO to the options and that he did not recall ever being asked if he would agree to it.

[316] There is no basis on the evidence from which this panel of the Board could conclude that the bargaining agent ever made a promise or gave an assurance.

[317] It is simply not credible that the bargaining agent made a promise or provided assurance about the switch to the options.

E. Board Analysis

[318] I reviewed the authorities that both parties provided. There does not appear to be any fundamental disagreement in terms of the principles to apply.

[319] In *Brock University*, referred to in the employer's argument, the arbitrator made observations at paragraph 72, which appear particularly apt to this case:

[320] Did the employer meet its onus by adducing clear and cogent evidence through unambiguous and precise words that in the language of the briefing note to the commissioner dated March 2, 2015, "**The national union was consulted and would support providing Options to the employees should the RCMP decide to proceed in this manner**" [emphasis added]? A review of the evidence reflects as follows.

[321] Mr. Morlidge did not recall who made the suggestion, either him or "Deb", to switch from a GRJO to the options. He thought it was Ms. Harrington. He stated, "If this is what we wanted to do, we would have to go to the Commissioner of the RCMP." Either she or he said, "Can we give them the options?" The other replied, "Great idea."

[322] He could not recall whether a conversation took place in late 2014 or early 2015. It was a hallway discussion. It was not put in writing. The question was whether it could be done.

[323] Ms. Revet testified that she had taken over carriage of the grievor's personnel file. The bargaining agent asked if anything could be done.

[324] Ms. Stangrecki, the local president, said that she talked to the grievor. She said that she would talk to the bargaining agent's national level.

[325] Ms. Stangrecki pushed it. Ms. Revet pushed it. She worked with corporate LR. Ms. Stangrecki spoke to PSAC's national level, which she said was supportive.

[326] The discussion with Ms. Stangrecki took place in December 2014 and January 2015. They talked about it often.

[327] Mr. Cook prepared the briefing note. The employees had informally expressed their preferences for the options. This information came from Ms. Stangrecki, who advised her that she had informally spoken with the grievor.

[328] During cross-examination. Ms. Revet stated that she and Ms. Stangrecki consulted. She was asked if she possessed any records of their discussions. She stated that she did not and that eight years had passed.

[329] She stated that they did not have any record of communicating an agreement to provide the options to the grievor. She was asked if there was any record before March 24, 2015, which was the date of the letter. She stated that Ms. Stangrecki gave her a verbal.

[330] She believed that Mr. Cook had a discussion with the bargaining agent at the national level. She said that he would have drafted the letter and that he would have relied on others.

[331] There is no evidence of any consultation with the Treasury Board and the employer.

[332] Nor is there any evidence of bargaining history which is unfortunate.

[333] It is difficult to reconcile the evidence of Mr. Morlidge and Ms. Revet as to how the purported agreement came about since they both asserted that they were involved or might have been involved in initiating the proposal.

[334] Mr. Morlidge acknowledged that he could not remember whether he or "one of the Debs" raised the issue, although he was quite confident that it arose in a hallway discussion.

[335] There is no evidence of any record of any discussions with the employer and the bargaining agent at the national level. Nor is there any evidence that the Treasury Board the party to the collective agreement was involved

[336] Ms. Revet testified that Mr. Cook, whose name is on the briefing note to the commissioner, might have spoken with the bargaining agent at the national level.

[337] Ms. Revet testified that Ms. Stangrecki had advised her that the bargaining agent at the national level was supportive.

[338] Did the employer meet its onus by adducing clear and cogent evidence through unambiguous and precise words that "the national union was consulted and would support providing Options to the employees should the RCMP decide to proceed in this manner"?

[339] There is no evidence of a written agreement. There are no notes of discussions between the parties. The dates of purported discussions are vague. They range from late 2014 to early 2015, December to January 2014 and 2015, and March 2015. As for where the discussions took place, there was only a recollection of possibly one in a hallway.

[340] Given the passage of time as well as the fact that Ms. Revet no longer had access to her records, it is not surprising that her recollections were vague.

[341] Ms. Stangrecki was not able to remember the essential nature and purpose of the purported agreement as of June 2015.

[342] I take note from the evidence that Mr. Cook might very well have engaged in discussions with the bargaining agent's national level. No explanation was provided as

to why he was not called as a witness for the employer, to provide direct evidence as to the nature of those discussions, assuming that they occurred.

[343] In the circumstances, I am not persuaded that the employer met its onus of establishing that the bargaining agent was estopped from arguing that the collective agreement was breached based on a purported agreement of the national of the PSAC, which would have the authority to stipulate the interpretation of the collective agreement, and the employer signatory, the Treasury Board to switch the grievor from a GRJO to the options, given the conflicting and ambiguous evidence adduced, as well as the vagueness of the discussions. The evidence of a purported agreement lacks the requirements of being clear, cogent, and unambiguous.

F. Issues

- **Did the employer meet its obligations under the WFA appendix to maximize employment opportunities for the grievor as an indeterminate employee affected by a WFA**?

- **Did the Grievor meet his obligations under the WFA appendix by actively seeking alternative employment and information about his entitlements and obligations and by providing timely information to the employer and the PSC to help his redeployment, and did he seriously consider the job opportunities that were presented to him?**

[344] The evidence relating to those two issues is so interrelated that I will outline it all, together.

[345] Extracts from the parties agreed statement of facts pertain to both issues and to the witnesses' testimonies.

[346] Mr. Morlidge referred to a memo titled "Food services implementation plan" and dated April 15, 2011, which referred to a meeting that was held the day before with staff, during which he had outlined the recommendation to close the kitchen operations and to bring in a vendor. The document indicated that the start date for reducing internal services would depend on the Request for proposal process. He targeted either September 1, 2011, or January 1, 2012. The document noted that he had already agreed to acting assignments for affected employees, including the grievor.

[347] On May 10, 2011, Mr. Morlidge emailed all employees of K division headquarters, to advise them that the cafeteria service would be replaced with a coffee

and sandwich service to be operated by a private contractor, that the hot meal service in the cafeteria would end on January 1, 2012, and that after that date, two employees would provide the coffee and sandwich service until renovations to accommodate a new vendor were complete. The email also stated that every effort was being made to find the members of the cafeteria staff employment within the public service.

[348] One of the managers complained to Mr. Morlidge that he was pushing too hard and that he should back off. The manager was concerned that they would have to take the kitchen employees into their organization, but they had their own plans.

[349] In an email dated April 15, 2011, Mr. Morlidge advised HR of the proposed closure so that HR could advise the bargaining agent. He had already met with the personnel and with the bargaining agent local president. HR advised him of the requirements under the directive that the employer had to formally notify the bargaining agent as soon as possible after a WFA-related decision was made. HR prepared a summary of the business case and related matters, such as the timing of the WFA process and the affected and surplus letters and whether employees would be provided with a GRJO.

[350] With respect to a GRJO, the email noted this:

> …
>
> … At this point it is not known whether the RCMP will be able to provide all 4 of the GS-FOS-02 employees with a GRJO due to the lack of available GS-FOS-02 positions or equivalent level positions (i.e. CR-02 Level) in the Edmonton area. It may be reasonable to anticipate that 2 of the 4 GS-FOS-02's may qualify on higher-level positions due to previous and on-going acting opportunities at higher levels. The RCMP may also consider the provision of retention payments or the options to some of the GS-FOS-02's. The RCMP anticipates providing a GRJO to the Senior and Junior Cook incumbents.
>
> …
>
> [*Sic* throughout]

[351] Mr. Morlidge stated that a GRJO is the default. If the employer cannot offer one, then it moves to the options.

[352] They knew that if they were to make GRJOs, they would have to be over a wide geographic area.

[353] They looked within the RCMP. In 2011-2012, the CR-04 classification was seen as a broad type of job. The positions were entry level, requiring little experience. Even though other jobs required considerable knowledge, the CR-04 position had few requirements. They thought that the GS-FOS positions' incumbents could move to CR-04 positions. They were not sure what counted as a GRJO and its scope.

[354] He was asked about the efforts made to find available CR-02 positions. He replied that none were available. Some CR-03 positions were available that involved extracting reports from federal government databases. However, the incumbents of the GS-FOS-02 positions could not be appointed to CR-03 positions because they occupied lower-level positions in doing so would constitute a promotion which was not provided for under the terms of the WFA. Mr. Morlidge has not heard of CR-01 positions in 25 years.

[355] He was asked about staff positions available for the Food Services operation employees within the Edmonton area or elsewhere. He stated that there was a DND base and correctional institutions in Edmonton. The women's institution had no GS-FOS-02 positions. The men had none either, only GS-FOS-05 and 07 positions.

[356] The DND had GS-FOS-02 positions in Edmonton but they were term positions to be backfilled for military cooks. In Wainwright, Cold Lake, and Suffield, GS-FOS-02 indeterminate positions were available.

[357] The Depot was interested in the GS-FOS-02 kitchen helpers in Edmonton. However, none of the staff members were interested in relocating. The only interested person was the GS-FOS-05 employee who wanted to go to the east coast. Mr. Morlidge stated that it was unlikely that other positions at-level would be found and that the employer did not think that it could rely on staff being appointed to higher-level positions to meet its obligations.

[358] He was asked for the difference between a GS-FOS-02 and 05. A GS-FOS-02 is a kitchen helper who also serves, cleans, and washes dishes. A GS-FOS-05 is a cook who prepares food and has completed a formal trade certification.

[359] A GS-FOS-02 may be involved in some basic cooking. A GS-FOS-07 is the chef or manager responsible for managing the operation and doing the menu planning.

[360] Mr. Morlidge was referred to a PSC document titled "Priority Clearance Request Volumes (Staffing Activity) by Location and Group/Level". It outlined the number of indeterminate GS-FOS-02 staffing actions that occurred in all departments in Alberta, the Northwest Territories, and Nunavut for the period from January 1, 2010, to July 6, 2011, which totalled 14, and a similar document for the same period for all departments on a national basis, which totalled 46, made up of 42 English-essential and 4 French-essential actions.

[361] Mr. Morlidge stated that there was not much action for those jobs in terms of either appointments or staffing processes. The purpose of pulling those statistics was to help determine whether the employer should make GRJOs or go to the options. The statistics very much reinforced the idea that the GRJOs might have to be at the Depot.

[362] Mr. Morlidge was referred to his email to the regional director in which he recommended a national area of referral to ensure that their personnel were aware of all opportunities to remain in the public service, based on the low numbers of staffing actions for the GS-FOS positions over the past 18 months. The regional director approved the recommendation.

[363] He was referred to notes of a meeting dated May 3, 2011, that was held about the Food Services operation employees. Present were Mr. Morlidge; the bargaining agent president, Ms. Stangrecki; an HR consultant for food services; and an HR manager.

[364] He was asked when he first had discussions with the bargaining agent. He stated that shortly after the all-employee meeting, he had a hallway conversation with the bargaining agent local president and invited her to a meeting with the staff.

[365] He was asked for the bargaining agent's reaction. It was not surprised. It was aware of the austerity push at the time. It was concerned for the staff and was concerned that the employer follows the directive.

[366] Mr. Morlidge was referred to his email to HR dated June 17, 2011, and titled, "Availability of Alternate Positions for Food Services Staff" and to a reply from M.E. in HR. In his email, he stated that he recommended proceeding with issuing the WFA letters guaranteeing a GRJO to all kitchen personnel. He noted that there was no

position to make the actual offers at that time, but he felt that providing the personnel with official priority status and starting the clock was the best way to proceed.

[367] On July 6, 2011, employees working in the Food Services operation at K division formally received a letter advising them that the employer would close it.

[368] The letter addressed to the grievor guaranteed that he would be provided with a GRJO within the public service and that because of that guarantee, he was not eligible for any of the options or to participate in the alternation process described in Part VI of the WFA appendix.

[369] He was also advised that although the employer did not have another position to offer at that time, it was confident that there would be alternative employment for him in the public service.

[370] The grievor attended an information session on WFA presented by HR on July 7, 2011. The grievor recalled everyone else in the kitchen operations being present. He did not recall ever having a one-to-one meeting with the HR advisor.

[371] The grievor was registered as a priority person with the PSC on July 11, 2011. He understood that he would have priority registration for an appointment to a position at his level and that he would have to apply online along with others for a CR-04 position at a higher level.

[372] Mr. Morlidge was referred to a series of emails dated July 21 to September 20, 2011, in which he wrote to HR and advised that he did not receive copies of forms for the Food Services operation personnel's acting assignments. He was then advised that the grievor had an acting assignment from August 15 to December 9, 2011.

[373] After receiving the July 6, 2011, letter, the grievor continued to work full-time in the Food Services operation until the date it closed, July 31, 2015. Between January of 2012 and July 31, 2015, the Food Services operation continued to run with minimum staff, which included the grievor.

[374] The grievor was asked about the steps he took to find another position. During that period, he acted for periods as a GS-FOS-07 while the chef was on leave. Between 2012 and 2015, not all chef functions were being carried out, such as administrative

tasks, ordering, and menu planning. During that period, he also acted in a CR-04 position at Crime Stoppers from August 15 to December 9, 2011.

[375] He spoke with the print shop. He was asked during cross-examination whether Mr. Morlidge reached out to the print shop's manager and raised the grievor's name. He knew that Mr. Morlidge had reached out on his behalf and that he had sent an email dated June 10, 2011, requesting job shadowing for him and other employees.

[376] The divisional information manager replied that she was happy to discuss potential job opportunities with any of the Food Services operation personnel and that if anyone was interested, they should book an appointment with her and bring their résumé. Mr. Morlidge was asked whether any of the staff took up the offer. He thought that perhaps two employees did. The Grievor did not.

The grievor stated that he self-referred to other departments. He spoke with the records manager and requested an opportunity to gain some experience. He sought training opportunities in other RCMP departments. Everyone promised that they would keep him in mind; however, nothing ever happened. He looked outside the public service.

[377] He applied online on the PSC's website. He did not receive a formal response. He received a telephone call offering him a position at an army base some 300 km from Edmonton. He was accepted into staffing pools for CR-04 positions at Service Canada and at the Immigration and Refugee Board.

[378] During cross-examination, he was asked if he had been placed in an any selection process pools. He stated that he did not apply.

[379] He referred to his performance evaluation and individual learning plan, which he and Mr. Morlidge signed on August 24, 2011. His career interests were stated as an office support position in the Government of Canada, and his goals were stated as skills development in media and distance web design. The activities to support the goals were listed as a communications course in information technology (IT) and new media, as well as one in digital graphic design tools. On June 16, 2011, Mr. Morlidge wrote to the grievor and advised him that he had been approved for the communications course in IT and new media. The grievor stated that that course cost $11 000 and that the one in digital graphic design tools cost $555. The employer

offered to pay the $555. However, it was not willing to give him a GRJO in those areas. He did not register for the course.

[380] On September 15, 2011, the grievor wrote to Mr. Morlidge to advise that he had completed courses and training in harassment awareness and security awareness and individualized instruction modules (an introduction to the judicial process, being a police witness in a judicial process, the *Charter*, Aboriginal and First Nations Awareness, and TIP SOFT, an introduction to software), that he was in the process of completing training with the CPIC, and that he was scheduled the following week for PROS training. He also mentioned his interest in taking other courses or training as required.

[381] He testified that the only hands-on training he received from 2011 to 2015 was when he acted as a CR-04 with Crime Stoppers. He stated that training was impossible with the kitchen under full operation. The chef was away for between 50 and 70 days between 2011 and 2014. When the grievor returned from Crime Stoppers, only he and the chef provided service, which at that time consisted of breakfast and lunch, including 2 dishes, and 1 was a hot meal.

[382] Mr. Morlidge stated that the grievor received training at Crime Stoppers. He had acted as a GS-FOS-07 and had administrative skills. Managers were aware that he had transferable skills. He should have qualified for CR-04 positions, depending on the job postings. Retraining could have been done, not at the CR-04 level but at his level. Mr. Morlidge had no specific knowledge about the positions that the grievor applied for. The result was that in three years, he did not secure a position. The question was whether he self-referred. He agreed that the transition was challenging.

[383] In terms of being provided with other opportunities, the grievor received an email relating to a possible application for a CR-04 position with an organization dealing with missing women. He looked into the opportunity. He checked the job description and discussed it with others, to determine if he was a fit for the position. It required putting documents together for court cases that would include a large amount of graphic material. The grievor stated that he would not be able to carry out the position's duties. It was too much.

[384] On October 11, 2011, the grievor wrote to Mr. Morlidge, to advise that he had completed training in effective listening and questioning techniques.

[385] By letter dated December 1, 2011, the regional director, Northwest Regional Assets & Contractor Services advised the grievor that the employer intended to continue the Food Services operation until approximately mid-year 2012, that due to the limited GS-FOS positions in the public service, his GRJO would be located in Regina at the Depot. He would continue to be in surplus status until he was presented with a GRJO, and that the PSC would continue to market him in the Edmonton area.

[386] Mr. Morlidge was asked for the grievor's reaction to the letter. He stated, "Okay, we got the letter formalizing the situations" In conversations over the months, he was not surprised. The grievor asked about the size of the Depot's operation. The kitchen operation there was bigger; it served up to 1000 people per sitting. He remembered giving the grievor a sales pitch on the Depot in which he explained that business conferences were held there, which would have been right up the grievor's alley.

[387] Also, in that letter, the grievor was advised to contact his manager with any questions about it and his HR advisor with questions about his surplus priority entitlement.

[388] The grievor stated that he met once with his HR advisor, M.R., only once. He was asked whether he took any steps to contact her. He stated that HR was a large department and that he did not know that M.R. was assigned to his file. He was referred to Mr. Morlidge's June 1, 2011, email, which stated that as was discussed that morning, M.R. had taken over HR for food services and to please direct questions to her as of then. He did not recall seeing the email.

[389] He discussed the situation with the chef and asked him for more details about jobs in Regina. He had never been to Regina, which he understood was more than 500 km from Edmonton. He sought permission to check out Regina. He was advised that it would be approved only if he agreed to a job offer there. He did not tell the employer that he was not interested in going there. He said that there might be opportunities in Edmonton, where his co-workers had secured jobs, and he was interested in staying there.

[390] The employer knew of his personal situation. He was renting a house and he was taking care of elderly people who were ill.

[391] Mr. Morlidge was asked what the grievor told him about his willingness to move to Regina. The only time he expressed an interest was when he requested to take an exploratory trip to Regina, to see the kitchen operation. The request was denied because without a commitment to move to Regina, he could not approve an exploratory trip under the rules of the day.

[392] As of December 14, 2011, all but three of the Food Services operations employees had been appointed to indeterminate positions in the Edmonton area or K division headquarters or had resigned.

[393] The grievor completed the PROS and CPIC training courses on December 31, 2011, along with other online courses.

[394] The grievor referred to Mr. Morlidge's email to him and other affected employees of January 12, 2012, in which he advised the employees that he had contracted the PSC's Staffing and Assessment services for assistance with their résumés and applications and that a counsellor would contact them.

[395] The grievor did not recall receiving any assistance before that email. Before January 2012, he tried to follow up and was advised that the PSC counsellor was no longer available.

[396] Mr. Morlidge stated that it had been nine months since the employees had been declared surplus and that a number of them had not found positions. He thought that one-on-one counselling would be helpful for them. Each employee had an individual session, for the purpose of determining where they fit best.

[397] Between January and March of 2012, the grievor attended and completed a "Competency/Personal Assessment" with the PSC's Staffing and Assessment Services.

[398] The grievor stated that the report recommended that based on his interests and the self assessment, he would probably enjoy administrative positions in a financial field in which budgeting and asset management were important.

[399] The grievor referred to an email from J.D., who was a priority administration advisor for the PSC, which was dated May 1, 2012. J.D. identified himself as the grievor's representative with the PSC for issues relating to priority entitlement and confirmed a telephone discussion with the grievor. The advisor confirmed that the PSC

could not refer him to CR-02 positions, as they would have constituted a promotion from GS-FOS-02, and that therefore, the PSC had taken that group and level out of his file.

[400] He advised that the grievor was eligible to apply at any group and level as long as he met the essential qualifications and conditions of employment and advised him to ensure that he identified himself to hiring managers as a priority person, to ensure that his rights were respected. He also advised the grievor that priority persons must conduct their own job searches through self-referrals, that hiring organizations had to consider his priority entitlement as if the PSC had referred him, and that he could self-refer to positions that constituted a promotion.

[401] The grievor stated that he was very surprised with the answer. He did not have the same rights as his co-workers, who had been able to obtain CR-04 positions. He did everything he could to self-refer and promote himself, to secure any position at a level higher than CR-02. He had to go through the whole process. Others did not. He referred to one co-worker who was able to obtain a CR-05 position.

[402] In cross-examination, he stated that he did not apply to selection processes. He was asked if he understood that management could not appoint people to positions at will, whether he understood the difference between an advertised and an unadvertised process, and whether he was aware of processes to challenge other employees' appointments to positions. He stated that he did. He did not make any staffing complaints. He stated that he did not know how other employees secured their jobs, but he wanted to be treated the same way. He was advised that Mr. Morlidge would testify that other employees used their priority statuses to apply for positions. The grievor replied that he did not agree but he did not elaborate further.

[403] He also stated that he was not accorded the same rights as were the other employees, because they already had CR-04 positions for which they were not qualified, and the positions had not been advertised. He also alleged that to qualify for the CR-04 positions, candidates had to have completed grade 12, and that those employees did not meet that requirement. He agreed that he did not have access to their files.

[404] Mr. Morlidge testified that he assumed that the other GS-FOS-02 kitchen helpers self-referred to the process to which they applied, went through those processes, and successfully obtained those positions.

[405] In cross-examination, he confirmed that three other Food Services operation employees were appointed to RCMP positions in Edmonton in the fall of 2011. One of the other GS-FOS-02 employees was appointed to a CR-05 position in the mailroom, and the two others obtained positions that had been unadvertised. There were no educational requirements for appointment to a GS-FOS-02 position; however, the completion of grade 11 was as an educational requirement for appointment to CR-04 positions. He did not know whether the grievor had completed high school or grade 11. He did not know if the grievor was considered for those positions.

[406] He was asked why the grievor did not obtain another position. His assessment from the grievor's résumé was that he should have been qualified for a CR-04 position and that if he was a priority, he likely would have been appointed. He did not know why not. Only the grievor could answer the question.

[407] There was no reason he would have heard anything. Had the grievor been screened into a process, he might have been a reference. Only in those circumstances would he have heard anything.

[408] He was referred to an email from Mr. Morlidge, dated June 8, 2012, to him and other impacted employees that mentioned career-planning information for WFA-impacted employees. Included was a document from the HR manager containing information on Canada School of the Public Service courses and numerous federal government department resources that dealt with the impact of the 2012 deficit reduction initiatives. The grievor did not recall seeing the document.

[409] The grievor continually promoted himself for positions in the building. He also considered contract work and developing his own business. He tried to get a business going with an Aboriginal department. He is a photographer and tried to pursue a business opportunity as one with a veteran's association.

[410] He was asked whether he updated his curriculum vitae (CV). He tried to get advice about how to improve his CV. He did not receive any assistance. He was referred to the career-focused summary report and its recommendation 5, which discussed his

CV and recommended that he create different versions, one that highlighted his administrative experience, and one that highlighted his graphic-design expertise. In addition, he was asked if Mr. Morlidge had made corrections to his CV. He was shown a document dated November 15, 2010, purporting to be his résumé, which had annotations made in handwriting. The grievor did not recall seeing it and stated that if Mr. Morlidge made corrections, he never sought them.

[411] Mr. Morlidge testified that he helped the grievor tailor his CV for several jobs that the grievor had applied for and noted his comments on a hard copy of the CV. He was referred to a copy of it dated November 15, 2010, and identified his handwriting on the second page, which set out his suggestions for improving it for applying for federal government jobs. He stated that as he had applied for federal government jobs and had been a hiring manager he had the experience to assist the grievor with his CV.

[412] The grievor was asked if he followed up with the PSC's psychologist. He replied that she had not been available. Mr. Morlidge testified that that whole unit was subjected to a WFA.

[413] He advised the employer that he was available for retraining. But he did not receive any retraining opportunities. He tried to check government websites and posted his résumé on a number of them.

[414] Shortly before the Food Services operation shut down, he thought about contracting with it, to provide the service. He asked Mr. Morlidge if the RCMP would consider an employee taking it over. To support that application, he asked if he could have his hotel management diploma from Poland translated.

[415] In an email exchange in January and February of 2014, Mr. Morlidge and the grievor discussed assessing the grievor's Polish diplomas. There was a discussion about the chef paying for the translation using his Visa card. The grievor did not follow up. He was not certain that it would be worth doing.

[416] Mr. Morlidge stated that in his view, the grievor did not need his credentials assessed. The postings for CR-04 positions did not ask for diplomas. He did not see the relevance, although ultimately, he agreed to fund it.

[417] When the grievor expressed his interest, the employer did not discourage him from applying to take over the Food Services operation under the Employee Taking

Over Program, and he did so, on June 11, 2014. During cross-examination, he was asked if he was aware of any conflict from applying to take over that operation while he was still an employee. He stated that he was unsure and that it was not clear.

[418] Mr. Morlidge explained that an employee takeover program was in place in the 1990s. However, at that time, K division could not consider an employee takeover, as it would have constituted sole sourcing. A proposal could also have been submitted under an expression of interest. The grievor did so. But there was an assumption in his proposal that the students would stay for dinner. The proposal would also have required subsidies and equipment. He did not feel that the grievor's proposal would succeed. In addition, he felt that everyone working in the building would require a security clearance. The grievor, working as a contractor, would not have been entitled to one. Mr. Morlidge did not think that it was feasible.

[419] The employer also encouraged the grievor to apply for other work, as the decision to close the Food Services operation was final.

[420] Mr. Morlidge was asked how the change from a GRJO to providing the options came about. Nothing was happening. Keeping the staff around was not going to help with anything. Management started making job offers. One employee retired. The cook and the grievor both said that they would not go to Regina. He did not recall who raised the suggestion, either him or Deb. One of them asked if the staff could receive the options. The other replied that it was a great idea. See the detailed evidence on this issue in the section of this decision that discusses whether the employer contravened the collective agreement by switching to the options.

[421] On March 2, 2015, a briefing note to the commissioner sought approval to rescind the GRJO provided to the grievor and instead give him access to the options in clause 6.3 of the WFA appendix. It stated as follows:

> *The employees continue to be marketed as priority persons in Edmonton within the RCMP and core Public Service. Few opportunities exist in the GS-FOS group and* [redacted] *employees have limited transferable skills for other groups, especially administrative positions that are typical of most government enterprises.* [redacted] *failed to qualify on numerous selection processes.*

[422] The grievor stated that that statement about limited transferable skills was very hurtful and untrue. He had never had access to a GRJO. He had no opportunities to apply to a staffing process and did not agree that he failed to qualify in several such processes. He reiterated that he has many years of experience in which he developed transferable skills as a manager of graphic design and as a photographer. He referred to his CR-04 acting position at Crime Stoppers. He was never given the opportunity to job shadow or to be selected for a new position, although others received that opportunity.

[423] As of March 2, 2015, all employees of the Food Services operation, except for the grievor and Chef Tront, had obtained employment within K division headquarters or had resigned.

[424] The grievor was referred to his email exchange with Mr. Morlidge dated March 11 and 12, 2015, in which he requested to be advised of his options of future employment with the public service or as a food service contractor and to which Mr. Morlidge responded. The grievor stated that he did not recall the exchange.

[425] Nothing had changed; the Food Services operation was still running, and he still wanted to maintain his position there.

[426] He was asked what happened to the other employees. The chef resigned, and the junior cook retired. The kitchen helper, K.W., obtained a CR-04 position in K division. The other kitchen helper, S.R., obtained a CR-04 position in mailroom operations. Another employee secured a mailroom position in Edmonton.

[427] By letter dated March 27, 2015, the corporate management officer wrote to the grievor, to advise him that the employer could no longer provide a GRJO and that he had 120 days from the date of the letter (i.e., July 25, 2015) to consider and decide from the following 3 options in the WFA appendix:

1) Option A: the 12-month surplus priority period. Over a 12-month period, the RCMP and the PSC would work with him to identify alternate indeterminate employment in the core public service;
2) Option B: a transition support measure consisting of a cash payment based on his years of service; or
3) Option C: an education allowance.

[428] The grievor was referred to Mr. Morlidge's May 12, 2015, email to another employee and him titled "WFA Options-Questions?" In it, Mr. Morlidge noted that they were nearing the midpoint of his opting period and that he wanted to ensure that the grievor was receiving all the information he required to make an informed choice. The grievor was asked whether he had any questions. He replied that he did not. He was asked whether he had sufficient information. He replied that he was looking for jobs within K division. He was asked whether this was the opening to ask questions. The grievor replied that he was working hard full-time in the kitchen operations, as the chef was absent. He was asked to confirm that if he did not ask questions, would it be reasonable that no further information would be provided. He replied that he was not in management.

[429] He was referred to an email that advertised a CR-04 inventory clerk position in Edmonton dated April 13, 2015, and contained a link to it. It advised that the inventory would be used to CR-04 staff positions in Edmonton and that referrals from the inventory would be ongoing. He was asked if he received it. He replied that maybe he did. He spoke with the chef. He was very busy in the kitchen at the time. He had problems with the link.

[430] He emailed Mr. Morlidge on June 10, 2015, advising that the link did not work. Mr. Morlidge replied the same day with another link and noted that the opening likely had closed as it had been sent two months earlier. The grievor stated that when he went back to the link, the job did not exist any longer. He had missed the deadline.

[431] The grievor was referred to Mr. Morlidge's email to him and another employee dated June 10, 2015, and titled "WFA Options-Questions?" The email noted that Mr. Morlidge had not received a meeting request to follow up on the options letter, so he assumed that the employees had no questions. He provided information on the end of the opting period and advised that they were welcome to message him with any questions. The grievor acknowledged receiving the email. He did not recall replying to it.

[432] The grievor stated that nothing changed in the kitchen. He worked full-time, with limited resources. He shut down the kitchen. It was closed on or about June 30.

[433] The grievor was referred to an email dated June 30, 2015, from Mr. Morlidge to staff titled "Kitchen Closure-Thank You and Update on Staff". He thanked those that

went to the closure reception and advised that the chef and the grievor would work in the kitchen area until the end of the July, to shut it down. The email also advised that the grievor continued to pursue other opportunities at headquarters and in the federal government at large and that he had not yet chosen what he would do. It also stated that readers should feel free to contact him with any opportunities or questions about his qualifications.

[434] The grievor was referred to an email that Mr. Morlidge sent him dated July 14, 2015, and titled "Options Discussion" in which Mr. Morlidge proposed an in-person meeting, to ensure that the grievor made a decision based on a common understanding of the available options. The grievor acknowledged receiving the email. He was not sure what Option C was and whether it was better to go to Regina or to pursue further education. However, he did not accept the meeting request, because the kitchen had been closed.

[435] Mr. Morlidge referred to an email exchange dated July 14, 2015, and titled "Relocation for Depot Foods RJO" between him and the regional director. Mr. Morlidge wanted confirmation that the employer would fund the relocation if the grievor accepted the job in Regina. He stated that he was not sure which option the grievor would choose, as he had discussed them all. Public Service Staffing was preparing a deployment job offer at the Depot's mess in case he chose Option A or failed to make a choice. It was to be presented on July 27, with an acceptance deadline of around August 10 to 12. The offer was to identify a start date of September 1, which was to be flexible. The regional director advised that the employer would fund the relocation if the grievor chose the Regina option.

[436] He was offered another job in a mine in the Yukon. He decided to go to the Yukon.

[437] He was asked if he was offered any opportunity for a job in Regina. He replied that he was not given a GRJO.

[438] The grievor was referred to an email dated August 14, 2015, from the PSC's Priority Administration Policy branch that listed the locations of positions to which he was referred after being declared surplus, including 1 term and 2 indeterminate positions in Wainwright and two-term positions in northern Alberta. He stated that there is an army base in Wainwright, which is about 500 km south of Edmonton. He

understood that those were 3-month contracts. He was looking for full-time positions. In his view, they were not reasonable offers.

[439] During cross-examination, the grievor reiterated that all the positions in Wainwright were for three-month contracts, as were the positions in northern Alberta. Also in the same email was a report dated August 4, 2015, which indicated that three of the positions were term, which he did not want, and the others were rejected based on their location. The last referral date was in June 2014. He stated that at that time, the Food Services operation was still fully running. He wanted the same deal as his colleagues had received. At that time, he wanted to remain in Edmonton; he was not willing to move. He was asked if he was willing to move to Wainwright for an indeterminate position. He replied that there were more opportunities in Edmonton and that at that time, he was working on a proposal to take over the Food Services operation in Edmonton. For all those reasons, he was not willing to move to Wainwright.

[440] In an email exchange from July 23 to 31, 2015, Ms. Harrington and Ms. Revet discussed the WFA process for the grievor. Ms. Harrington stated as follows:

> …
>
> *It was also indicated that Mr. ZALEWSKI would be immediately offered (*on Monday, July 27, 2015*) a RJO position at Depot if he did not sign option B or C. It was advised and implied that he would be terminated in 30 days if he selected option A and refused the RJO. In reference to this information and the recent FOS "anticipatory" position posted to the government job board (jobs.gc.ca) for Regina Kitchen, the kitchen staff in Regina were not aware of any current vacant positions.*
>
> …

[441] Ms. Revet replied to Ms. Harrington that the "Depot does indeed have a FOS-02 vacancy which they were prepared to offer John as a GRJO." The grievor had several discussions with Mr. Morlidge about the position in Regina.

[442] The grievor was asked in re-examination about what the bargaining agent did about finding information about the position in Regina. He replied that it could not get any information as late as July 2015 about whether a job existed there.

[443] When he completed the option form, the grievor selected Option B, the transition support measure. Because he made that selection, his resignation was effective July 31, 2015.

[444] The grievor was asked if he read the document. He replied that he did. He confirmed that he decided to take the transition support measure, and it was paid to him.

[445] The grievor was referred to an email to him dated March 11, 2015, advising that the only location identified was Regina. It was indicated that he did not wish to relocate. He was asked by counsel whether he had responded to the email and denied the allegation that he did not wish to relocate. He admitted that he had not responded to the email. He was looking at all options.

[446] During cross-examination, Mr. Morlidge confirmed that at no time was the grievor provided a GRJO because he had indicated that he was not prepared to move. He chose Option B instead.

[447] The grievor was not offered the Depot position, given the changed circumstances. He was told that if he chose Option A, an RJO would be made to him at the Depot, where he did not want to go. He made it clear that that was not his choice. We went to the commissioner, to try something different.

[448] He was asked to confirm that the WFA's primary objective was to maximize employment opportunities for indeterminate employees affected by it, primarily through ensuring that whenever possible, alternate employment opportunities were provided to them. Mr. Morlidge replied that that was the objective but that the WFA's implementation was in the details.

[449] Mr. Morlidge acknowledged that because of the consequences of offering a GRJO, the employer has to demonstrate that it cannot guarantee a GRJO before it moves to the options. He replied that significant work was done to see if the employer could offer GRJOs. Ultimately, he recommended proceeding with GRJOs for all kitchen personnel. He referred to his email dated July 8, 2011, to management that recommended a national area of referral, to ensure that the personnel were aware of all opportunities to remain in the public service, based on the low numbers of staffing processes for relevant jobs.

[450] He stated that there was no specific workforce planning across the RCMP, except for priority clearance, and that the HR unit was aware of the WFA.

[451] In terms of redeployment and retraining, there was nothing else at-level.

[452] He was asked for the circumstances under which retraining would be offered to a surplus employee. Retraining was offered when it was necessary for an employee to be appointed to another position or when there was a chronic shortage of qualified employees. Retraining was not offered to the grievor because he was qualified only for positions classified GS-FOS-02.

[453] He confirmed that alternation was available only for opting employees.

[454] He was referred to an extract from the presentation given to employees on July 11, 2011, related to surplus employees being eligible for up to two years of retraining. He stated that it was not relevant for the GS-FOS-02 employees because there were no jobs available at-level. Employees were eligible for retraining for positions at the same level but not for promotions. He did not recommend training for the grievor at the CR-04 level because there were so many different CR-04 positions. Generic training would not have helped him.

IX. Did the Employer meet its Obligation under the WFA appendix to maximize employment opportunities for the grievor as an indeterminate employee affected by a WFA?

A. Counsel for the Grievor

1. The employer's obligation to maximize opportunities for continued employment

[455] Continued employment is the key goal of the WFA appendix, which must guide its interpretation and application.

2. WFA principles

[456] Departments are responsible for treating affected employees equitably and for giving them every reasonable opportunity to continue their careers.

3. The employer's failure to meet its WFA obligations

a. Delay and under-resourcing

[457] The employer's handling of the grievor's WFA situation was marred by delays and a lack of resources.

[458] HR Advisor MR documented that no formal counselor was assigned to surplus employees and that employees, including the grievor, did not receive proper support for résumé writing or their job-search efforts. Despite a career counselor being requested, management did not follow through.

[459] The grievor testified that he never met with Ms. MR one-on-one, only when he attended attending a group presentation, and that he did not realize that he could contact her for assistance. Despite being aware of those issues, the employer did not provide adequate support or resources in a timely manner.

b. Failure to establish systems

[460] The WFA appendix requires departments to establish redeployment or retraining systems, but no such systems were created for the grievor. See *Chénard v. Treasury Board (Employment and Social Development Canada and Statistics Canada)*, 2020 FPSLREB 15.

[461] HR planning was absent, and efforts to redeploy or retrain the grievor were inadequate. HR Advisor Ms. Racetin confirmed that no formal systems were in place for those processes.

[462] When the grievor attempted to explore opportunities on his own, such as contacting RCMP departments for work experience, his efforts met with little success, further highlighting the lack of a structured support system.

c. Failure to provide retraining and to assess qualifications

[463] Retraining is crucial for employees affected by WFAs. However, the grievor was not offered retraining or given proper consideration for roles that matched his experience and qualifications.

[464] The case law (e.g., *Chénard* and *Nesic*) highlights that retraining must be offered to maintain continued employment, but it did not happen for the grievor. His skills

and qualifications were not fully assessed, and the employer failed to create a retraining plan for him.

d. Failure to provide an RJO

[465] A GRJO was identified at the Depot but was never provided to the grievor during the appropriate opting period.

[466] Despite knowing about the potential job as early as 2011, the employer delayed offering it, which left the grievor in the dark about its details. That arbitrary decision was inconsistent with the WFA appendix's intent to maintain employment within the federal public service.

[467] Emails exchanged between employer representatives (e.g., Mr. Morlidge and Ms. Revet) confirmed that the GRJO was withheld until the grievor selected Option A, despite the obligation to present the GRJO earlier.

e. Unfair, inequitable, and arbitrary treatment

[468] The employer did not treat the grievor equitably. Other GS-FOS-02 employees were redeployed to CR-04 positions through facilitated training, while he was left to maintain the Food Services operation without similar redeployment or retraining opportunities.

[469] The testimony and emails revealed that the employer had to maintain two employees in the kitchen, which took precedence over supporting the grievor's efforts to find alternative employment. That approach unfairly disadvantaged him and ultimately led to the loss of his public service career.

f. Summary of the employer's obligation to maximize opportunities for continued employment

[470] The employer failed in five key areas to meet its obligations under the WFA appendix: it delayed providing support, failed to establish redeployment systems, failed to provide retraining, withheld a GRJO, and treated the grievor arbitrarily and inequitably compared to his colleagues.

[471] Therefore, for the reasons set out in its submissions, the bargaining agent asked for a finding that the employer failed to meet its obligations and that it breached the WFA appendix.

B. The employer's submissions

[472] The employer offered an alternative narrative. Throughout the process, it acted in good faith, to the grievor's benefit.

[473] The grievor did not help himself under the WFA appendix.

[474] The switch from the GRJO to the options was done in consultation with the bargaining agent, to the grievor's benefit.

[475] The grievor did not wish to relocate.

[476] He acted in a position at Crime Stoppers and as a GS-FOS-07 when the chef was absent.

[477] In early 2011, Mr. Morlidge analyzed the kitchen operations at K division and concluded that they were not sustainable.

[478] Mr. Morlidge met with the employees, HR, and the bargaining agent president, Ms. Stangrecki, on May 3, 2011, to discuss what to do with the employees.

[479] Mr. Morlidge was the information manager and was involved in hiring the grievor. He was involved in the decision to close the operation and was the employer's representative in those discussions. He later became the bargaining agent president.

[480] He was forthright and honest in his evidence, and he volunteered information that might not have helped his case. He outlined his efforts to help the grievor.

[481] Ms. Revet was more focused. She had conversations with the bargaining agent in 2015 to switch from a GRJO to the options.

[482] With the passage of time, memories fade. Her testimony was consistent with the documentation and contemporaneous notes.

[483] Evidence was adduced that Mr. Morlidge made efforts to provide training to the grievor. He spoke to other managers about finding a position for the grievor and coached the grievor.

[484] Finding employment was challenging, as the federal government had imposed the Deficit Reduction Action Plan.

[485] The main equivalent to the GS-FOS-02 position was a CR-02 position. CR-03 positions were being eliminated. The next step of positions available were at CR-04, which would have been a two-step increase.

[486] The grievor was advised that he could self-refer, to apply for higher-level positions. He would have benefitted from his priority status.

[487] The grievor knew early in the process in 2011 that the only equivalent position in the RCMP was at the Depot. The evidence set out that in fact that position existed.

[488] The WFA appendix lists 39 obligations. Clause 1.1.1 was referred to. It provides that since indeterminate employees who are affected by WFA situations are not responsible for such situations, it is the departments or organization's responsibility to ensure that they are treated equitably and, whenever possible, given every reasonable opportunity to continue their public service careers.

[489] All kitchen employees except the grievor were able to obtain new appointments. They would have self-referred.

[490] The grievor was advised to apply, but he did not self-refer. There was limited evidence that he tried to find another position.

[491] Counsel referred to an email from Mr. Morlidge to the surplus employees and to HR and Ms. Stangrecki in which he advised that the employer was proceeding directly to the official notification of WFA status and that another meeting would be held, at which HR would advise what it meant and set out the employees' rights and options, which would give them an advantage when applying for positions, and the sooner the better.

[492] He referred to the slide deck, which explained the WFA appendix and specifically to slide 8, which advised the employees that they would be placed in a divisional inventory and that they would be considered for RCMP job openings at their substantive levels or equivalent.

[493] Priority employees who have priority status may apply directly on their own to any position that is advertised or that they are otherwise aware of for which they believe they are qualified.

[494] This information was provided to all staff members. All the employees were given the same opportunities. The RCMP cannot give surplus employees a higher-level job.

[495] Mr. Morlidge thought that the grievor had excellent credentials and that all employees would find alternative employment.

[496] Mr. Morlidge stated that the grievor said that if he were offered the job in Regina, he would not go.

[497] The grievor testified that other employees secured jobs without applying. During cross-examination, he said that he did not know how they secured the jobs.

[498] It was argued that a series of emails indicated that the plan was keep the grievor in his position as long as possible.

[499] Counsel referred to a document that stated that there was a need for two persons in the kitchen. It did not mention the grievor.

[500] Counsel referred to Ms. MR's July 27, 2011, email, which does not refer to the grievor. Any reference to him is pure speculation.

[501] Counsel for the grievor referred to a summary outlining actions and decisions that several stakeholders took and made in accordance with the roles and responsibilities under the directive.

[502] Counsel for the employer argued that Ms. MR the author of the document, who was the HR advisor, did not testify. Although it refers to two K-division GS-FOS-02 employees being appointed to clerical positions, the summary is silent about whether they self-referred.

[503] The narrative is that the employer wanted to keep the employees in Edmonton. On the totality of the evidence, it did what it could in the circumstances.

[504] The grievor did have training opportunities. In an email, he set out the courses and programs that he had completed as of September 15, 2011, which included harassment awareness and security awareness, an introduction to the judicial process, being a police witness in a judicial process, the *Charter*, and Aboriginal and First

Nations awareness. He noted that he was scheduled for PROS training and that he was in the process of completing the CPIC training.

[505] At that time, he was in the Crime Stoppers acting position.

[506] Counsel referred to an email that the grievor sent on October 11, 2011, in which he advised Mr. Morlidge as well as another person, that he had just completed the effective listening and questioning techniques courses.

[507] In 2012, Mr. Morlidge set up a career-focused assessment.

[508] In addition, the grievor acted in a CR-04 position.

[509] He was approved for a computer course, but it was not taken.

[510] The employer did not have the sole responsibility to provide training opportunities. See clause 4.1.2 of the WFA appendix, which provides that it is the responsibility of the employee, the home department or organization, and the appointing department or organization to identify the retraining opportunities that they provide. The grievor had a role to play.

[511] Clause 4.1.1 of the WFA Appendix provides that departments or organizations shall make every reasonable effort to retrain surplus employees for existing or anticipated vacancies. In the context of the Deficit Reduction Action Plan, Mr. Morlidge identified quite a few positions.

[512] Although the grievor stated that he was open to anything, it was a vague and unsubstantive response.

[513] Retraining was necessary only at-level.

[514] Mr. Morlidge was asked if he provided training to the grievor for CR-04 positions. He replied that there were a wide variety of CR-04 positions. General training would not have been helpful.

[515] The department offered counselling.

[516] Mr. Morlidge repeatedly advised the grievor that he had to self-refer. If he was not able to find a position, his job was in Regina. He did not ask for any further information.

[517] Clause 1.1.34 provides that the employer is to assign a counsellor to each opting and surplus employee and any laid-off persons to work with him or her throughout the process. Although a counsellor was not specifically assigned to the grievor, there was no need for one, as it was Mr. Morlidge. He stated that he counselled the grievor. Counsel referred to an email dated May 25, 2011, which outlined Mr. Morlidge's efforts on the grievor's behalf with respect to finding opportunities in the print shop. He also contacted other managers, to find opportunities for the grievor. Why would he have contacted other departments if he wanted to keep the grievor working in the kitchen?

[518] Counsel referred to the conversations around relocating to the Depot and the fact that if the grievor did not accept the position, he would be laid off. During those discussions, the grievor said that he did not want to go to Regina.

[519] On June 26, 2011, Mr. Morlidge recommended that the WFA appendix be applied to all kitchen personnel. He was not offering positions at that time. He wanted to give the employees priority surplus status. He was under no obligation to offer positions at that point. He spoke to DND in Edmonton about available positions and to the women's institution. He concluded that it was unlikely that those location would have vacancies. When he looked for opportunities for the staff members, he talked about how there were positions in Regina and how the employees were not interested in going to the Depot. As a result, it was recommended that the scope of available positions be determined on a national basis, which was approved on July 8, 2011.

[520] In May 2012, the PSC advised that employees could apply for positions using their priority status. On June 8, 2012, Mr. Morlidge forwarded the grievor career-planning information available to those affected by the deficit reduction initiative. The grievor did not take advantage of that information.

[521] With respect to the translation of his documentation and diplomas from Poland, management agreed to pay for it; however, the grievor did not take the necessary steps.

[522] In 2014, Mr. Morlidge provided tips to the grievor on how to apply for positions and made recommendations on his résumé.

[523] On March 19, 2015, Mr. Morlidge provided the grievor with the link to a forum in which employees looking to retire early looked for surplus employees to alternate with.

[524] On June 30, 2015, near the end of the opting period, in the context of the kitchen closure, Mr. Morlidge advised all staff members that the grievor continued to pursue other opportunities and that they should feel free to contact him with any opportunities or questions about his qualifications.

C. Analysis

X. Did the employer meet its obligations under the WFA appendix?

[525] The bargaining agent relied on the objectives in the WFA appendix that stipulate that the employer's policy is to maximize employment opportunities for indeterminate employees affected by WFA situations, primarily through ensuring that whenever possible, alternative employment opportunities are provided to them. To that end, every indeterminate employee whose services will no longer be required because of a WFA situation, and for whom the deputy head can predict that employment will be available, receives a GRJO within the core public administration. Those employees for whom the deputy head cannot provide the guarantee have access to transitional employment arrangements.

[526] The bargaining agent also relied on a number of principles in the WFA appendix, namely, clause 1.1.1, which sets out the responsibility of departments or organizations to ensure that affected employees are treated equitably and whenever possible given every reasonable opportunity to continue careers; clause 1.1.34, which states that departments or organizations shall inform and counsel affected and surplus employees as early and completely as possible and in addition shall assign a counsellor to each opting and surplus employee, to work with him or her throughout the process; and clause 1.1.5, which sets out that departments or organizations shall establish systems to facilitate redeploying or retraining their affected and surplus employees.

[527] From the case law, the bargaining agent relied on the employer's failure to provide an RJO during the opting period.

[528] The bargaining agent also alleged that the employer engaged in unfair, inequitable, and arbitrary treatment.

[529] The bargaining agent listed five themes that run through the evidence that demonstrated the employer's failure.

A. Delay and under-resourcing

[530] The bargaining agent referred to documentation from Ms. MR, the HR representative, which set out that Mr. Morlidge stated had been assigned the WFA files. She did not testify. The documentation reflects that the kitchen employees required a great deal of assistance and acknowledge and that a career counsellor had not been hired. However, in the documentation, she acknowledged that in the absence of an official counsellor, she indirectly acquired most of that responsibility.

[531] The employer argued that although a counsellor was not specifically assigned to the grievor, there was no need for a formal counselling, as Mr. Morlidge was the counsellor. He stated that he counselled the grievor. Counsel referred to an email dated May 25, 2011, which outlined Mr. Morlidge's efforts on the grievor's behalf.

[532] The bargaining agent argued that the grievor never met with Ms. MR one-on-one, only during the meeting with the initial PowerPoint presentation, and he did not have a clear understanding that he was supposed to contact her for counselling.

[533] In the letter dated December 1, 2011, which advised the grievor that his GRJO would be located in Regina, he was advised to contact his manager with any questions about the letter and his HR advisor for questions about his surplus priority.

[534] The grievor stated that he met with Ms. MR only once. He was asked whether he took any steps to contact her. He stated that HR was a large department and that he did not know that she was assigned to his file. He was referred to Mr. Morlidge's June 1, 2011, email, which stated that as was discussed that morning, Ms. MR had has taken over HR for food services and to please direct questions to her as of then. He did not recall the email.

[535] The bargaining agent also argued that until the PSC's assessment was done in February and March 2012, the grievor had not received formal counselling.

[536] It was also argued that the grievor did not receive any assistance with his résumé.

1. Discussion

[537] Detailed in the evidence are the steps that Mr. Morlidge took to counsel and support the grievor throughout the entire WFA process.

[538] For example, as early as April 15, 2011, he had already agreed to acting assignments for affected employees, including the grievor. He made significant efforts to find suitable positions by inquiring about them in the Edmonton area and elsewhere. As there were few equivalent positions in Alberta, the Northwest Territories, and Nunavut, he argued for a national area of referral.

[539] The grievor acknowledged that Mr. Morlidge reached out on his behalf to the print shop and requested job shadowing. The grievor did not follow up.

[540] Mr. Morlidge arranged for the contract with the PSC's Staffing and Assessment Services for assistance for the grievor, as he thought that it would be helpful for him to receive one-on-one counselling.

[541] On June 8, 2012, Mr. Morlidge emailed the grievor career-planning information for WFA-impacted employees.

[542] With respect to the argument that the grievor did not receive assistance with his résumé, during his evidence, he was referred to the career focused summary report and recommendation number 5, which discussed his CV and made recommendations.

[543] Mr. Morlidge testified that he helped the grievor tailor his CV to different jobs that he applied for, and he noted his comments on a hard copy of the CV that was introduced into evidence. They were his suggestions for improving the résumé, to apply for federal government jobs. He stated that he had applied for government jobs and that he had been a hiring manager. The grievor did not recall seeing that résumé and stated that if Mr. Morlidge made corrections, the grievor did not seek them.

[544] Also of significance, which I will return to, Mr. Morlidge, together with Ms. Stangrecki, the bargaining agent local president, sought to give the grievor access to the options, as he had indicated that he was not prepared to move to Regina, by petitioning the commissioner to revoke the GRJO. Although I have found that that

initiative contravened the collective agreement, it was done in good faith, and in the circumstances, for the grievor's benefit.

[545] "Counselling" is not defined in the appendix. Based on the evidence I have recited with respect to Mr. Morlidge's efforts as well as other employer representatives on the grievor's behalf and the testimony with respect to assisting with his CV, I am not persuaded on a balance of probabilities that the employer failed to meet its obligations under clause 1.1.34 of the WFA appendix. While the employer must offer some type of counselling and assistance, it is clear from the wording of the WFA that employees also bear responsibility to search for a job. The WFA does not provide that the employer's obligation is to provide impacted employees with positions that not only meet the requirements of the GRJO but are also entirely satisfactory to the employee. In this case, the Grievor bear some responsibility for what occurred and "counselling" does not require the employer to bear the entire burden of the job search, particularly in a case where the grievor's best option was to self referred to higher-level positions given that so few at level positions were available.

B. Failure to establish systems

[546] Clause 1.1.5 of the WFA appendix states that departments or organizations shall establish systems to facilitate redeploying or retraining their affected and surplus employees.

[547] The bargaining agent relied on the *Chénard* decision, in reference to the WFA appendix, for the principle that departments and organizations are obligated to establish systems to facilitate redeployment or retraining.

[548] To support that proposition, the bargaining agent relied on Mr. Morlidge's evidence that no formal system for HR planning was in place.

[549] Ms. Racetin's WFA memo dated October 4, 2011, was referred to again.

[550] It was also argued that Mr. Morlidge's efforts on the grievor's behalf went nowhere because there was no resource planning in place that would have provided that synergy.

[551] The employer argued that all kitchen employees except the grievor were able to obtain new appointments. The employer referred to the slide deck that was reviewed at

the meeting with all employees, which explained the WFA appendix, and specifically slide 8, which advised the employees that they would be placed in a divisional inventory and would be considered for RCMP job openings at their substantive levels or equivalent. That information was provided to all employees, who all received the same opportunities as did their colleagues.

1. Discussion

[552] In his evidence, Mr. Morlidge confirmed that the WFA's primary objective was to maximize employment opportunities for indeterminate employees affected by it, primarily through ensuring that whenever possible, alternate employment opportunities were provided to them. He replied that that was the objective but that the WFA's implementation was in the details.

[553] He acknowledged that there was specific workforce planning across the RCMP, for priority clearance, and that the HR unit was responsible for any WFA issues.

[554] In Ms. MR's memo on the WFA of October 4, 2011, which the bargaining agent referred to when it discussed departments' obligation to establish systems to facilitate redeployment or retraining, she stated as follows:

> …
>
> *No formal systems have been established to facilitate redeployment or retraining of the surplus employees.*
>
> *In the absence of a formal system being established to facilitate retraining, as well as the fact that there are not any other FOS-02 or CR-02 job opportunities within "K" Division, all of the FOS-02s have secured acting assignments (<4 months) in various units in the HQ building. In terms of retraining, their acting opportunities are enabling them to acquire new skills in a different group and level. The units are currently funding the training for these employees. Two of the FOS-02 employees are taking PROS training in hopes of acquiring needed skills to facilitate in their appointments in different units.*
>
> …

[555] The rules under the WFA about priority status, guaranteed reasonable job offers and opting are clear and meet the criteria of formal systems. In addition, formal systems were in place for priority clearance. The Public Service Commission had the grievor in their database and he was in fact contacted by a few people about positions demonstrating that the system worked. Further, as evidenced in MRs email informal

systems were created. The employer took steps to facilitate training among others by securing acting assignments for the kitchen staff, including the grievor. I find that the employer had in place the critical formal systems to meet its obligations under the appendix and that those systems provided structures and parameters that worked together with informal systems as outlined in the evidence.

C. Failure to provide retraining and assess qualifications

[556] The bargaining agent submitted that because the WFA's guiding principle is continued employment, retraining is required, to facilitate continued employment. It relied on clauses 1.1.35, 4.1.1, 4.1.2, 4.1.3, 4.2.1, 4.2.2, and 4.2.7 of the WFA appendix, which requires departments to establish retraining systems. But no such systems were created for the grievor (see *Chénard*).

[557] Retraining is crucial for employees affected by WFAs. However, the grievor was not offered it or given proper consideration for roles that matched his experience and qualifications. The case law (e.g., *Choinière*, *Chénard*, and *Nesic*) highlights that retraining must be offered, to maintain continued employment, but it did not happen for him. His skills and qualifications were not fully assessed, and the employer failed to create a retraining plan for him.

[558] The employer argued that the evidence indicated that Mr. Morlidge made efforts to provide training to the grievor. He spoke to other managers about finding a position for the grievor and coached him. The grievor did have training opportunities.

[559] As noted, he was assigned to an acting position at Crime Stoppers.

[560] He completed training on effective listening and questioning techniques. He was approved for a course, but it was not taken.

[561] Clause 4.1.2 of the WFA appendix provides that it is the responsibility of the employee, the home department or organization, and the appointing department or organization to identify retraining opportunities. The grievor had a role to play.

[562] Clause 4.1.1 of the WAA provides that departments or organizations shall make every reasonable effort to retain surplus employees for existing or anticipated vacancies. In the context of the deficit action plan, Mr. Morlidge identified quite a few positions. Although the grievor stated that he was open to anything, it was a vague and

unsubstantive response. Retraining was necessary only at-level. Mr. Morlidge was asked if he provided training to the grievor for CR-04 positions. He replied that there were a wide variety of CR-04 positions. General training would not have been helpful. The employer offered counselling.

1. Discussion

[563] Part I of the WFA appendix sets out roles and responsibilities. Clause 1.1 deals with departments or organizations. Clause 1.1.1 reads as follows:

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.*	***1.1.1*** *Étant donné que les employé-e-s nommés pour une période indéterminée qui sont touchés par un réaménagement des effectifs ne sont pas eux-mêmes responsables de cette situation, il incombe aux ministères ou aux organisations de veiller à ce qu'ils ou elles soient traitées équitablement et à ce qu'on leur offre toutes les possibilités raisonnables de poursuivre leur carrière dans la fonction publique, dans la mesure du possible.*

[564] Also of relevance to this discussion is clause 1.1.16, which reads as follows:

1.1.16 *Appointment of surplus employees to alternative positions with or without training shall normally be at a level or equivalent to that previously held by the employee, but this does not preclude appointment to a lower level. Departments or organizations shall avoid appointment to a lower level except where all other avenues have been exhausted.*	***1.1.16*** *La nomination d'employé-e-s excédentaires à d'autres postes, avec ou sans recyclage, se fait normalement à un niveau équivalant à celui qu'ils ou elles occupaient au moment où ils ou elles ont été déclarés excédentaires, mais elle peut aussi se faire à un niveau moins élevé. Les ministères ou les organisations évitent de nommer les employé-e-s excédentaires à un niveau inférieur, sauf s'ils ont épuisé toutes les autres possibilités.*

[565] Part IV of the WFA appendix deals with retraining and has three clauses: 4.1, the general part; 4.2, which deals with surplus employees; and 4.3, which deals with laid-off employees. The relevant provisions are as follows:

…	[…]
4.1.1 *To facilitate the redeployment of affected employees, surplus employees and laid-off persons, departments or organizations shall make every reasonable effort to retrain such persons for:*	***4.1.1*** *Pour faciliter la réaffectation des employé-e-s touchés, des employé-e-s excédentaires et des personnes mises en disponibilité, les ministères ou les organisations doivent faire tous les efforts raisonnables pour les recycler en vue d'une nomination :*
(a) existing vacancies;	*a) à un poste vacant;*
or	*ou*
(b) anticipated vacancies identified by management.	*b) à des postes censés devenir vacants, d'après les prévisions de la direction.*
…	[…]
4.2.1 *A surplus employee is eligible for retraining, provided that:*	***4.2.1*** *L'employé-e excédentaire a droit au recyclage, pourvu :*
(a) retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies in occupations or locations where there is a shortage of qualified candidates;	*a) que cela facilite sa nomination à un poste vacant donné ou lui permette de se qualifier pour des vacances prévues dans des emplois ou endroits où il y a pénurie de compétences;*
and	*et*
(b) there are no other available priority persons who qualify for the position.	*b) qu'aucun autre bénéficiaire de priorité n'ait les qualifications requises pour le poste.*
…	[…]

[566] Clause 4.2.7 grants additional benefits to surplus employees, as follows:

4.2.7 *In addition to all other rights and benefits granted pursuant to this section, an employee who is guaranteed a reasonable job offer is also guaranteed, subject to the employee's willingness to relocate, training to prepare the surplus*	***4.2.7*** *Outre les autres droits et avantages accordés en vertu de la présente section, l'employé-e excédentaire qui se voit garantir une offre d'emploi raisonnable et qui consent à être réinstallé se voit garantir le droit de suivre un programme de formation pour se*

employee for appointment to a position pursuant to 4.1.1 ….	*préparer en vue d'une nomination à un poste en vertu de l'alinéa 4.1.1* […]

[567] As noted, this separate provision deals with laid-off persons:

…	[…]
***4.3.1** A laid off person shall be eligible for retraining, provided that:*	***4.3.1** La personne mise en disponibilité est admissible au recyclage, pourvu :*
(a) retraining is needed to facilitate the appointment of the individual to a specific vacant position;	*a) que cela s'impose pour faciliter sa nomination à un poste vacant donné;*
(b) the individual meets the minimum requirements set out in the relevant selection standard for appointment to the group concerned;	*b) qu'elle satisfasse aux exigences minimales précisées dans la norme de sélection applicable au groupe en cause;*
(c) there are no other available persons with priority who qualify for the position;	*c) qu'il n'existe aucun autre bénéficiaire de priorité disponible qui ait les qualifications requises pour le poste;*
and	*et*
(d) the appointing department or organization cannot justify a decision not to retain the individual.	*d) que le ministère ou l'organisation d'accueil ne puisse justifier sa décision de ne pas la recycler.*
…	[…]

[568] In *Choinière*, the grievor had been declared surplus under the WFA. The employer offered her a position at a lower level which she accepted. She grieved the decision to appoint her to a lower position before exhausting all other possibilities, including assessing her competencies which violated clause 1.1.6 of the WFA appendix. As a remedy, she requested that it assess her competencies for a position classified in her former level.

[569] The adjudicator found that the employer did not offer the grievor an interview or consider the possibility of offering her retraining, to acquire the knowledge for a vacant position at her former level. Therefore, it acted arbitrarily by not following its

procedures. It did not exhaust all avenues before appointing her to a lower-level position.

[570] In *Nesic*, the grievor was advised that he was surplus and had been identified for layoff and that the employer could not provide him with a GRJO. He grieved alleging that several positions for which he was qualified and were currently vacant could have been offered to him as a GRJO, but none was offered.

[571] He filed another grievance, in which he contested the employer's response to his first grievance that indicated that the retraining provisions for layoff priorities would be applied only for positions that were considered equivalent or one level lower to the grievor's substantive position. The Board found that when the employer was considering whether or not to offer him a GRJO, it limited its analysis to employment opportunities at the same level or one level lower than his then-current position and did not explore lower-level opportunities.

[572] With respect to the retraining grievance, the grievor presented evidence about five appointment processes in which he was found not to meet the essential qualifications for positions classified more than two levels lower than his then-current position.

[573] The adjudicator found that by applying an arbitrary rule that retraining would be offered only for positions at-level or one level lower, the employer violated the collective agreement by not exploring lower-level opportunities.

[574] In *Chénard*, the grievor was declared an affected employee due to a WFA and was laid off. His home department determined that it could not offer him a GRJO. He had to choose between the 3 WFA options: Option A, the 12-month surplus priority; Option B, the transition support measure; and Option C, the education allowance. The grievor chose the 12-month surplus employee option.

[575] A few days before the end of the priority period, the grievor found a term position that coincided with his priority appointment layoff period.

[576] During the layoff, the PSC presented the grievor with indeterminate job opportunities with several organizations, including Statistics Canada. He applied. The candidates who met the merit criteria were invited to an interview. Statistics Canada's selection board determined that the grievor did not meet the essential qualifications

for the position. The PSC advised him that his home department was responsible for identifying retraining needs and that there was no retraining as such during a WFA. The incumbent in a priority position had to possess the essential qualifications for the position.

[577] The grievor replied that he could acquire the qualifications in two years, and he requested training.

[578] He filed a grievance against the employer, Statistics Canada, to challenge the incorrect interpretation and misapplication of Part IV, on retraining, of the WFA appendix, which infringed his collective agreement rights.

[579] Relying on clause 4.3.1 of the WFA appendix, which states that someone laid off is eligible for retraining provided that it is required to facilitate the person's **appointment to a given vacant position**, the adjudicator determined that both the home department and the appointing department failed their obligation, as they did not examine retraining opportunities for the grievor, and that they failed their obligations under clause 4.1.2. That decision turns specifically on clause 4.3.1, which deals expressly with laid-off employees. In that case, no evidence was adduced that the home department explored all reasonable possibilities to allow the grievor to continue his public service career, as he was laid off.

[580] These cases illustrate differing fact situations in which employers failed to provide retraining and to assess qualifications, contrary to Part IV of the WFA appendix. In the next section I will consider the applicability if any of these decisions to the facts of this case.

XI. The application of the retraining obligations in the WFA appendix to the facts of this case

[581] Clause 1.1.16 of the WFA appendix provides as follows:

1.1.16 *Appointment of surplus employees to alternative positions with or without retraining shall normally be at a level or equivalent to that previously held by the employee, but this does not preclude appointment to a lower level. Departments or organizations shall avoid*	***1.1.16*** *La nomination d'employé-e-s excédentaires à d'autres postes, avec ou sans recyclage, se fait normalement à un niveau équivalant à celui qu'ils ou elles occupaient au moment où ils ou elles ont été déclarés excédentaires, mais elle peut aussi se faire à un niveau moins élevé. Les ministères*

appointment to a lower level except where all other avenues have been exhausted.	*ou les organisations évitent de nommer les employé-e-s excédentaires à un niveau inférieur, sauf s'ils ont épuisé toutes les autres possibilités.*

[582] The WFA appendix has separate clauses dealing with surplus and laid-off employees that state as follows:

…	[…]
4.2.1 *A surplus employee is eligible for retraining, provided that:*	***4.2.1*** *L'employé-e excédentaire a droit au recyclage, pourvu :*
(a) retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies and occupations or locations where there is a shortage of qualified candidates;	*a) que cela facilite sa nomination à un poste vacant donné ou lui permette de se qualifier pour des vacances prévues dans des emplois ou endroits où il y a pénurie de compétences;*
and	*et*
(b) there are no other available priority persons who qualify for the position.	*b) qu'aucun autre bénéficiaire de priorité n'ait les qualifications requises pour le poste.*
…	[…]

[583] Clause 4.2.7 of the WFA appendix grants additional benefits to surplus employees as follows:

4.2.7 *In addition to all other rights and benefits granted pursuant to this section, an employee who is guaranteed a reasonable job offer is also guaranteed, subject to the employee's willingness to relocate, training to prepare the surplus employee for appointment to a position pursuant to 4.1.1 ….*	***4.2.7*** *Outre les autres droits et avantages accordés en vertu de la présente section, l'employé-e excédentaire qui se voit garantir une offre d'emploi raisonnable et qui consent à être réinstallé se voit garantir le droit de suivre un programme de formation pour se préparer en vue d'une nomination à un poste en vertu de l'alinéa 4.1.1* […]

[584] For the following reasons the facts in this case are distinguishable from the facts in the decisions discussed. In Choiniere the Board found that the employer had

violated the WFA in not providing retraining for a very specific position that was available to her. The facts in this case are not at all the same as the Grievor's claim consists of a broad claim for retraining without any specific position identified.

[585] The decision in *Nesic* is not helpful as in that case the employer failed to provide a GRJO for specific positions at a lower level.

[586] Nor is the decision in *Chenard* applicable as it dealt with a claim that the Grievor was eligible for retraining to facilitate his eligibility for specific vacant position.

[587] The evidence that I have recited does not indicate that the grievor required retraining to facilitate an appointment to a specific vacant position or to have enabled him to qualify for anticipated vacancies or locations with shortages of qualified candidates.

[588] In addition, clause 1.1.6 does not contemplate training for surplus employees, to facilitate their appointments to positions at higher levels than the ones they held previously.

[589] The WFA does not provide for appointments that would result in promotions. Surplus employees can self refer and compete for such appointments however they are not entitled to priority status to access them.

[590] The employer determined that the grievor's GRJO was at the Depot and at the same level as his then-current GS-FOS-02 position. Were training required, he would have been entitled to it had he accepted the position.

[591] Unlike the situations in those cases, the employer in this case took steps to ensure that the affected employees, including the grievor, were provided with acting opportunities, to enable them to learn new skills.

[592] On reviewing the evidence, it must be noted that as early as April 2011, Mr. Morlidge had already arranged for acting assignments for affected employees, including the grievor, to enable them to acquire new skills. The grievor was assigned the CR-04 acting assignment at Crime Stoppers then.

[593] Mr. Morlidge reached out to the print shop's manager on the grievor's behalf, to arrange job shadowing. The divisional information manager indicated that she was happy to discuss potential job opportunities and that interested employees should book an appointment with her and bring their résumés. The grievor did not follow up with the print shop.

[594] Mr. Morlidge approved the grievor's request for courses in communications and IT and in digital graphic design. The grievor stated that as the employer was not willing to guarantee him a job offer in those areas, he did not register for the courses.

[595] The grievor wrote to Mr. Morlidge in September 2011, to advise that he had completed courses and training in harassment awareness and security awareness and individualized instruction modules (an introduction to the judicial process, being a police witness in a judicial process, the *Charter*, Aboriginal and First Nations awareness, and TIP SOFT, and introduction to software. He advised that he was in the process of completing training with the CPIC and that he was scheduled the following week for PROS training. He completed both.

[596] The grievor testified that the only hands-on training he had was his acting CR-04 time with Crime Stoppers. He stated that training was impossible with the kitchen under full operation. When he returned from Crime Stoppers, only he and the chef provided the service, which at that time consisted of breakfast and lunch, including two dishes, and one was a hot meal. The grievor stated when the chef was absent, he acted for the chef.

[597] Mr. Morlidge referred to the grievor's training at Crime Stoppers. There is also the fact that he acted as a GS-FOS-07 and had administrative skills. Managers were aware that he had transferable skills. He should have qualified for CR-04 positions depending on whether he had self-referred. Retraining could have been done not at the CR-04 level but at his level. Mr. Morlidge had no specific knowledge about the positions that the grievor applied for; the result was that over three years, he did not secure a position. The question was whether he self-referred. He acknowledged that the transition was challenging. On a balance of probabilities, I am not persuaded that the employer contravened the retraining provisions of the WFA appendix.

A. Failure to provide a reasonable job offer, and applying an arbitrary rule

[598] The bargaining agent relied on clause 6.1.5 of the WFA appendix, which provides the following:

6.1.5 *If a reasonable job offer that does not require relocation is made at any time during the one hundred and twenty (120) day opting period and prior to the written acceptance of the transition support measure (TSM) or education allowance option, the employee is ineligible for the TSM, the pay in lieu of unfilled surplus period or the education allowance.*	***6.1.5*** *Si une offre d'emploi raisonnable qui ne requiert pas de réinstallation est faite au cours de la période de cent vingt (120) jours de réflexion et avant l'acceptation par écrit de la mesure de soutien à la transition (MST) ou de l'indemnité d'études, l'employé-e est inadmissible à ces options.*

[599] It submits that although that provision is specific to RJOs that do not require relocation, the necessary implication is that when the employer has an RJO, it must make the RJO during the opting period, which is consistent with the WFA appendix's overarching objective of continued federal public service employment.

[600] In this case, the employer applied an arbitrary rule with no support in the language of the WFA appendix that the RJO would not be provided until the grievor had selected Option A or had failed to select an option.

[601] The employer argued that the grievor knew early in the process in 2011 that the only equivalent position in the RCMP was at the Depot.

1. Discussion

[602] Part VI the WFA appendix is entitled "Options for employees". Clauses 6.1.1 to 6.1.5 and 6.3.1 provide as follows:

6.1.1 *Deputy heads will be expected to provide a guarantee of a reasonable job offer for those affected employees for whom they know or can predict that employment will be available. A deputy head who cannot provide such a guarantee shall provide his or her reasons in writing, if so requested by the employee.*	***6.1.1*** *Normalement, les administrateurs généraux garantiront une offre d'emploi raisonnable à un employé-e touché pour lequel ils savent qu'il existe ou ils peuvent prévoir une disponibilité d'emploi. L'administrateur général qui ne peut pas donner cette garantie indiquera ses raisons par écrit, à la*

Employees in receipt of this guarantee will not have access to the choice of options below.

demande de l'employé-e. L'employé-e qui reçoit une telle garantie ne se verra pas offrir le choix des options ci-dessous.

***6.1.2** Employees who are not in receipt of a guarantee of a reasonable job offer from their deputy head have one hundred and twenty (120) days to consider the three options below before a decision is required of them.*

***6.1.2** L'employé-e qui ne reçoit pas de garantie d'offre d'emploi raisonnable de l'administrateur général aura cent vingt (120) jours pour envisager les trois options mentionnées plus bas avant de devoir prendre une décision.*

***6.1.3** The opting employee must choose, in writing, one (1) of the three (3) options of section 6.3 of this Appendix within the one hundred and twenty (120) day window. The employee cannot change options once he or she has made a written choice.*

***6.1.3** L'employé-e optant doit présenter par écrit son choix de l'une des options énumérées à la section 6.3 du présent appendice pendant la période de cent vingt (120) jours de réflexion. L'employé-e ne peut changer d'option lorsqu'il ou elle a fait son choix par écrit.*

***6.1.4** 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 offer, at the end of the one hundred and twenty (120) day window.*

***6.1.4** Si l'employé-e n'a pas fait de choix à la fin de la période de réflexion de cent vingt (120) jours, il ou elle sera réputé avoir choisi l'option a), priorité d'employé-e excédentaire d'une durée de douze mois pour trouver une offre d'emploi raisonnable.*

***6.1.5** If a reasonable job offer that does not require relocation is made at any time during the one hundred and twenty (120) day opting period and prior to the written acceptance of the transition support measure (TSM) or education allowance option, the employee is ineligible for the TSM, the pay in lieu of unfulfilled surplus period or the education allowance.*

***6.1.5** Si une offre d'emploi raisonnable qui ne requiert pas de réinstallation est faite au cours de la période de cent vingt (120) jours de réflexion et avant l'acceptation par écrit de la mesure de soutien à la transition (MST) ou de l'indemnité d'études, l'employé-e est inadmissible à ces options.*

… […]

6.3 Options

6.3 Options

***6.3.1** Only opting employees who are not in receipt of the guarantee of a reasonable job offer from the*

***6.3.1** Seul l'employé-e optant qui ne reçoit pas une garantie d'offre d'emploi raisonnable de son*

deputy head will have access to the choice of options below:	*administrateur général aura le choix entre les options suivantes :*
(a)	*a)*
(i) Twelve (12)-month surplus priority in which to secure a reasonable job offer. It is time-limited. Should a reasonable job offer not be made within a period of twelve (12) months, the employee will be laid-off in accordance with the Public Service Employment Act. *Employees who choose or are deemed to have chosen this option are surplus employees.*	*(i) Une priorité d'employé-e excédentaire d'une durée de douze mois pour trouver une offre d'emploi raisonnable. Si une offre d'emploi raisonnable n'est pas faite au cours de ces douze (12) mois, l'employé-e sera mis en disponibilité conformément à la* Loi sur l'emploi dans la fonction publique. *L'employé-e qui exerce cette option ou qui est présumé l'exercer est excédentaire.*
(ii) At the request of the employee, this twelve (12) month surplus priority period shall be extended by the unused portion of the one hundred and twenty (120) day opting period referred to in 6.1.2 that remains ….	*(ii) À la demande de l'employé-e, ladite période de priorité d'excédentaire d'une durée de 12 mois sera prolongée à l'aide de la partie inutilisée de la période de cent vingt (120) jours mentionnée à l'alinéa 6.1.2 qui reste valide dès que l'employé-e a choisi par écrit l'option a).*
…	[…]

[603] As I read clause 6.1.5, if the employer offers an employee a RJO during the opting period, that does not require the employee to relocate, and before the employee accepts a transition support measure or an education allowance, the employee is ineligible for those options. I note that this provision does not obligate the employer to offer an RJO in these circumstances even if it has one.

[604] I fail to see how the necessary implication of this provision obligates the employer to offer an employee a RJO if it has one in situations where the employer does not require the employee to relocate. In my view, it would take express language in the WFA appendix to mandate that result. It is limited to circumstances in which the RJO does not require the employee to relocate.

[605] Based on the evidence, the bargaining agent local and the employer, given their understanding that the grievor did not want to relocate to Regina and that he was facing a layoff, for his benefit, sought to give him access to the transition support

measures. Although I have found that in the circumstances, the bargaining agent's conduct did not meet the strict conditions necessary for a finding of estoppel, nevertheless, at the local level, it was complicit in seeking the transition support measure. I find it difficult in the circumstances to find that the employer's conduct was arbitrary.

B. Unfair, Inequitable and Arbitrary Treatment

[606] Section 1.1.1 of the appendix provides as follows:

> ***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.***
>
> [Emphasis added]

[607] In *Choiniere* at paragraph 43 reference is made to clause 1.1 of the workforce appendix where it is stated: clause 1.1 states that in workforce adjustment situations, the employer is responsible for treating affected employees equitably. It follows that because the WFAA gives the employer's discretion, the Board has jurisdiction to determine if that discretion was exercised fairly and reasonably.

[608] The bargaining agent argues that it is clear that the employer gave undue preference to other employees who appeared to have lacked the educational qualifications of the Grievor while not taking steps to support the grievor's continued employment because the employer needed two employees to run the kitchen operation over the years as the employer had no vendor in place.

[609] The grievor was treated unfairly and unreasonably while not necessarily in bad faith. The employer was juggling the ongoing Food services operation while running into challenges with bringing a new vendor.

[610] The employer submitted that although the grievor testified that other employees got jobs without competing, during cross-examination he admitted that he did not know how they got jobs. In response to the contention that the plan was to keep the grievor in his position as long as possible, the document referring to the need to have two persons in place in the kitchen does not mention the grievor and any reference to the grievor is pure speculation. The documentation with respect to the

appointment of two FOS-02 employees in K division to clerical positions is silent about whether or not they self referred.

1. Discussion

[611] The bargaining agent contends that the employer acted unfairly by giving undue preference to other employees in appointing them to higher-level positions. I am not satisfied that the bargaining agent has met its onus on a balance of probabilities to establish that it is more likely than not that the employer gave undue preference to other employees. The only evidence in support of that theory is from the grievor who acknowledged that he did not know how the other employees got their jobs nor is there any evidence about whether or not these employees self-referred.

[612] Nor am I persuaded that there was a plan to keep the grievor in his position for as long as possible. The evidence indicates that over time the other GS-FOS-02 employees were able to find other positions and accordingly were not available to work in the kitchen. The Grievor not having found another position continued to work in the kitchen. During this period, he continued to be eligible for appointments on a priority basis and to self refer for higher-level positions.

[613] In other sections reference has been made with respect to the efforts made by the employer and in particular Mr. Morlidge to assist the grievor in finding another position. In all of the circumstances I am not satisfied that the grievor has met his burden in establishing on a balance of probabilities that the employer treated him inequitably or unfairly.

[614] Accordingly, I dismiss these grounds of the grievance.

XII. Did the grievor meet his WFA obligations by actively seeking alternative employment and information about entitlements and obligations and by providing timely information to his employer and the PSC to help him redeploy, and did he seriously consider the presented job opportunities?

[615] This issue was raised by the employer in support of its argument that the grievance should be dismissed on the basis that the Grievor failed to meet his WFA obligations.

A. The employer's submissions

[616] The employer referred to the WFA appendix and to the employee's obligations.

[617] In the June 30 email, Mr. Morlidge noted that the grievor was actively seeking alternative positions. However, Mr. Morlidge was not aware of any applications or files; nor was there any evidence that the grievor participated in interviews.

[618] Counsel for the employer referred to HR's email that advised of a CR-04 administrative support services clerk inventory dated April 13, 2015, and the fact that the grievor waited more than two months to advise Mr. Morlidge that the emailed link did not work. Counsel speculated that that might have cost the grievor the opportunity to remain in the federal government. There is minimal evidence that he took any steps to self-refer to other employment.

[619] Counsel for the employer referred to Mr. Morlidge's email of June 1, 2011, in which he advised that Ms. M.R. had taken over HR for food services and that the employees were to contact her with any questions about their entitlements. The grievor did not email her or ask her any questions. This is a common thread. In the initial surplus letter, he was advised to contact HR if he had any questions. He did not contact HR.

[620] Counsel for the employer referred to the revised surplus letter dated December 1, 2011, which again contained another invitation to contact HR. The grievor did not contact HR, even though that letter advised him that the GRJO would be located in Regina.

[621] Counsel for the employer referred to the letter dated March 27, 2015, which advised the grievor that the commissioner could no longer provide him with a GRJO, so he was to be given one of the three options provided in the WFA appendix.

[622] Neither the grievor nor the bargaining agent challenged the switch from the GRJO to the options until the end of July 2015. No meeting requests were made during that time frame.

[623] Counsel for the employer referred to Mr. Morlidge's email to the grievor and another employee dated June 10, 2015, in which Mr. Morlidge noted that he had not received a meeting request as a follow-up to the options letter, so he assumed that the grievor had no questions. He again repeated that the grievor was welcome to message him with any questions.

[624] Counsel for the employer referred to Mr. Morlidge's email to HR dated July 13 in which he noted that the grievor did not see any benefit to a meeting.

[625] An email from Mr. Morlidge to the grievor was referenced that expressed the concern that the grievor might have misunderstood some parts of Option C and that proposed a meeting with HR to ensure a common understanding. The grievor did not respond.

[626] The employer attempted to provide timely information. However, the grievor did not meet his obligations under the WFA appendix.

[627] An email that the print shop manager sent to Mr. Morlidge, dated May 25, 2011, was referred to. It was about the grievor's interest in the print shop. The manager expressed her openness to discussing the possibility of a four-month term with the grievor and invited him to discuss the matter with her and to provide a résumé or come see her. The grievor did not take the opportunity.

[628] An email from P.S. to the grievor dated July 16, 2015, was referenced. It stated that the employer did not have a full-time position available and that nothing was forthcoming, but if he were in limbo after July 27, he would provide meaningful work until his circumstances were finalized. The grievor stated that he could not take that opportunity, as his security clearance was no longer valid.

[629] The grievor refused two full-time indeterminate and two-term positions in Wainwright. In conclusion, he did not meet his obligations under the WFA appendix, clauses 1.4.2(a), (b), and (e).

[630] Counsel referred to *Hobbs v. Treasury Board (Indian and Northern Affairs Canada)*, 1992 CarswellNat 1618.

[631] The grievor in that case grieved several violations of the WFA policy and in particular, that certain conditions precedent to the layoff were not fulfilled. It was alleged that the employer failed to meet its departmental responsibilities in the WFA policy and that in particular, the grievor had not been offered retraining; nor was he given individual counselling or individual sessions following general counselling meetings.

[632] The employer argued that it met its obligations by holding information and counselling sessions and that had the grievor in that case been interested, he could have availed himself of the personal counselling services that were offered. In particular, it was alleged that he was intransigent in that he was not mobile and would not accept employment outside a particular area.

[633] The adjudicator dismissed the grievance and reasoned at paragraph 61 and following of the decision as follows:

> *61 Although the home department (INAC in this case), the Public Service Commission and the Treasury Board all have important roles and responsibilities under the Work Force Adjustment Policy, employees must also play a significant part in the process.*
>
> *62 Section 5.4 of the Work Force Adjustment Policy … clearly sets out what those obligations are.*
>
> > *5.4 Employees who are directly affected by WORK FORCE ADJUSTMENT situations are responsible for:*
> >
> > *5.4.1 actively seeking alternative employment in cooperation with their departments and the PSC…;*
> >
> > *5.4.2 seeking information about their entitlements and obligations;*
> >
> > *5.4.3 providing timely information to the HOME DEPARTMENT and to the PSC to assist them in their REDEPLOYMENT activities (including curriculum vitae or résumés); and*
> >
> > …
> >
> > *5.4.5 seriously considering job opportunities presented to them (referrals within the HOME DEPARTMENT, referrals from the PSC and job offers made by departments), including RETRAINING and RELOCATION possibilities…*
>
> *63 For various reasons … the grievor in this case was at all material times unwilling to accept employment outside the Shellbrook/Debden area. This was made abundantly clear in various documents as well as during conversations Mr. Hobbs had with Helen Oko and Donald Behrns of the Public Service Commission.*
>
> …
>
> *65 Ronald Hobbs was so adamant in his views on mobility and acceptable employment that he gave his Department and the Public Service Commission no room to play with. Their actions in this case meet the obligations imposed upon them by the Work Force Adjustment Policy.*
>
> …

[634] That case provides an analogous type of analysis. The grievor in this case did not meet his obligations. The WFA policy is not a one-sided appendix.

[635] In *Sampson v. Treasury Board (Indian and Northern Affairs Canada)*, [1996] C.P.S.S.R.B. No. 34 (QL), the grievor in that case alleged that he had been laid off without first receiving an RJO, in contravention of the directive. The directive at that time provided that an employee who was both mobile and trainable would not be laid off without receiving an RJO. The grievor restricted his mobility geographically and would not consider deployment opportunities outside his preferred area. The adjudicator determined that the grievor had so restricted his mobility for deployment purposes that it became impossible to guarantee an RJO.

[636] The adjudicator noted in part at paragraph 49 as follows:

> *49 The grievor was well aware of their concerns. If in fact Mr. Sampson was serious about extending his mobility to more reasonable limits as he pretended to be during his testimony, he should have clearly said so. Quite the contrary, at every turn, he would repeat his credo: I am mobile but for now I won't look at anything outside Moncton, Sackville or Amherst. Mr. Sampson was the author of his own misfortune.…*

[637] A series of documents demonstrated that the grievor was never willing to move to Regina. That put the employer in a corner and limited what it could do. He is also the author of his own misfortune.

[638] Counsel for the employer referred to Mr. Morlidge's email to M.A. dated June 17, 2011, and titled, "Availability of Alternate Positions for Food Services Staff", in which he stated, in part, as follows:

> …
>
> *Jan at Depot is interested in our kitchen helpers - GS-02. None of the staff are interested in relocating to Regina and we would be on the hook for about $30k/person for relocation. But we are unlikely to find other positions at level and I don't think we can rely on the staff getting appointed to higher-level positions to meet our obligations. If other opportunities arise, we will pursue them, of course.*
>
> …

[639] This is the first time that the employer mentioned in writing that none of the kitchen helpers, including the grievor, were interested in relocating to Regina.

[640] He also referred to the evidence that the grievor did not make any inquiries to HR.

[641] He referred to the notes of the teleconference held on December 14, 2011, with Mr. Morlidge and HR, which outlined the original plan to close the kitchen, the fact that the employees had been declared surplus in July 2011, and the fact that they had been guaranteed a GRJO. In the memo, Mr. Morlidge stated, "GS-FOS-02 (John Z) All of the above have verbally indicated they would refuse a GRJO for Regina food services."

[642] Counsel for the employer referred to an email chain between Mr. Morlidge and HR dated May 1, 2012, in which he noted that the bargaining agent stated with broad strokes that GRJOs must be in the headquarters area and asked for confirmation that the Depot positions would qualify as RJOs. M.E. responded that the bargaining agent's position was not accurate.

[643] Counsel referred to an email chain between Mr. Morlidge and M.E. in HR dated September 14, 2012. Mr. Morlidge advised her that he had a conversation with DF the local president of the Union of Solicitor General Employees (USGE), in which he updated her on the kitchen closure status. He advised her that DF reiterated the idea that a job offer was not reasonable if it required relocation against the employee's wishes and asked for clarification. He stated that if DF's view was correct, he would have to review their ability to guarantee a GRJO.

[644] M.E. replied that she did not agree with DF's statements.

[645] The grievor was asked if he would consider moving to Wainwright, which is some two hours from Edmonton. He testified that all the positions to which he was referred there were terms. Clearly, this was not the case.

[646] The record of the grievor's referrals and their locations states: Wainwright (term), Wainwright (indeterminate) Wainwright (indeterminate) Alberta (Northern) term, Alberta (Northern) term.

[647] The grievor consistently was averse to moving to Regina. While he indicated that he wanted to visit Regina, management wanted a commitment from him.

[648] The bargaining agent suggested that the position in Regina was a fabrication. A series of emails sent in July 2015 confirmed the employer's position that management

was ready to provide the grievor with an actual job offer for a GS-FOS-02 position in Regina, with a position number.

[649] An email from M.A. to Mr. Morlidge dated July 14, 2015, confirmed that management would be able to fund the grievor's relocation if he chose the Regina option.

[650] The grievor said that the employer was aware of his situation in Edmonton, in that he was taking care of people and family and that he preferred not to go to Regina.

[651] Counsel referred to an email dated March 12, 2015, which Mr. Morlidge sent to the grievor in response to his email about his then-present position with the Food Services operation and his options. Mr. Morlidge replied in part with this: "You have advised you do not wish to relocate, so we are working on changing to giving you the Options described in the section 6 of the WFA Appendix to the Collective Agreement."

B. The bargaining agent's reply argument

[652] On the question of whether the grievor met his obligations under the WFA appendix, throughout its argument, the employer did not provide the full context of his efforts to find another position. In direct examination, he stated as follows:

> *I start spreading my resume in RCMP headquarters, one of the first offices was the mailing room and printing shop. I talked to the manager in the printing shop before we got the priority option status. I followed up on my interest with that department while I was working with the K division. Outside self-referred to the other departments, like record management. I asked the manager to get some experience and after 8 hours of regular shift in food service, I work there as a volunteer to get experience in case any position options. Unfortunately that manager retired, but my resume was all the time at that departments.*
>
> *I sent my resume to the other department in Edmonton, including aboriginal health insurance programs. I talked with other departments in RCMP including training section with a few managers the last one was with staff sergeant Jeff Mercier, and everyone promised they will keep in mind, and they will get me a job but nothing really happened. I tried to find job not just in public service but in other organizations. Q: What about applying for positions, did you actually submit applications? A: Yes, I put online? Q: What happened with those applications? A: I didn't get any response on it. I got phone calls offering me temporary job about food services at an army base a few hundred km from Edmonton.*

[*Sic* throughout]

[653] Also, in direct examination, he explained that he directly contacted the print shop and that he was "always asking for opportunities to work there". Mr. Morlidge confirmed that the print shop's manager had complained that the grievor was "pestering" them about a job. As Mr. Morlidge stated in direct examination, "The grievor seemed to be the person that was most frequent in these things."

[654] Counsel stated that she understood that the employer would argue that that job offer was not provided because the employees working in the Food Services operation at K division headquarters had verbally expressed a desire to not move to Regina. First, the grievor gave clear and detailed testimony that while he sought more information about the position in Regina, in an effort to understand it before committing to it, and that he hoped that he would be able to secure a job in Edmonton, due to personal family concerns, he did not tell the employer that he would not go to Regina. Rather, he testified as follows: "If I would have had to go to Regina, I would."

[655] The fact that he was not willing to move to distant Alberta locations for three-month term positions when he had an ongoing indeterminate position with surplus status and a GRJO was common sense and was not an indication that he refused to be mobile.

[656] To the contrary, the fact that the grievor wanted more information about the position and sought an opportunity to take an exploratory trip to Regina, a fact that Mr. Morlidge confirmed in evidence, was confirmation of his willingness to move if that was where the position was to be. Recall that the grievor asked to be given an opportunity to travel to Regina, to check out the GS-FOS-02 position there, which was denied.

[657] The bargaining agent did not argue that the Regina job was a fabrication; rather, it and the grievor were not given the information about the position number, start date, etc. That contributed to a lack of trust and discomfort for the grievor.

1. Discussion

[658] Clause 1.4 of the WFA appendix deals with the employee's obligations. Clauses 1.4.2 and 1.4.3 state as follows:

> ***1.4.2*** *Employees who are directly affected by workforce adjustment situations and who receive a guarantee of a reasonable job offer or opt, or are deemed to have opted, for Option (a) of Part VI of this appendix are responsible for:*
>
> *a. actively seeking alternative employment in cooperation with their departments or organizations and the PSC, unless they have advised the department or organization and the PSC, in writing, that they are not available for appointment;*
>
> *b. seeking information about their entitlements and obligations;*
>
> *c. providing timely information (including curricula vitae or resumes [sic]) to the home department or organization and to the PSC to assist them in their appointment activities;*
>
> *d. ensuring that they can be easily contacted by the PSC and appointing departments or organizations, and attending appointments related to referrals;*
>
> *e. seriously considering job opportunities presented to them (referrals within the home department or organization, referrals from the PSC, and job offers made by departments or organizations), including retraining and relocation possibilities, specified period appointments and lower- level appointments.*
>
> ***1.4.3*** *Opting employees are responsible for:*
>
> *a. considering the options in Part VI of this Appendix;*
>
> *b. communicating their choice of options, in writing, to their managers no later than one hundred and twenty (120) days after being declared opting.*

[659] In *Hobbs*, the Board considered grievances relating to violations of the WFA policy, which alleged that the grievor in that case had not been treated within that policy's intent.

[660] In the result, having reviewed the obligations of employees under the policy, the Board concluded that the grievor was so adamant in his views on mobility and acceptable employment that he gave the employer and the PSC no room to work with. As a consequence, their actions met the obligations that the policy imposed on them.

[661] In my view, this case turns on its rather unique and extreme facts.

[662] In *Sampson*, the grievor in that case alleged that he was laid off without first receiving an RJO. After being declared surplus, he advised his department that it had to find him a job within 16 km of his headquarters area. He then advised that he hoped to receive an RJO within his headquarters area, Amherst, Nova Scotia, but that

Moncton and Sackville, New Brunswick, would also be good. He was mobile, but he requested that over the next few months, the employer do everything within its power to firstly place him internally, secondly within the headquarters area, and thirdly to the Sackville or Moncton areas. He was advised that there was no 16-km rule and there was a need for employees to be mobile and to be ready to retrain. He was advised that there were few job opportunities in the area to which he had restricted his mobility. He was then advised of three vacant positions in the National Capital Region. He was asked if he wanted to refer to them. He reminded the employer of his preferred area.

[663] His name was given to what is now the Canada Revenue Agency for possible employment at the tax centre. When he was advised that managers might contact him, he advised that he did not feel comfortable being added to a note of a provincial deployment inventory list. He advised that his children were in French immersion and that he did not want to move his family at that time.

[664] He later advised the PSC that he would be mobile in Nova Scotia and New Brunswick and that his preferences were still Moncton, Amherst, and Sackville.

[665] He was then laid off. He was advised that the department and the PSC had been unsuccessful in their efforts to find employment suitable for him in his preferred geographic location. When it denied his grievance, the Board stated that for all intents and purposes, the grievor had so restricted his mobility for deployment purposes that it became impossible to guarantee him an RJO.

2. Application to the facts of this case

[666] Surplus employees' responsibilities under the directive are easy enough to state. Namely, they are to actively seek alternative employment, provide timely information, and seriously consider all job opportunities presented to them. Opting employees are required to consider the options and communicate their choice of option in writing.

[667] The facts in this case are not as straightforward and are more complex than those described in *Hobbs* or *Sampson*.

[668] Did the grievor, after he was declared surplus, actively seek alternative employment, provide timely information, and seriously consider all the job opportunities that were presented to him?

[669] The grievor acted in the CR-04 Crime Stoppers position from August 15 to December 9, 2011, to gain new skills and experience.

[670] He spoke with the print shop about potential job opportunities. He self-referred to other departments. He spoke with the RCMP's records manager and requested an opportunity to gain experience.

[671] The grievor acted for periods as a GS-FOS-07 when the chef was on leave.

[672] He applied online. He received a telephone call offering him a position at an army base some 300 km from Edmonton.

[673] He was accepted into staffing pools for CR-04 positions at Service Canada and the Immigration and Refugee Board.

[674] As noted earlier the grievor completed several courses and training.

[675] He received an email about a possible CR-04 position with an organization dealing with Missing Women. He looked at the opportunity and discussed it with others, to determine if he was a good fit. The position required the employee to put documents together for court cases that included a large amount of graphic material. The grievor stated that he would not be able to do the position's duties; it was too much. He completed training in effective listening and questioning techniques.

[676] In December 2011, he was advised that his GRJO would be located at the Depot and that he would continue to be in surplus status until he was presented with the GRJO. He asked the chef about details of jobs in Regina. He sought permission to travel to and check out Regina. He did not receive it. He did not tell his employer that he was not interested in going to Regina; however, he was interested in staying in Edmonton.

[677] He completed PROS and CPIC training courses. The grievor attended and completed a "Competency/Personal Assessment" with the PSC's Staffing and Assessment Services.

[678] The grievor promoted himself for positions in the building. He considered contract work and developing his own business. He tried to get a business going with an Aboriginal department. He is a photographer and tried to pursue a business opportunity as one with a veterans association.

[679] Shortly before the Food Services operation shut down, he considered contracting to provide the service. He filed an expression of interest. When he formally filed it on June 11, 2014, the employer did not discourage him from applying to take over the operation.

[680] The PSC's Priority Administration Policy Branch provided a listing of locations of positions to which the grievor was referred after being declared surplus, namely, a term and two indeterminate positions in Wainwright and two-term positions in northern Alberta.

[681] When asked about those offers, the grievor stated that he understood that the positions were three-month contracts. He was looking for full-time positions. In his view, they were not reasonable offers. He also stated that when the referrals were made, he thought that there was more opportunity in Edmonton, and he was working on a proposal to take over the Food Services Operation. For those reasons, he was not willing to move to Wainwright.

[682] On March 27, 2015, the grievor was advised that the employer could no longer provide a GRJO and that he had 120 days to consider and decide from the options in the WFA appendix.

[683] It is not clear what role the grievor played in the events that led to the commissioner revoking the GRJO. Both the employer and the bargaining agent local were of the view that he did not wish to relocate to Regina and petitioned the commissioner to grant him the options.

[684] I am persuaded that on a balance of probabilities, it is more likely than not that the grievor met his obligations to actively seek alternate employment, provide timely information, and seriously consider all the job opportunities that were presented to him. But he did turn down the positions offered to him in Wainwright when he was actively pursuing a proposal to take over the Food Services operation. The employer agreed that when he expressed his interest, it did not discourage him from applying to take over the program. In my view, this explanation tips the balance in his favour. In addition, I cannot ignore the fact that both the bargaining agent and the employer at the local level, by seeking to revoke the GRJO and securing it, relieved him of his obligations as a surplus employee who had been offered a GRJ0 under the WFA appendix.

[685] After that, the grievor was an opting employee. As such, he was obligated to seriously consider the options presented to him and to communicate his choice of options to the employer in writing and in a timely way.

[686] The evidence is clear that the grievor did so.

XIII. Conclusion

[687] I find that the employer did not meet its obligations under the WFA appendix to provide the grievor with a GRJO.

[688] I conclude that it was not open to the employer, under the collective agreement and the WFA appendix, to switch the grievor from being a surplus employee with a GRJO to being an opting employee.

[689] I conclude that given the collective agreement wording that sets out a comprehensive detailed process by the parties to collective bargaining, the employer was not authorized under its residual managerial rights to switch the grievor from being a surplus employee with a GRJO to being an opting employee.

[690] I conclude that the strict requirements of the doctrine of estoppel have not been satisfied and that the grievor was not estopped from arguing that the collective agreement was breached based on the bargaining agent's unproven agreement at its national level to switch him from having a GRJO to being an opting employee.

[691] I conclude that the employer met its obligations under the WFA appendix to maximize employment opportunities for the grievor as an indeterminate employee affected by a WFA situation.

[692] I conclude that the grievor met his obligations under the WFA appendix by actively seeking alternative employment, seeking information about entitlements and obligations, and providing timely information to his department and to the PSC to help him redeploy and that he seriously considered the job opportunities that were presented to him. As an opting employee, he seriously considered the options that were presented to him and communicated his choice of options to the employer in writing and in a timely way.

[693] As I stated at the outset of my decision, my conclusions have not been arrived at easily and free from broader concerns.

[694] First, I have noted that while the grievance itself is broadly worded, the parties agreed to frame the issues before me in much narrower and far more specific terms. As outlined by the parties, they agree that had the employer carried out its offer of the GRJO at the Regina depot, it would have met the requirements of the WFA. As they agreed that no formal offer which met the WFA requirements was made, they also agreed to focus their arguments on the four issues outlined above, which issues only arise because of the failure of the employer to formally offer the Grievor the GRJO they had available.

[695] This leads me to my second observation regarding the very particular and unusual facts present in this case. I am aware of the apparent unfairness of finding that the employer violated the collective agreement despite the fact that the evidence discloses that it acted in good faith throughout and indeed only acted as it did on the understanding that it was acting in accordance with the grievor's own wishes. While the evidence regarding the grievor's actual wishes was not clear, it was clear that the employer took the decisions it did in response to what it understood to be the grievor's desires.

[696] Thirdly, I am mindful of the impact which this case could have throughout the public service. While this case only concerns the wording of the GS collective agreement, I am aware that WFA language has been included in other collective agreements represented by other bargaining agents, or that other bargaining agents within the public service follow the WFA directive which has been codeveloped by the NJC. This is not to say that other bargaining agents had any right to intervene in this case, but merely to acknowledge that this case could have wide-ranging impacts. Despite the importance of this case and the serious issue raised, it concerns me that the wider implications of this decision were not argued before me and that no negotiating history or evidence of past practice was submitted.

[697] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

XIV. Order

[698] The grievance is allowed

[699] I remit the grievance to the parties to fashion an appropriate remedy.

[700] I will remain seized for a period of 60 days from the date of this decision on the remedy issue in the event that the parties are not able to resolve it.

April 14, 2025.

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