Date: 20251009

File: 566-02-48033

Citation: 2025 FPSLREB 134

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

LINDA DANIELSEN

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

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

In the matter of an individual grievance referred to adjudication

Before: Guy Grégoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Trevor Ray and Jeff Smorang, counsel

For the Employer: Stephanie White, counsel

Heard by videoconference,
June 19 and 20, 2025.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] In 2015, Linda Danielsen's position ("the grievor") as a kitchen supervisor, classified at the FOS-06 group and level, was declared surplus by the Correctional Service of Canada (CSC or "the employer"). The *Workforce Adjustment Directive* (WFA) helped her find another CSC position, as a financial specialist, classified at the CR-05 group and level. The new position was at a lower pay rate than was her original one. The WFA provided that her higher salary would be protected or "red circled", so that she would retain her original pay rate in the lower-paid position.

[2] The FOS-06 position was governed by the Operational Services (SV) collective agreement (expired August 4, 2014), and the new CR-05 position was governed by the Program and Administrative Services (PA) collective agreement (expired June 20, 2014). Both agreements were between the Treasury Board and the Public Service Alliance of Canada (PSAC or "the bargaining agent").

[3] The source of the grievance arose when the grievor transitioned from one collective agreement to the other when she changed positions. The first collective agreement required her to work 40 hours per week to retain her full-time (FT) employment status, while the second one required working only 37.5 hours per week. Those two conflicting requirements led to the unexpected consequences that gave rise to this grievance.

[4] For the reasons that follow, I allow the grievance and order the corrective measures identified in my conclusion.

[5] Counsel for the employer raised two preliminary objections related to the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board") to hear this grievance.

[6] The first objection alleged that I lack jurisdiction to determine this grievance as it relates to a memorandum of understanding (MOU) between an employer and an employee and was not related to the application of the collective agreement.

[7] The second was an objection under *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.). In argument, the grievor claimed that articles 25 and 28 of the

SV collective agreement, related to the change to working hours, were contravened. The employer objected to her raising this argument at the hearing, as it had not been addressed in the grievance process.

[8] For the reasons that follow, the first objection is denied, and the second one is allowed in part, but it has no bearing on the grievance's outcome.

II. Summary of the evidence

[9] The parties concurred that the material facts of this case are not in dispute. The grievor worked FT from 2009 to 2015 in the FOS-06 position until it was declared surplus. Without employment interruption with the employer, she began her new FT CR-05 position on November 2, 2015.

[10] On November 16, 2015, 2 weeks after she joined her new team, her manager had a discussion with her about reducing her workweek hours to 37.5 to match her teammates' hours; they were governed by the PA collective agreement. She agreed and worked that workweek until 2022. At that time, while in a pension-training class, she found out that by working 37.5 hours per week, she was considered a part-time (PT) employee and that that change in status, from FT to PT, negatively affected her benefit entitlements and would eventually also affect her retirement benefits.

A. For the grievor

[11] The grievor testified that under the SV collective agreement, she was paid an hourly wage for 40 hours per week. Beyond her weekly pay, she also received a weekend premium of $2 per hour and inmate-training pay of 7% of her salary, which she stated was not an allowance but part of her regular pay. Also, she stated that all employees within the institution in which she worked were paid $1000 per year (which was later increased to $2000), including the CR-05s.

[12] She testified that she worked six years in her FOS-06 position, including much overtime, and that she made regular pension payments as a FT employee.

[13] She testified that before she moved to the CR-05 position, she briefly worked FT at the same employer's CORCAN operation, still under the SV collective agreement. On October 22, 2015, she received an offer letter for a "full-time indeterminate appointment" effective November 2, 2015. That was the CR-05 position. Her proposed manager, Laura Lysager, Senior Financial Analyst, FI-02, approached her, confirmed

that her salary would be red circled, and stated that she would make the same amount per hour as she had in the kitchen.

[14] The grievor testified that the work was discussed but that working 40 or 37.5 hours per week was not discussed. She and her manager worked in the same location for 37.5 hours per week. She testified that from her first day in the CR-05 position to November 14, 2021, she worked 37.5 hours per week, and that the difference in work hours, from 40 to 37.5, was never discussed.

[15] The grievor testified that she never knew that there was a difference between the SV and PA collective agreements and that she always believed that she worked FT. She continued to work 37.5 hours per week until 2023 and 2024, when she found out about her PT status change. She then increased her weekly work hours to 40, so that she could be considered FT and not lose any more of her benefits.

[16] She testified that she worked with 3 other CR-05s who worked 37.5 hours per week and were considered FT and that even though she worked the same number of hours, she was considered PT.

[17] The grievor testified that her job offer came from her supervisor and that she did not discuss it with the warden. She understood that her pay would decrease because she was to work 37.5 hours per week instead of the 40 hours she worked before. She stated that she did not understand that other impacts would occur since she worked the same hours as everyone else. She stated that had she known the impact to her pension, she would not have accepted the work-schedule change. She testified that her take-home pay went down due to the change.

[18] The grievor testified that the November 16, 2015, letter that materialized the change to her work hours stated that it was done at her request, but in fact, it was not; it was at her supervisor's request. She testified that all that was understood from the letter was a decrease of 2.5 hours per week of salary, nothing more. She testified that the letter's second paragraph was not explained to her. It read, "Acceptance of this change in hours also constitutes acceptance of the changes in relation to the applicable Terms and Conditions of Employment." There was no mention that she would lose her FT status. She testified that there was no discussion with the warden.

[19] Her schedule became 8 a.m. to 4 p.m. every day, like all others in the office with FT status. On November 25, 2015, the grievor signed a document entitled, "Part time Work Schedule", which no one else in the unit signed. After that, she worked 37.5 hours per week. That PT schedule remained the same throughout the years; it never changed.

[20] She testified that in 2022, she took a pension-related seminar. She had never thought about her FT or PT status and believed that she was FT. But she learned the impact of the different status. She testified that she spoke with her new supervisor, who told her that she would look into it and have it corrected. It was believed that it was a slip of a finger that changed her to PT instead of FT.

[21] She testified that she never consulted the pension system but that because of the change, she would be eligible for only 93% of what she would receive had she been FT. She stated that the status change also created an overpayment that the employer did not realize occurred until this grievance was filed. It is the Labour Relations (LR) branch that discovered it.

[22] In 2017, after the grievor returned to work from an absence, her inmate-training allocation was removed. She grieved it and received it retroactively. She testified that LR looked into it and found she was PT and not FT. It then assessed an overpayment of $18 000, which originated from vacation and sick leave credits and led to credited statutory holidays being recovered.

[23] The grievor testified that she spoke with Maureen Quintal, Assistant Warden (AW), with whom she had many discussions and who read the collective agreement as she did. She told Ms. Quintal that 37.5 hours per week constituted FT work. Ms. Quintal believed that it was wrong and that it should be corrected. However, Kevin Fowler, Deputy Warden (DW), who answered the grievance at the second level, stated that it was in LR's hands.

[24] In cross-examination, the grievor admitted to not having read the WFA and that she had no direct awareness of it. She chose the option of keeping her employment and never sought more information about it.

[25] Counsel for the employer referred the grievor to her October 22, 2015, offer letter. The grievor understood that her FOS-06 salary would be protected. She stated

that the letter did not indicate that she would be governed by a different collective agreement and did not state the collective agreement that would govern her from then on. She stated that work hours were not mentioned and that she did not read Appendix M of the SV collective agreement, entitled, "Memorandum of Understanding Salary Protection - Red Circling".

[26] The grievor testified that she did not read the *Directive on Terms and Conditions of Employment* ("the Directive"). She confirmed that she did not consult her bargaining agent, PSAC, that she did not know that she had to, and that it had been available for consultation. She further confirmed that she took no steps to clarify the implications of her offer letter.

[27] In reference to the November 16, 2015, letter about the reduction to her work hours, she stated that she did not know which collective agreement applied to her. She stated that she did not understand the meaning of the letter's second paragraph. The only discussion was about the reduction to her hours.

[28] The grievor confirmed that she was given time to consult PSAC or her family. She stated that she agreed to the reduction to her hours just to finish at the same time as the other CR-05s in the unit. From the first paragraph of the November letter, she understood only that her salary would be reduced, not that it would affect the rest of her benefits.

[29] The grievor was referred to her grievance form, on which she defined her salary as a rate per hour plus some other benefits. She admitted that when she accepted the reduction to her work hours, she also accepted a reduction to her pay and agreed that not working means not getting paid.

[30] In reference to the PT work schedule, she stated that it did not raise any concern, as she thought that she had to sign it to retain her red-circled salary. She stated that her red-circled salary differentiated her from the other CR-05s in the unit who she believed were in the same bargaining unit as she was. She acknowledged that PSAC had been available and that it could have clarified the documents that she received.

[31] She stated that the overpayment meant that her biweekly pay was garnished, due to the statutory and designated holidays that she had been paid for. As a PT employee, she was not to be paid for them.

B. For the employer

[32] The employer called Ms. Lysager, from Saskatoon, Saskatchewan. She was the grievor's supervisor during the relevant period, 2015 to 2019, as the finance chief.

[33] She testified that Human Resources (HR) drafted the offer letter, and that the warden signed it. She stated that at first, she did not know which collective agreement would apply to the grievor, but she then believed that it should be the SV and not the PA collective agreement. She testified that she did not discuss with the grievor the collective agreement that would apply; they discussed only the job duties. She stated that the grievor expressed no concern or lack of clarity about the offer letter or the expected work hours. She testified that LR reached out to her in the context of the WFA.

[34] In reference to the reduction to the grievor's work hours set out in the November 16, 2015, letter, she stated that her supervisor brought to her attention that the grievor was supposed to work 40 hours per week. She stated that HR drafted the letter, as it typically drafts them. She testified that her general discussion with the grievor was about the reduction to her work hours. She stated that in the past, others had asked for their hours to be reduced. She testified that she presented options to the grievor to consult PSAC because the decision would impact her pay and maybe "other things" not specifically known. She did not know the impact of becoming a PT employee. She stated that she believed that the letter's wording was standard, as was that of the offer letter. She stated that if the grievor had questions, she should have asked them, and that the employer did not try to mislead her.

[35] She testified that the PT work schedule specifies the work hours when someone becomes PT, and she believed that the grievor did not have any issues with that schedule.

[36] In cross-examination, Ms. Lysager stated that she was reasonably informed about the WFA. She confirmed that the grievor was not reclassified but rather was appointed to the CR-05 position while still being paid her FOS-06 salary. She confirmed

that her employees were under the PA collective agreement. She stated that when the grievor joined her unit, whether or not she worked 37.5 hours per week, the grievor arrived as FT, but she did not remember at how many hours per week. Ms. Lysager was not aware that the grievor worked 40 hours per week in her previous position and stated that had she been aware of the 40-hours issue, she would have raised it.

[37] She stated that someone else had the opinion that the grievor should work 40 hours per week to retain her FT status and that she also did not know that going back to PT would affect the grievor's pension benefits. She testified that she recommended to the grievor that she speak to PSAC, as she was not a pension expert. She stated that as a PT employee, the grievor worked the same schedule as the other CR-05s. She stated that she was not aware of the negative impact on the grievor of the reduction of 2.5 hours of work per week. She testified that she did not approach PSAC about it, as that was not her role.

[38] Ms. Lysager was referred to Part V of the Directive, entitled "Salary Protection". She testified that she was not responsible for the WFA, she believed that LR was responsible for it.

[39] The employer called Julie Lanoue, Manager, WFA, at the Treasury Board Secretariat (TBS) since 2022. She managed teams that interpreted the WFA and its appendices and collective agreements in the core public administration.

[40] Ms. Lanoue explained that when a position is no longer needed, the WFA is invoked. She spoke of the different options that it offers. One is making a reasonable job offer to the affected employee. If it is an equivalent position, the employee is deployed, and if it is at a different level, then the employee is appointed to the position. She claimed that the offer letter is not part of the WFA; nor are any changes to working hours. She claimed that the WFA's provisions end when a reasonable job offer is accepted.

[41] When an employee accepts a position at a lower level, their salary is protected, and the protection survives the WFA. The salary becomes part of the employee's terms and conditions of employment.

[42] The employer called Rupa Roy, Manager, Escalation Compensation, CSC. She manages compensation issues that occur outside normal processing. In this case, she

stated that her responsibility lied with the job offer and with the compensation related to the WFA.

[43] At the CSC commissioner's request, Ms. Roy became involved in the grievor's case at the end of September 2024, when the grievor was placed in a no-pay situation due to the overpayment. She testified about the many issues involving the grievor, including that pay for multiple statutory holidays was recovered, the compensation section put everything on hold and stopped it, and the pay office tried to correct the situation. Everything happened because the grievor changed from FT to PT.

[44] Ms. Roy stated that because the grievor was an FOS-06, she was governed by the SV collective agreement. She explained that that agreement was applied and that the grievor was fully paid, and that any extra allowance, such as the inmate-training differential, was coded separately but in addition to the salary. A separate allowance, the "Correctional Services Specific Duty Allowance" (CSSDA), was also considered salary for pension purposes, similar to the bilingual bonus. She repeated that the grievor was fully paid for her work and statutory holidays but not in accordance with the PA collective agreement.

[45] A table of the list of the statutory holidays recovered from the grievor's pay was entered into evidence for 2015 to 2023. Ms. Roy explained the calculation that led to the overpayment. She further explained that it was not an overpayment reimbursement but that the grievor was owed some sums of money that arose from the calculations. It all should have been done simultaneously, to avoid such a large overpayment. She stated that she had spoken with the grievor and CSC's manager of corporate compensation in the fall of 2024. She explained that the situation in general resulted from the grievor's status change from FT to PT.

[46] In cross-examination, Ms. Roy stated that the issue with the pay office was finalized in the week of the hearing. She testified that the grievor fell under the SV collective agreement because she was a FOS-06, and her protected salary was part of the Terms of employment (ToE) of the SV collective agreement. She pointed to the second page of the offer letter, which states, "Your signature is an attestation that you clearly understand and will comply with the terms and conditions of employment." She recognized that the letter did not specify which collective agreement the ToE referred to.

[47] Ms. Roy agreed that were the grievor paid her red-circled salary for 37.5 hours per week, she would be owed 2.5 hours per week. She acknowledged that had the grievor worked 37.5 hours per week, there would have been no issue. She testified that she was not aware that the grievor's inmate-training allowance had been stopped. That was an error, as it forms part of her salary.

III. Summary of the arguments

A. For the grievor

[48] Counsel for the grievor argued that the grievor's FOS-06 salary is protected. The issue is the collective agreement that applies to the grievor in her CR-05 position. He suggested that the PA collective agreement applies and argued that the employer's position makes no logical sense.

[49] Counsel for the grievor referred to the SV collective agreement under Appendix I, "Workforce Adjustment", the "Objectives" section. He argued that the section's objective is continuing the employee's employment, and it does not aim at a single position but to continued employment.

[50] Under the "Roles and responsibilities" section, at page 308, clause 1.1.1, it recognizes that affected employees are not responsible for their situations and that they should be treated fairly. Clauses 1.1.34(a), (b), (e), and (f) place the onus on the employer to help the affected employees. The text states that the employer shall inform and counsel employees as completely as possible and assign a counsellor to explain and help them with the following:

> 1) the WFA and its effects on the employee;
> 2) the WFA's appendix;
> 3) the employee's rights and obligations; and
> 4) the employee's current situation, for example pay, benefits such as severance pay and superannuation, classification, language rights, and years of service.

[51] He then referred to Part V, entitled "Salary protection", as it pertains to an employee appointed to a lower-paid position and protecting their salary.

[52] He also referred to Appendix M, section 2, which addresses salary protection. He argued that the process to use and the bulk of the interpretation is not about continuing a position but continuing employment through a new appointment with salary protection, to minimize the WFA's impact. The grievor carried her old, protected

salary into her new, appointed position. He emphasized that the salary is protected, not the position.

[53] He argued that the employer asks for the protection of the entire SV collective agreement but argued that it no longer applied to the grievor.

[54] He argued that the Directive applied to nonunionized employees. He stated that similar words could be found in the MOU.

[55] Referring to the decisions at the two previous grievance levels, he argued there were two types of salary protection, either only the salary is protected or the salary along with the ToE are protected, and that they are not defined in the collective agreements or the MOU. He argued that words cannot be added to the collective agreements or the MOU.

[56] He argued further that the Directive deals with reclassifications and therefore cannot apply to this grievance. He referred to paragraph 2.4.2.7 to state that it dealt with appointments.

[57] The grievor's counsel referred to *Janveau v. Canada (Attorney General)*, 2003 FC 1337, which he stated dealt with a downward reclassification but involved different collective agreements and different bargaining agents. The issue was related to the grievor's terminable allowance ceasing.

[58] He then referred to Brown and Beatty, *Canadian Labour Arbitration*, 5th Edition, paragraph 4:20, to suggest a contract interpretation of the collective agreements' language. He argued for the modern approach to collective agreement interpretation.

[59] He argued that the purpose of Appendix I, read with the MOU, explained only how salary is protected. He added that the bargaining agent's approach is more reasonable and more feasible. The grievor works the same hours as do her colleagues, and it makes no sense to have her work 30 minutes per day more than them to retain her FT status, which they have.

[60] Turning to Annex E, entitled "Thirty-seven and one-half Hour Work Week" of Appendix C of the SV collective agreement, counsel argued that the bargaining agent has the exclusive right to negotiate the numbers of hours per workweek and that the

employer may not change them unilaterally. The employer contravened that appendix when it reduced the grievor's work hours.

[61] Counsel for the grievor referred to *Hawkesbury General Hospital v. U.S.W.A., District 6*, 1992 CarswellOnt 1169, and stated that in that case, the employee asked to go from FT to PT. He also referred to *Federal Government Dockyard Trades and Labour Council (East) v. Treasury Board (Department of National Defence - includes DRDC)*, 2015 PSLREB 25 ("*Dockyard*"), stating that if I were to accept the employer's interpretation, allowing the grievor to change her work hours would contravene PSAC's right to negotiate.

[62] The grievor's second counsel continued the argument. He argued that it would lead to absurd results if the employer were willing to pay all the grievor's FOS-06 salary provided she stayed governed by the SV collective agreement in its entirety, including working 40 hours per week. He stated that it would make no sense to tie her salary protection to the old requirements, as there is no logical connection between the required number of work hours to retain her FT status.

[63] He stated that the material facts are not at issue. The grievor worked first for 6 years as a FOS-06 and then, from 2015, 10 years as a CR-05 financial specialist under the PA collective agreement. She always worked the FT hours required by her position, which were 40 hours per week for the FOS-06 position and 37.5 for the CR-05 position.

[64] When the WFA was used in 2014, it was not the grievor's fault. She was thankful to find the CR-05 position that was covered by the PA collective agreement. She was appointed to it to continue her FT employment with the employer, with salary protection.

[65] The grievor's counsel stated that she was not offered any counselling, as prescribed in the SV collective agreement under Appendix I, clause 1.1.34; otherwise, she would have known what would happen to her, along with her rights and obligations. He argued that that is critical. Had she received counselling, she would have been aware of the consequences of her choice, but she was never informed of them. He argued that regardless of whether the grievor asked a question, the employer is not relieved from its obligation. He asked how the grievor could ask a question if she did not know any of the implications of her decision.

[66] He argued that no language supports the employer's understanding of the WFA and how it applies. He argued that only in reclassification cases would the former ToE continue to apply to an affected employee. Nor was there any language or logic to suggest that in her new position, she would be governed by a collective agreement that did not apply to her new CR-05 position. He argued that it was particularly important for the employer to communicate this to the grievor but that it failed to.

[67] He argued that the offer letter should have set out the collective agreement that would apply to the grievor. He stated that the employer failed to communicate to her the effect that the reduction to her hours would have on her. He argued that Ms. Lysager could not recall the discussion she apparently had with the grievor about that subject, because it did not happen. All the grievor knew about the impact was that she would lose 2.5 hours of salary per week.

[68] The grievor's counsel argued that the grievor always sought FT employment and that had she known the impact of reducing her hours, she would not have done it. He argued that the employer suggested that she had the time to discuss the reduction, not the changes that it would bring when she moved from FT to PT. She did not know to ask about it. Ms. Lysager did not know which collective agreement applied to the grievor. The warden and the AW believed that the grievor was FT and that the error would be corrected.

[69] Counsel for the grievor stated that the grievor started at 37.5 hours per week believing that she was FT, which was consistent with her CR-05 colleagues. He argued that the employer told her that she was supposed to work 40 hours per week and offered to reduce her hours to 37.5, with the belief that she would remain FT. He stated that Ms. Lysager did not recall considering the grievor PT; she would have, had the grievor worked less than 37.5 hours per week. He claimed that there was a significant lack of communication.

[70] Counsel for the grievor argued that the employer is estopped until the salary protection ends. The employer made the representation of a FT job offer and failed to specify that the SV collective agreement would continue to apply to the grievor and that reducing her work hours would change her status from FT to PT. That, he argued, created an estoppel.

[71] He also argued that it does not matter that the PA collective agreement applies to the grievor's CR-05 role. She meets the FT requirement at her red-circled salary rate. He concluded by stating that her red-circled salary is composed of her annual salary plus the benefits that she was entitled to as an FOS-06 and that those provisions are the only ToE that still applied to her after her appointment to the CR-05 position.

B. For the employer

[72] Counsel for the employer raised two preliminary objections. The first related to the Board's jurisdiction to hear this grievance under s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*").

[73] She pointed to the November 16, 2015, letter, entitled "Decrease in Hours of Work". She stated that the grievor did not understand the wording, "Acceptance of this change in hours also constitutes acceptance of the changes in relation to the applicable Terms and Conditions of Employment."

[74] She stated that ss. 208 and 209 of the *Act* define what may be grieved and referred to the Board for adjudication. She referred to *Dupuis v. Canada Revenue Agency*, 2024 FPSLREB 164 at para. 56, which recognized that employees have broad rights to file individual grievances under s. 208 but that those rights do not extend to adjudication; those are defined by s. 209(1)(a). Further, *Dupuis*, at para. 79, stated that allowing every grievance to be referred to the Board for adjudication would render that section meaningless.

[75] She submitted *Spencer v. Deputy Head (Department of the Environment)*, 2007 PSLRB 123 at paras. 19 to 21, which stated that the *Act* does not contemplate that the Board has some sort of plenary or original jurisdiction. Sections 209(1)(a) to (d) outline the grievances that may be referred for adjudication. To support her argument, she also cited *Spacek v. Canada Revenue Agency*, 2006 PSLRB 104; *Wray v. Treasury Board (Department of Transport)*, 2012 PSLRB 64; *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board*, 2010 PSLRB 85; and *Savard v. Treasury Board (Passport Canada)*, 2014 PSLRB 8.

[76] Essentially, her argument is that the Board does not have inherent jurisdiction to hear all referrals to adjudication. It is limited by its enabling *Act*, particularly s. 209(1)(a). She argued that since the grievance is against the reduction to the grievor's

work hours and not specifically against a collective agreement article, the Board lacks jurisdiction and should deny the grievance on that basis.

[77] The second objection invoked *Burchill*. Counsel relied on *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93, which recognized that grievances are rarely well crafted and that they must be considered in the context of the facts and their wording. She claimed that the grievance focuses on the grievor's yearly salary. The allegations raised in the grievance process were about her misunderstanding of the document that set out the reduction to her work hours that she signed on November 16, 2015, and the impact that it would have on her pension benefits. She argued that at the hearing, the grievor changed the nature of her grievance, as articles 9 and 28 and clause 25.01 of the SV collective agreement were never part of the grievance. Counsel claimed that issues related to the bargaining agent's recognition, or the permissibility of a PT schedule were never part of the grievance.

[78] She argued that changing the nature of a grievance before the Board is contrary to the principle enunciated in *Burchill*. She stated that PSAC is sophisticated and that its representative knows that they cannot change the nature of the grievance; doing so is akin to moving the goal posts. The grievor raised the pay level at the hearing, which was never raised before, and the employer did not have an opportunity to reply to it.

[79] She argued that on the merits, this grievance should be denied, as the grievor's salary was applied properly. She stated that the grievor requested the reduction to her work hours, which had little to do with the WFA.

[80] She argued that the Directive applies to all employees, not just those unrepresented, per its paragraph 2.1.

[81] She argued that the rate of pay is not the total compensation and that it would be absurd to pay an employee for working 40 hours when they worked 37.5. She stated that it is not an issue of FT versus PT status but rather of the number of work hours. In the grievor's case, 37.5 hours represented 93% of her 40 hours, which led to the pension reduction at that rate.

[82] Counsel for the employer argued that the grievor was governed by the SV collective agreement, as she remained in the same position, not a better one. She stated

that the grievor's pay rate was defined in Appendix C, at clauses 2.01 and 2.02, based on 40 hours of work and argued that pay is a function of the time worked. She stated that the grievor understood that she would be paid at the same hourly rate.

[83] She then referred to the SV collective agreement, Appendix I, clause 5.1.1, which deals with salary protection, and Appendix M, the MOU on salary protection and red circling. She stated that those are the only clauses that deal with salary protection.

[84] She argued that when determining the scope of salary protection, those collective agreement provisions, including Appendix M, must be consulted. It states that "… an encumbered position shall be deemed to have retained for all purposes the former group and level." She stated that those words are mirrored in the Directive, at clause 2.4.2.2, and that they express the three conditions applicable to salary protection. She argued that the grievor met all three conditions: she moved to a lower attainable maximum rate of pay, both positions were represented by the same bargaining agent, and the SV collective agreement contains a salary protection MOU.

[85] She argued that it is clear that as long as salary protection is in place, the grievor remains governed by the SV collective agreement for all purposes, despite being in a CR-05 position. She argued that this includes all the ToE of the SV collective agreement as they pertain to hours of work, the threshold between FT and PT, and all other benefits.

[86] Counsel for the employer confirmed that the grievor was appointed to the CR-05 position but that it was an appointment different from the traditional sense of the word. She relied on Ms. Lanoue, who testified that different rules apply in salary-protection cases and in the grievor's circumstances. She stated that one cannot just say, "It is a new appointment; so, the new collective agreement applies."

[87] She stated that the employer applied the correct collective agreement to the grievor. She relied on Ms. Roy's testimony that it was entirely consistent with her experience administering compensation changes further to a WFA process. She also relied on *Farhan v. Canada Revenue Agency*, 2021 FPSLREB 48. Its first paragraph recognized that the notion of salary protection for someone appointed to a lower-level position following a WFA is well established as ToE.

[88] Counsel for the employer stated that the clauses 59.01 and 59.02 of the SV collective agreement address the notion of PT and that there were no obligations to continue the grievor's compensation as FT if she did not work the hours. She relied on *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, stating that the Board cannot read in additional substantive obligations that are inconsistent with the plain and ordinary meaning of a text.

[89] She submitted *Nadeau v. Canada Revenue Agency*, 2017 FPSLREB 27 at paras. 62 to 67, to support her argument that PT employees receive different entitlements than do FT employees.

[90] She argued that article 59 of the SV collective agreement allows for PT schedules, contrary to the grievor's argument. She argued that *Janveau* cannot apply to this grievance since it dealt with a downward classification and a different bargaining agent. She argued that *Dockyard* can be distinguished, as no shift change was imposed on the grievor. She also argued that *Hawkesbury* is inapplicable to this case since there was no collective agreement violation and no seniority clause and that that case is not in the federal public sphere. She claimed that it would be absurd to believe that the bargaining agent must be consulted for any changes to employees' working hours.

[91] She argued that counsel for the grievor's estoppel argument is without merit since the grievor took no steps to determine the impact of her decision.

[92] Counsel for the employer argued that the grievor suffers from buyer's remorse and that she is dissatisfied with the financial outcome of the reduction to her working hours. She stated that Ms. Lysager testified that she told the grievor that she was governed by the SV collective agreement and argued that the employer and the grievor had a shared responsibility to inquire further if she had any questions about the impact of the change. She never sought more information; she did not comply with her most basic responsibility to inquire. She was aware of the SV collective agreement and knew that the other CR-05s were treated differently, but she never asked any questions. She argued that it amounted to wilful blindness due to the grievor's lack of diligence to inquire and that she raised no issue for seven years.

[93] She argued that the issue of FT versus PT status is a red herring and that the grievor's pension benefits are a function of the contributions made to it, not of the grievor's status.

[94] She argued that if the Board holds that it has jurisdiction to grant an award in this case, the grievor's award should be limited by the principles set out in *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), to 25 days before the date on which she filed her grievance, which was September 15, 2022, which means that her remedy is limited to the period beginning on August 20, 2022.

IV. Reasons

[95] I will deal first with the employer's two preliminary objections. The first related to my jurisdiction under s. 209, and the second was the *Burchill* objection.

A. Jurisdiction objection denied

[96] Section 209(1)(a) of the *Act* reads as follows:

209 (1) *An employee who is not a* member *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*	***209 (1)*** *Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire qui n'est pas un* membre*, au sens du paragraphe 2(1) de la* Loi sur la Gendarmerie royale du Canada*, peut renvoyer à l'arbitrage tout grief individuel portant sur :*
(a) *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award ….*	***a)*** *soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention collective ou d'une décision arbitrale;*

[97] Counsel for the employer submitted that under s. 209(1)(a) of the *Act*, a grievance may be referred to the Board if it is related to the interpretation or application in respect of the employee of a collective agreement provision. She submitted that the grievance was against the WFA and not any other collective agreement clauses. She argued that a grievance may not be referred to the Board for adjudication under the WFA. Also, since the grievance is not against any other clauses, it could not have been referred to the Board.

[98] I disagree. Firstly, both the PA and SV collective agreements contain appendices entitled "Workforce Adjustment": Appendix D in the PA collective agreement and Appendix I in the SV collective agreement. As well, both contain appendices on salary

protection and red circling, Appendix H in the PA and Appendix M in the SV collective agreement.

[99] The grievance reads, "My Yearly Salary Protection has not been paid to me in full" and next to it she has indicated "Ref Letter October 22, 2015", which is her letter of appointment to the CR-05 position. Often, grievances are written in broad terms and perhaps not as precisely as to avoid future debate, but I find that the wording of this grievance clearly refers to clauses in the collective agreement and as such is properly before me.

[100] In this case, the grievor clearly raised an issue about her pay rate not being what it should be, and she also refers to her letter of appointment, which in turn references her red circled status. I find that the grievance falls squarely in the subject matter of the interpretation of the collective agreements which are in issue. Which one remains to be determined, but the grievance does require interpreting a collective agreement. As such, I find that I do have jurisdiction to hear this grievance under s. 209(1)(a) of the *Act*. This preliminary objection is denied.

B. *Burchill* objection allowed in part

[101] The employer made two arguments to support its *Burchill* objection. The first one pertained to the grievor's argument about management's right, or lack of the right, to change the ToE with respect to hours of work related to article 9 and clauses 25.01 and 28.01 of the SV collective agreement. This argument was not invoked at any stage of the grievance process and occurred only during the grievor's opening statement at the hearing. I agree with the employer that this is an entirely new issue and not merely a refinement of the arguments related to the original grievance. In any event, given my decision, this argument on behalf of the grievor has not factored into my decision. As such, although I allowed the argument to be heard, I find that it contravened the *Burchill* principle and would prejudice the employer were it entertained in this decision, had it been relevant. On that argument, the employer's objection is sustained.

[102] The second part of this objection is about the argument related to the grievor's pay rate. Counsel for the employer argued that the counsel for the grievor changed their argument by shifting it in terms of the number of hours to be worked and the rate of pay itself.

[103] I agree with the decision in *Bowden* that grievances are rarely well-crafted documents and that they must be examined in the context of the facts and their wording. Grievances are not required to set out arguments or be drafted with technical precision. All that is required is a brief description of the issue being grieved and the corrective action requested. In this case, the grievance reads, "My Yearly Salary Protection has not been paid to me in full." Although expressed in one sentence, it can easily be read that her salary as a red circled employee is at issue.

[104] Further, her representative, Bob Jackson, was clear during his presentations at the first and second level, which documents were entered into evidence by the employer. He argued that she was governed by the PA collective agreement and on several occasions, he reiterated to management that red circling was merely a salary issue and was separate from the issue of hours of work. In his first level presentation he advised management that if she worked 40 hours per week, she would have been owed overtime for a half hour per day. He also advised management that the "offer" to reduce her hours should never have been made. In its replies, management clearly states that she is governed by the SV collective agreement.

[105] Given the above, I cannot accept the employer's argument that it constituted moving the goal posts. It may be that the arguments to support her grievance changed through the different grievance process levels in that they became increasingly refined, but the issue at the grievance's heart remained constant and I find no evidence to the effect that management was in any way caught off guard at adjudication. As the Board found recently in *Anderson v. Treasury Board (Canada Border Services Agency)*, 2023 FPSLREB 75 at para. 100, grievors are free to raise new arguments at adjudication, provided that they do not change the nature of the dispute. As such, the *Burchill* objection with respect to the grievor's pay rate is dismissed.

[106] Therefore, the *Burchill* objection is allowed in part.

[107] I will now turn to the grievance's merits.

C. The merits

[108] Under the WFA's circumstances, once a reasonable job offer is accepted and the appointment is completed, most of the time, it concludes the matter. In this case, during the application of the WFA process to the grievor, neither the employer nor the

grievor addressed some outstanding issues. A mutual lack of understanding on the part of both parties, compounded by a significant lack of research and communication, has led to this grievance and the regrettable circumstances now faced by the grievor.

[109] The two issues which should have been addressed from the start were which collective agreement applied to the grievor following her acceptance of the CR-05 position and, resulting from that, what were her scheduled hours of work.

[110] I find that the answers to both are to be found in the collective agreement and that the grievor was, following her clear appointment to the CR-05 position, now covered by the terms and conditions of the PA collective agreement, with the exception of reference back to the SV collective agreement upon her appointment solely for the purposes of calculating her holding rate and determining a date on which the PA rates would catch up with her salary protection and therefore end.

[111] Among other things, the WFA addresses the need to make a reasonable job offer to the grievor and included salary protection when she was appointed. While the WFA does not specifically deal with the issue of hours of work in cases such as this, it does not need to, since the grievor was appointed to her CR position and was now covered by the terms and conditions of the PA collective agreement for all purposes except salary calculation.

[112] The letter of offer is clear, and the WFA itself refers, in several places, to appointments such as the grievor's. Also, the red circling provisions of the collective agreement focus solely on pay issues and how to apply those provisions to various cases, for the reason that red circling is simply, as was argued by the bargaining agent, a pay issue. For all other purposes, the grievor was, on her appointment to the CR-05 position, a CR like any other. Had the employer understood this, none of the financial and work hours consequences would have occurred.

[113] The employer has relied on the wording of Appendix M of the SV collective agreement, which is the Appendix on red circling. I note here that Appendix H of the PA collective agreement also concerns red circling, and the identical language referred to by counsel for the employer, being the phrase which refers to the "encumbered position" retaining its former group and level. According to counsel for the employer, that phrase confirms that the grievor remains an SV until her salary protection is at an end.

[114] I disagree. Part I clearly states that it "… shall apply to the incumbents of positions which will be reclassified …" to a lower rated position. Part I then goes on to say that "[d]ownward reclassification notwithstanding, an encumbered position shall be deemed to have retained for all purposes the former group and level." In cases involving the downward reclassification of a position, that position is still "encumbered" by the employee and unsurprisingly, the parties have agreed that they should not be penalized for the fact that their positions were, through no fault of their own, downwardly reclassified.

[115] In any event, it is clear to me that the employer is mistaken to rely on this phrase to support its argument that the grievor is covered by the SV collective agreement as long as she is salary protected. In her case, it is impossible for her to "encumber" her former FOS-06 position as it has been deleted.

[116] The grievor's circumstances were caused by management and the consequences of that mistake were perpetuated by it. As I will explain, even her management and its HR resources were firstly, unaware of which collective agreement applied to her and secondly, unaware of the consequences that would result from their mistaken interpretation of which collective agreement applied to her and what her hours of work were required to be.

[117] The grievor understood that her FOS-06 position was no longer required, and her main concern was her continued FT employment with the employer. I accept that she believed that the WFA would be a straightforward process by which she would move from her original FOS-06 position to the financial specialist CR-05 position and retain her salary rate. But that was not so. Thirdly, I accept the grievor's argument that management failed in its responsibilities under the WFA, although I find that it is the WFA language set out in Appendix D of the PA collective agreement which applies to the grievor and not that under the SV collective agreement. "Part I: Roles and Responsibilities" makes it clear that the employer has an onus to treat employees equitably, which it has not done here, for the reasons that I have outlined above.

[118] Processes which are characterized by a lack of understanding on management's part, and which result in serious negative impacts for employees are not equitable. While management tried to argue that the reduction in hours bore no relationship to the WFA process, this is patently not so. The reduction in hours and resultant impact

on the grievor were caused entirely by management's mistaken understanding that the grievor was still governed by the SV collective agreement.

[119] Although the grievor remained with the same bargaining agent, she left the coverage under the SV collective agreement to join that under the PA collective agreement, which applied to her new CR position. Once again, I point out that her letter of offer for the CR-05 position clearly states that she will be appointed to it and the employer accepted this fact, though arguing that this was not a "traditional" appointment, an argument that it left unsupported by either reference to legislation, policy or case law. I therefore reject it and find that the grievor's appointment to her CR-05 position was in accordance with the clear terms of the WFA and was an appointment as that term has been commonly understood.

[120] The two collective agreements in issue do not have the same requirements for a FT employee. The SV collective agreement requires 40 hours of work per week, while the PA collective agreement requires 37.5 hours per week for FT status. That difference was overlooked or not noticed, and it was not addressed in the grievor's WFA process by either her or management. Had it been, the grievor should have been advised that she was now a member of the PA group and would be working a 37.5-hour workweek, with full salary protection of her former salary, regardless of the fact that she was now working fewer hours. Nonetheless, it led to this grievance.

[121] After the first two weeks in the grievor's new CR-05 position someone, who was unidentified, noticed the discrepancy in the requirement for hours worked to maintain FT status. This "discrepancy" was based on the mistaken understanding that the grievor was still covered by the SV collective agreement. The evidence did not identify that person, who informed the grievor's manager, who in turn informed the grievor.

[122] A debate arose with respect to the evidence as to who requested the change to the grievor's work hours per week. On the balance of probabilities, although it is of little consequence, I believe that the employer initiated the discussion. There is no evidence that the grievor gave any thought to which collective agreement applied to her or to what hours of work were required under either collective agreement. The grievor's only concerns were maintaining full-time employment and her salary, both of which she was clearly accorded in her letter of appointment to her CR-05 position. For her, the reduction in hours simply made sense and she reluctantly agreed to the

reduction in her salary as she had been advised that the reduction was in accordance with her terms and conditions of employment.

[123] In any event, it makes no difference whether the grievor agreed to the salary reduction as I find that such reduction was based on an error on management's part, an error that is a violation of the collective agreement. While her agreement may have an impact on any remedy that she might claim, it does not impact her status as a CR-05.

[124] The grievor's colleagues in her new position were governed by the PA collective agreement and had to work 37.5 hours per week to maintain their FT status. I find that on the balance of probabilities, from the testimonies of Ms. Lysager and the grievor, they both believed that the grievor was under the PA collective agreement when she joined the financial group, which considered FT as working 37.5 hours per week.

[125] Management subsequently changed its position on which collective agreement applied to her based on mistaken advice from their HR experts. Based on their testimonies, I also accept that, at the time that the change from 40 to 37.5 hours per week was made, both the grievor and her manager believed that it simply implied a reduction of 2.5 payable hours per week on the grievor's paycheque, nothing more. Briefly put, the impact of making her PT and the resultant impact on her pension and entitlement to statutory holiday pay were never envisaged by either party.

[126] Once management mistakenly concluded that her hours of work were governed by the SV collective agreement, and once it was decided that it made more sense for her to work the same hours as her colleagues, the grievor and her manager agreed to sign a document by which she agreed to reduce her work hours from 40 to 37.5. From then on, she worked 37.5 hours per week until 2022, when she discovered that the change affected the pension amounts that she would be entitled to when she retired.

[127] This is not to say that the grievor does not bear some responsibility for the perpetuation of management's initial mistake. There was evidence that she did not to consult her bargaining agent and that she did not inquire as to the impact of the PT designation in the form that she signed. However, the grievor's actions or lack of action in this regard cannot absolve the employer of its mistake and lead to a finding that she is governed by the SV collective agreement.

[128] As I have found above, once she accepted the CR position, she was governed by the PA collective agreement. Management's error on this issue led to this grievance, but it also led to a whole readjustment of her compensation benefits, as a result of applying the SV collective agreement to her circumstances. In 2024, she requested to return to a schedule of 40 hours per week, to return to FT status and to protect her eventual pension benefits, despite the fact that she did not need to work those hours in order to maintain her full red circling.

[129] From the grievor's perspective, the issue is that the employer applied the wrong ToE to her new position. Her salary, based on the SV collective agreement, was red circled in her new position. She argued that she should be governed by the PA collective agreement and its ToE, as she is in a new work unit.

[130] The employer argued that the WFA properly red circled the grievor's salary and that the ToE of the SV collective agreement would continue to govern her until the protected-salary clause came to an end, as prescribed by the WFA.

[131] The employer argued that once the grievor accepted the reasonable job offer, the WFA was completed; her FOS-06 salary was red circled, and she remained governed by the SV collective agreement. Its counsel significantly emphasized the fact that the grievor voluntarily accepted a reduction to her hours of work per week and that she was afforded ample time to consult her bargaining agent or her family before accepting the reduction. Its counsel emphasized a lack of due diligence and wilful blindness from the grievor, who now suffers from, in counsel's words, "buyer's remorse".

[132] That argument cannot stand, for the reasons outlined above. As I have found, I agree that once the CR-05 job offer was accepted, the WFA process was completed, in the sense that its terms now only needed to be implemented with respect to the grievor. This means that she was now a member of the PA bargaining unit and that the terms and conditions of employment relevant to the CR group were applicable to her.

[133] This was not done, which resulted in the employer believing that she was still a member of the SV unit. The subsequent "agreement" regarding the reduction of her hours of work and salary resulted from this initial error on the employer's part. However, even when the "agreement" was made, there was no indication that any

consequences other that a reduction in weekly salary of 2.5 hours would result from the agreement.

[134] Although the warden signed the agreement on the employer's behalf, the grievor's manager discussed the matter with her. She testified that after that, she contacted the acting AW with her concern, who replied that there must be an error and that she would try to have it corrected. Therefore, I conclude that on a balance of probabilities based on the evidence, no one in the management line above the grievor knew about the impact of the difference between the ToE of the two collective agreements and the consequences.

[135] I find that the maxim that the accessory follows the principal applies in this case. The Directive establishes how the WFA should be administered, and it is quite extensive. As in many other policies and programs, not every circumstance could be envisaged, and unforeseen exceptions were left out that managers, the bargaining agent, and, obviously, the affected employees had to deal with.

[136] The WFA's main objective is to ensure continuity of employment for affected employees while protecting their salaries in the event that they are appointed to a position which has a lower yearly maximum rate of pay. While appointments might be from one bargaining unit to another, it is clear to me that under the terms of the WFA, the grievor was appointed to her CR-05 position, with all of the terms and conditions in that agreement applicable to her, except for the issue of salary calculation. While the WFA does not specifically state that the grievor will now be under the terms of the PA collective agreement, such a statement is not necessary given that the WFA clearly provides, in several places, that employees will be appointed to their new positions, as was the case here.

[137] Counsel for the employer stated that the grievor suffered from buyer's remorse after she agreed to reduce her work hours. This completely ignores the circumstances under which the grievor signed the agreement and management's role in it. It also ignores the fact that this agreement is a clear violation of the PA collective agreement and more specifically, the WFA and red circling provisions, and in clear contradiction to her letter of offer. I believe that that metaphor might be more suitable to the employer for the offer letter that misled the grievor into believing that she would be appointed to an FT position in the CR-05 group.

[138] After a careful review of the offer letter for the CR-05 position and its appendix, I find absolutely nothing, explicitly or implicitly, to indicate that the grievor was to remain governed by the SV collective agreement. The letter is written in such a manner that no one in the grievor's management believed that she would be governed by any agreement other than the PA collective agreement. It was only mistaken advice from HR which had management change its position on this. I concur with that belief, as the only logical understanding is that a newly appointed CR-05 would be governed by the collective agreement appropriate to their position, which in the grievor's case was the PA collective agreement.

[139] Counsel for the grievor made an estoppel argument, related to the offer letter. The employer argued that it could not apply in these circumstances since the grievor took no steps to determine the impact of the reduction to her work hours. Given the clear terms of the collective agreement and my finding that the grievor fell under the PA collective agreement, no estoppel argument is required to be explored.

[140] Despite this conclusion, I do wish to note that in making the argument it did, the employer avoided the crux of the matter, which is the offer letter for the CR-05 position. Instead, the employer focused its attention and many arguments on the agreement to reducing both her hours and her pay, which agreement was mostly the result of management's mistaken understanding of the collective agreement. The letter of offer is clear and in accordance with the terms of the collective agreement: the employer offered a FT CR-05 position to the grievor, which implied the ToE applicable to a CR-05 position, and those are governed by the PA collective agreement. Any exception to the clear terms of the collective agreement would require the agreement of the two signatories to it and I was provided with no such evidence. While the employer entered evidence about having dealt with similar situations in the past in a similar manner, the evidence was far from sufficient to establish past practice as an aid to interpretation, should I find that the collective agreement is ambiguous. No evidence was entered as to any details of dates, numbers, specific situations, or whether TBS or the bargaining agent were aware of these events. In any event, counsel for the employer did not raise this issue in argument.

[141] In her testimony, the grievor reported that Ms. Quintal believed that the situation would be corrected. Mr. Fowler stated that the matter was in LR's hands. Since those two people did not testify at the hearing, the statements constitute

hearsay. In administrative law, hearsay evidence is admissible and must be assessed, to give it its proper weight in light of the actual evidence.

[142] In this case, I accept those statements at face value and accept them as true, as they are in line with the statement of Ms. Lysager, the grievor's manager, expressing her doubts as to which collective agreement to apply to the grievor. I believe that everyone in the grievor's management hierarchy shared that doubt.

[143] Often, in the course of Board hearings, it is heard that delegated managers consulted the HR section before taking an action. It is as if HR provides the permission to implement an action. It might be forgotten that HR's role is to advise managers, whose responsibility is to take that advice, consider all the circumstances, and then decide which action to implement.

[144] Both the AW and the DW believed that the interpretation of the grievor's FT or PT status was in error. When the DW stated that it was in LR's hands, he effectively abdicated the authority delegated to him by the *Financial Administration Act* (R.S.C., 1985, c. F-11) and the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13) and blindly followed HR's advice, no matter how illogical it might have been. Managers are responsible for their actions and should act accordingly and not believe that they may substitute HR's advice for their own authority.

[145] During the hearing, the grievor stated that LR removed her inmate-training allowance in 2017 but that after a grievance was filed, it was discovered that it had done so in error. This goes to show that LR or HR can also err. That is why the delegated authority rests with the managers. Ultimately, they are responsible for their decisions, not HR. HR may write the letters and MOUs, but the delegated managers sign them. Those documents are binding on the signatories. The employer cannot rely on the ambiguous nature of the documents, regarding the reduction in her hours of work and salary, to claim that the grievor was wilfully blind when she signed them.

[146] I find that the employer, in reducing her salary, was operating under the mistaken belief that she was still in the SV bargaining unit. The fact that the grievor signed this letter does not mean that the employer is now entitled to treat her as an SV, regardless of the terms of the collective agreement that does apply to her. As no PSAC agreement was reached on this matter, the employer was bound to apply the

terms and conditions of the PA collective agreement to her and there was no room for her to "agree" to the employer's perpetuation of its mistake.

[147] At the hearing, there was some argument on behalf of both parties regarding the issue of salary calculation and the role of hourly rates as opposed to yearly salary. In the end, it does not matter. The grievor did not grieve her rate of pay. While there had been issues regarding allowances and her protected rate of pay, those appear to have been resolved to her satisfaction. The evidence before me was to the effect that the employer had calculated a yearly amount of pay based on the grievor's former 40-hour work week and the grievor did not contest this amount. Further, it is clear that her grievance concerns the reduction in yearly salary as a result of a supposed reduction in her required hours of work and does not contest her holding rate.

[148] The grievor went from a position in a work unit governed by the SV collective agreement to one in a work unit governed by the PA collective agreement. I believe that it follows logically that she should have been governed by the same collective agreement as her coworkers since she occupied the same position in her new work unit. If an employee is "surplused" from a bargaining unit that only provides for day work into a new position that requires shiftwork per its collective agreement, would the employer then have been precluded from scheduling shiftwork for the grievor? It would be absurd to have coworkers, with the same job title, work description, responsibilities, group and level, and bargaining agent to be governed by two different collective agreements and two separate ToE. I find that the only logical conclusion is that once the grievor was appointed to her CR-05 position, she was to be governed by the PA collective agreement. And I find that this conclusion is supported by the evidence and the wording of the collective agreement.

[149] Counsel for the employer reiterated many times that the grievor could not be paid for hours that she did not work. I believe that that notion is not at issue and that its source is the mistaken belief that the grievor remained governed by the SV collective agreement. As the grievor became a CR employee on her appointment, there is no dissonance between her hours of work and her salary. She is merely salary protected.

[150] I do not agree with counsel for the employer's suggestion that the ToE of the SV collective agreement followed the grievor into her new position. The spirit of the WFA,

and its letter, clearly focus on preserving the employment of an affected employee who by no fault of their own finds themself in such a situation. When it defines a "reasonable job offer", the Directive stipulates that "(b) [i]t is **a seamless transfer of all employee benefits** including recognition of years of service for the definition of continuous employment and accrual of benefits, including the transfer of sick leave credits, severance pay and accumulated vacation leave credits" [emphasis added].

[151] There is no doubt that the spirit of the WFA is to facilitate a seamless process by which all the employee's benefits are preserved, including their red-circled salary. It does not speak of the survival of the original ToE when one is appointed to a new collective agreement and new ToE.

[152] The logical interpretation and conversion on the grievor's appointment were that her protected weekly salary should have been applied to her new ToE of 37.5 hours per week. There is no doubt that on an hourly basis, it constituted a pay increase for the grievor, but when transposed to a weekly or yearly basis, she would earn exactly what she earned as an FOS-06 before the WFA. That is the essence of a protected salary as devised in the WFA.

[153] In effect, I find that the grievor's salary was misapplied and miscalculated from the moment she was appointed to her new position. The ToE of the PA collective agreement should have applied, and she should have worked 37.5 hours per week. When management asked her to work 40 hours per week to retain her FOS-06 salary, it contravened the PA collective agreement that applied to her by asking her to work more hours than the agreement prescribed.

[154] The employer argued that that approach would lead to an absurd conclusion. I believe not. The absurd conclusion would be to single out appointees to a new work unit to be governed potentially by different collective agreements. That would render managing the unit complicated and would lead to the different treatment of employees employed in the exact same positions and in the same work unit.

[155] The employer also argued that the grievor's FT versus PT status was a red herring and that her pension benefits were a function of her contributions and not her status. I reject this argument and find it to be patently untrue. The grievor's status as a supposed PT employee had a direct and serious impact on her pension benefits and is far more than a red herring. While her benefits are indeed a function of her

contributions, it was the employer's error in designating her as a PT employee that led to a presumed reduction in contributions, which in turn resulted in her decreased entitlement to her pension benefits. Such a result is not a red herring but is in fact central to the issue before me, which is the employer's decision to retain her in the SV classification.

[156] Lastly, I turn to the issue of remedy in this case. Counsel for the employer very briefly argued that if I were to allow the grievance, the remedy should be limited to the 25 days before it was filed, per the *Coallier* principle.

[157] Counsel for the grievor recognized that *Coallier* would restrict the remedy to the 25 days before the grievance was filed. He argued however that the grievor did not sit on her right to grieve but rather that this is a continuing grievance. Relying on *Attorney General of Canada v. Duval*, 2019 FCA 290 at para. 30, he argued that situations justify going beyond the 25-day limit and that the Board should consider every element of the case.

[158] I find that the circumstances of this case are different from those in *Coallier* and are far more akin to those described in the Board's recent decision in *Barcier v. Treasury Board (Canada Border Services Agency)*, 2024 FPSLREB 103. I echo the Board's finding in paragraph 72 that *Coallier* does not limit the remedy in every continuing grievance, regardless of the circumstances.

[159] The situation in the present case is the same as in *Barcier*. Until the grievor attended the pension seminar, neither party was even aware that the collective agreement was being violated, least of all the grievor who had no expertise and who relied on the employer for that expertise, as did her managers. Once alerted she did not sit on her rights. As in *Barcier*, the grievor was entitled to rely on management's most basic obligation to assign her to the proper bargaining unit and to have trained employees in place to ensure an efficient and functioning system. The error originated from the grievor's appointment date, when the employer applied the SV collective agreement, and the employer caused the grievor negative prejudice.

[160] The recent Board decision in *Peterman v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 102, shed more light on the application and limit of *Coallier*. At paragraph 140, it concludes its reasoning, in referring to *Macri v. Treasury Board (Department of Indian and Northern Affairs)*, PSSRB File No. 166-02-15319 (19871016)

(upheld in *Canada (Treasury Board) v. Macri*, [1988] F.C.J. No. 581 (C.A.) (QL)), at para. 54, by stating:

> *[140] I agree whole-heartedly. Applying the* Coallier *principle unquestioningly to every continuing grievance, regardless of the circumstances, would certainly force unfortunate consequences on both parties, including providing an incentive for an employer to delay making decisions, whether deliberately or not.*

[161] I concur with this statement. I find that blindly applying *Coallier* to every circumstance, including those where timeliness is not an issue, would incite the employer to not consider responding to, or correcting, any past irregularity or error that it may have committed because the cost to such a mistake would only be limited to 25 days prior to the filing of the grievance. I have no doubt that such an approach or consideration is not in following of the principle envisaged by the *Coallier* decision.

[162] In this case, the grievance goes far beyond a salary adjustment, as contemplated in *Coallier*. It goes to the issue of which collective agreement should have governed the grievor's new position, and that issue is a fundamental one to the relationship between the parties to the collective agreement. The grievor cannot be faulted for the fact that it took so long for the error to come to light. Indeed, unlike in *Barcier*, in this case the employer denied that it had made any error.

[163] The financial impact on the grievor of the employer's error has been substantial. The facts demonstrated that the grievor worked 37.5 hours per week from the beginning of her appointment and for a substantial period of time afterwards, during which time her salary was erroneously reduced by 2.5 hours per week. Also, the employer erroneously assessed an overpayment against her related to her PT status and statutory holidays. She had to reimburse the overpayment. She was impacted by the reduction of her contribution to her pension and to the payment of her projected benefits when she retires. And she has, it seems, been working a 40-hour week since the discovery of the issues in this grievance in order to ensure her FT status, given the employer's position.

[164] Also contrary to *Coallier*, I find that there was absolutely no way that she could have known that management had misapplied the collective agreement in relation to her. The evidence indicates that even her managerial hierarchy was unaware of which ToE to apply, although it was counselled, though erroneously, by its HR team. Limiting

her remedy to the 25 days preceding the filing of her grievance would, in the circumstances of this case, be unconscionable and lead to an inequitable result. The grievor should have been paid in the same manner as she was paid prior to the implementation of the "agreement" between the parties. On the issue of "reducing" her weekly hours and her pay along with it, I have concluded above that reducing her salary or prorating it was an error by the employer and doing so negatively and mistakenly affected her protected salary by effectively reducing it, which is contrary to the WFA.

[165] The employer argued that awarding the grievor financial compensation will result in paying the grievor for hours that she has not worked. As I have carefully and repeatedly stated above, I disagree. The employer's argument in this regard is based on a conclusion that the grievor remained under the SV collective agreement, and I have found otherwise.

[166] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[167] The grievance is allowed.

[168] I order the employer to do the following:

1) Comply with the terms and conditions of the PA collective agreement and my decision as outlined above.
2) Consider and treat the grievor as a member of the CR bargaining unit governed by the PA collective agreement as of her first day of work in her CR-05 finance specialist position on November 2, 2014.
3) I order that the employer immediately recognize her weekly hours of work as being 37.5 hours and to pay her overtime for the hours worked over and above that amount as a result of the employer's mistake.
4) I order the employer to fully reimburse the grievor for the 2.5-hour reduction in her salary caused by its mistake, including the necessary adjustments to her pension, leave and any other applicable benefit or entitlement.
5) I order the employer to reimburse the grievor for the mistaken overpayment recovery claim it exacted upon the grievor.

[169] I will remain seized of this matter for 90 days after the issuance of this decision, to assist with the implementation of my order.

October 9, 2025.

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