

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**GOVERNMENT OF THE NORTHWEST TERRITORIES as
represented by the Minister responsible for the *Public Service Act***

AND:

THE UNION OF NORTHERN WORKERS

**(UNION GRIEVANCE - DIRECT-APPOINTMENT
GRIEVANCE NO. 97-557)**

CONSENT AWARD

MERVIN I. CHERTKOW

← Arbitrator and Mediator 

**#300 - 180 Seymour Street
Kamloops, B.C. V2C 2E3**

IN THE MATTER OF AN ARBITRATION

BETWEEN:

GOVERNMENT OF THE NORTHWEST TERRITORIES as
represented by the Minister responsible for the *Public Service Act*

(hereinafter called the "employer")

AND:

THE UNION OF NORTHERN WORKERS

(hereinafter called the "union")

**(UNION GRIEVANCE - DIRECT APPOINTMENT
GRIEVANCE NO. 97-557)**

BOARD OF ARBITRATION

Mervin I. Chertkow - Single Arbitrator

ADVOCATES

Sharilyn Alexander - for the employer
Chris Dann - for the union

DATE AND PLACE OF HEARINGS

April 28th, 1998 at Yellowknife, N.W.T.

DATE OF CONSENT AWARD

May 4th, 1998

CONSENT AWARD

I

This arbitration was heard under the expedited arbitration procedure as set out in article 37.27 of the collective agreement between the parties.

This grievance involves an issue of severance priority for laid off employees as set out in article 32.02 (b) (ii) of the collective agreement between the parties. It provides;

The lay-off shall be provided priority staffing for one (1) year from the last day of the lay-off notice period. Where a lay-off accepts an appointment that is not indeterminate the lay-off shall continue to be provided priority staffing for the length of the appointment plus three (3) months. At no time will the length of the priority status be less than one (1) year.

The parties filed an Agreed Statement of Facts as follows;

1. Mr. T.J. MacDonald was a casual employee at the River Ridge Secure Facility in Fort Smith, NT. In the summer of 1997 he was directly appointed to a full-time indeterminate Youth Officer position without competition.
2. Two former employees, Beverly Allard and Brenda McLeod, of the Trail Cross Child Care Facility in Fort Smith were on the Priority Staffing list. Neither was informed that a Youth Officer position at River Ridge was available. Neither was given an opportunity to apply for the position.

3. The Department of Justice has an Affirmative Action Policy that states "Where qualified aboriginal individuals are available to fill vacant position, direct appointments will be requested in all cases. Where there is more than one available aboriginal person a competition will be held to determine which aboriginal person will be referred for direct appointment.
4. Section 114.4 (1) for the Human Resource Manual states "Direct Appointments may be recommended in the following circumstances: (a) Affirmative Action - to facilitate the career development of Affirmative Action candidates when it is not reasonable or feasible to run a competition."

II

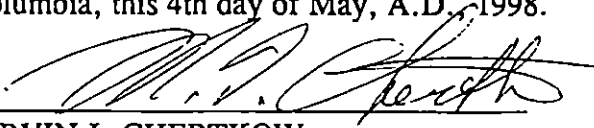
During the course of the hearings a settlement of the grievance was reached by the parties with the assistance of the arbitrator, which settlement is to be incorporated as a Consent Award to be issued by me.

Accordingly, the grievance is resolved as follows;

1. The employer agrees to a declaration that it breached article 32.02 (b) (ii) when the appointment in issue here was made without consideration of the rights of the two laid off employees, Beverly Allard and Brenda McLeod, both of whom were entitled to priority staffing.
2. The employer agrees to provide Beverly Allard and Brenda McLeod with priority status on the current vacancy for a Youth Officer I position at the River Ridge Secure Facility in Fort Smith, N.W.T.

Accordingly, the grievance is resolved pursuant to the above terms of settlement and it is so awarded.

DATED at Kamloops, British Columbia, this 4th day of May, A.D., 1998.


MERVIN I. CHERTKOW
Arbitrator