

Employer Must Consider Other Jobs for Disabled Probationary Employees



The union cried foul when an employer dismissed a disabled probationary correctional officer after determining that he wasn't medically capable of doing the job. While not taking issue with the determination, the union claimed that the duty to accommodate didn't stop there and that the employer had to also consider the officer for other positions. After an exhaustive analysis of case law, the Northwest Territories arbitrator agreed. It would be unfair for a person to be able to simply apply for a job they were incapable of doing and then, without actually getting hired, demand to be placed into another job for which they didn't apply, the arbitrator acknowledged. But rather than a blanket rule, the issue of whether employers must at least consider other positions should be decided case by case based on factors like the interchangeability of jobs, the size of the operation, the cost and impact of accommodations on employee morale and employee safety [[Northwest Territories v Union of Northern Workers, A Component of the Public Service Alliance of Canada](#), 2022 CanLII 82597 (NT LA), September 13, 2022].