

**Date:** 20051107

**File:** 166-02-33105

**Citation:** 2005 PSLRB 163



*Public Service Staff  
Relations Act*

Before an adjudicator

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BETWEEN

**MARCEL BUREAU**

Grievor

and

**TREASURY BOARD  
(Correctional Service Canada)**

Employer

***EXPEDITED ADJUDICATION DECISION***

***Before:*** Yvon Tarte, adjudicator

***For the Grievor:*** Céline Lalande, UNION OF CANADIAN CORRECTIONAL  
OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU  
CANADA - CSN

***For the Employer:*** Mark Sullivan, Treasury Board Secretariat

**Note:** The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

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Heard at Saint-Sauveur, Quebec,  
October 19, 2005.  
(P.S.L.R.B. Translation)

[1] Mr. Bureau's grievance relates to the interpretation of a collective agreement concerning the granting of overtime. The parties agreed on the following Agreed Statement of Facts:

[Translation]

...

1. *Canadian correctional officers are governed by the Correctional Services Group collective agreement, which came into force on April 2, 2001. . . .*
2. *Marcel Bureau has been a Correctional Officer 1 at Correctional Service Canada's La Macaza Institution for 26 years.*
3. *On the September 16 to September 29, 2002 shift schedule, which had been posted 14 days in advance, Mr. Bureau was scheduled to work a shift as a security escort (position 12A on the shift schedule) on September 25, 2002. . . .*
4. *The workday for this position is 7:20 a.m. to 3:50 p.m.*
5. *When Mr. Bureau arrived at work on September 25, 2002, he found that he had been assigned to an armed control point position (position 01). . . .*
6. *Mr. Bureau had not been warned of this change before his arrival at La Macaza Institution on September 25, 2002.*
7. *Richard Lebrun, Correctional Officer 1, who was originally assigned to this position (position 01), had been assigned to a temporary leave escort on September 25, 2002. . . .*
8. *On September 25, 2002, Mr. Lebrun and Alain Lirette escorted inmate S from La Macaza Institution to Kuujjuaq.*
9. *This escort assignment had Mr. Lebrun and Mr. Lirette leave La Macaza Institution at 4:45 a.m. and return at 10:50 p.m. on September 25, 2002. Due to the length of the temporary leave, the escorting officers received 8 hours at time and a half and 2.5 hours at double time on top of their regular pay for the day. . . .*
10. *When overtime is required for security escorts, it is performed by the officer assigned as escort. The overtime*

*performed in these positions is accounted for in keeping with the procedure established to ensure equitable allocation of overtime at La Macaza Institution.*

- 11. At La Macaza Institution, the equitable allocation of overtime is measured in four-month periods. For the August 1 to November 30, 2002 period, the average number of hours of overtime performed by correctional officers was 69.765. During this time, Mr. Bureau performed 152.000 hours of overtime. . . .*
- 12. The employer justified the change based on the need to assign two bilingual officers to the escort. . . .*
- 13. The order for security escorts does not specify that the officers serving as escorts must be bilingual. . . .*
- 14. Mr. Bureau did not hold a bilingual position on September 25, 2002.*
- 15. Mr. Lebrun did not hold a bilingual position on September 25, 2002.*
- 16. Mr. Lirette held a bilingual position on September 25, 2002.*
- 17. Since 2004, in response to the concerns expressed by the staff at La Macaza Institution regarding the assignment of security escorts, La Macaza Institution has agreed to assign these escorts on a priority basis to the Correctional Officer 1 scheduled for the day security escort position (12A). . . .*

*. . .*

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

[3] In the federal Public Service, the employer is the only one responsible for its organization, the assignment of functions to positions and the classification of positions. This means that the employer can assign an employee, in this case a correctional officer, to different positions for which the employee is qualified. In so doing, the employer must comply with the provisions of the collective agreement.

[4] In his grievance, Mr. Bureau claims that the change in position imposed by the employer deprived him of a certain number of overtime hours to which he was entitled.

[5] According to the collective agreement, overtime must be allocated equitably. Evidence shows that the overtime assigned to the grievor over a four-month period, including September 25, 2002, was well over the average overtime granted to other La Macaza correctional officers. Therefore, Mr. Bureau could not have been aggrieved by the application to him of clause 21.10 of the collective agreement, requiring the equitable allocation of overtime.

[6] At the hearing, Ms. Lalande advanced the alternative argument that the employer had also contravened clause 21.03 of the collective agreement regarding changes to employee shift schedules.

[7] Clause 21.03 addresses changes to shift schedules. This purpose of this clause is to manage changes that the employer might make to employee hours of work. On September 25, 2002, the employer changed Mr. Bureau's shift, in this case the location where he was to work, but not his hours of work. Thus, clause 21.03 was not contravened.

[8] The fact that the employer and the bargaining agent have agreed since 2004 on a new policy on escorting inmates does not in any way change the above interpretation of the collective agreement provisions.

### Order

[9] The grievance is denied.

November 7, 2005.

**Yvon Tarte,  
Adjudicator**