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*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**MICHAELANGELO SUMALING**

Grievor

and

**TREASURY BOARD  
(Correctional Service Canada)**

Employer

Indexed as  
*Sumaling v. Treasury Board*

In the matter of a grievance referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** John Steeves, adjudicator

***For the Grievor:*** Norm Wickstrom, Professional Institute of the Public Service of  
Canada

***For the Employer:*** Neil McGraw, Counsel

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Heard at Vancouver, British Columbia,  
December 1, 2004.

Grievance referred to adjudication

[1] This is a decision about the whether the grievor is entitled to an educational allowance , in addition to his regular salary, pursuant to Appendix “B” of the collective agreement.

[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*, I continue to be seized with this reference to adjudication, which must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (“the former Act”).

[3] The parties agree that the collective agreement that expired on September 30, 2002, *Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada (Group: Health Services Group)*, expiry date of September 30, 2000, contains the provisions that are applicable to this grievance.

Summary of the evidence

[4] The employer operates correctional facilities across Canada. This includes the Regional Treatment Centre, Pacific Institution, at Abbotsford B.C., which deals with mental illness and behavioural problems with inmates.

[5] The grievor is a Registered Psychiatric Nurse, he is a member of the College of Psychiatric Nurses of B.C. and he works at the Regional Treatment Centre. It is a condition of his employment that he be a licensed Psychiatric Nurse. He took a three-year training course in nursing at Douglas College, from 1998 to 2001. He is currently a supervisor at the Centre although he was a staff nurse at the time of his grievance.

[6] The grievor also has a Bachelor of Science in Psychology that, as will be seen, is the subject of his grievance. He obtained this degree between 1993 and 1997, before he began his training in nursing. The degree was not a pre-requisite for nursing.

[7] Appendix “B” is the provision of the collective agreement that is at issue. It provides for educational allowances as follows:

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**APPENDIX "B"**
**ALLOWANCES -NURSING GROUP**

*For all purposes of pay, the annual rates of pay for the Nursing Levels stipulated in Appendix "A" shall be altered by the addition of the amounts specified hereunder in Column II in the circumstances specified in Column I.*

**Column I**
**Column II**
**A. Responsibility Allowance**

...

**B. Education Allowances**

*Where the following post-graduate nursing training or nursing education is utilized in the performance of the duties of the position:*

<i>(a) Recognized speciality training course, 3-6 months</i>	<i>\$ 550</i>
<i>(b) Recognized speciality training course, 7-12 months</i>	<i>\$ 800</i>
<i>(c) (i) One-year university course in Administration, Administration and Education (« organisation des soins et éducation »), Clinical Fields (« milieu clinique »), Community Health (« santé communautaire »), Gerontology (« gérontologie »), Health Services Administration I and Health Services Administration II (« gestion des services de santé 1 et 2 »), Mental Health (« santé mentale »), Nursing Psychiatry, Public Health, Teaching and Supervision, or in any other field of study approved by the employer.</i>	<i>\$ 1,200</i>
<i>(ii) Two one-year university courses as described in (i) above.</i>	<i>\$ 1,300</i>
<i>(iii) Three one-year university courses as described in (i) above.</i>	<i>\$ 1,500</i>
<i>(d) Bachelor's degree in nursing.</i>	<i>\$ 2,000</i>
<i>(e) Master's degree in nursing.</i>	<i>\$ 2,500</i>

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*One (1) allowance only will be paid for the highest relevant qualification under paragraph B.*

[8] In 2001 the grievor requested an education allowance under Appendix “B”, section B, for his Bachelor of Science degree in Psychology. Specifically, he requested an allowance of \$1,500 under section B(c)(iii) of Appendix “B” for “Three one-year university courses as described in (i) ...”.

[9] The employer denied the grievor’s request under section B(c)(iii) but allowed an allowance of \$550 under section B(a). The reasons were as described in a letter dated June 2, 2003:

*Your further education in Psychology has equipped you with skills in addition to your basic nursing knowledge, yet it does not meet the criteria required for the education allowance under Appendix B(c)(iii) as requested. Management did, however, take into consideration some of the courses taken to achieve your Psychology Degree and as a result, determined that your allowance to be set at Appendix B(a) of the HS collective agreement.*

#### Summary of the arguments

[10] A hearing was held on December 1, 2004. At my request further submissions were requested and received on the interpretation of the English and French versions of the preamble of Appendix “B”, Section B.

[11] The bargaining agent submits that additional education provides added value to the workplace. Section B of Appendix “B” should be read widely, rather than narrowly, and a degree at the end of a four-year program meets the requirements of that provision. The employer has recognized that some value has been added by the degree in psychology by their acceptance of an allowance under section B(a).

[12] The employer submits that the grievance fails on two points. First, section B of Appendix “B” lists a number of specific programs and a degree in psychology is not one of those listed. Second, it is submitted that a degree is not a “certificate”, as described in *Krenus v. Treasury Board (Solicitor General Canada - Correctional Service)* 2003 PSSRB 62 (paragraph 25), for the purposes of section B. Taking individual courses is not what was intended by the parties.

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Reasons*(i) Appendix "B", Section B*

[13] As a starting point, it is useful to consider the language of Appendix B and in particular section B.

[14] The preamble to the entire appendix sets up a structure of two columns. Where an employee fits the "circumstances" in Column 1 then he/she will receive the additional pay in Column 2. For example, section B(a) states that an employee will receive an additional \$550 pay if he/she has a "recognized speciality training course, 3 - 6 months".

[15] Then the introductory language in section B provides a general description of the education courses intended to be eligible for an education allowance for an employee. These are "post-graduate training or nursing education" that are "utilized in the performance of the duties of the position" of the employee.

[16] I note the French version of the preamble which is as follows:

*Lorsque les éléments suivants de formation en sciences infirmières ou d'instruction post-scolaire en sciences infirmières sont utilisés dans l'exercice de leurs fonctions.*

The English version includes the phrase "post-graduate nursing training or nursing education" while the French version uses the phrase "formation en sciences infirmières ou d'instruction post-scolaire en sciences infirmières". That is, the English version uses "post-graduate" at the beginning of the phrase and two interpretations are possible from this language. The first is that post-graduate refers to both nursing training and nursing education. The second is that post-graduate applies only to nursing training. In contrast, the French version uses "post-scolaire" to describe only nursing education and the reference in the French version to nursing training is not circumscribed by the reference to post-graduate studies.

[17] It is useful to consider the meaning of the phrase "post-graduate" in order to reconcile these interpretations. I note that section B(d) states that an employee who obtains a Bachelor's degree in nursing can receive an education allowance. For this reason it is unlikely that the intention of the parties was to limit education allowances to education towards a graduate degree such as a Master's degree. Some broader meaning is intended.

[18] The difference between the French and English versions of the preamble was considered in *Gervais v. Treasury Board (Solicitor-General - Correctional Service)* (Board file 166-2-28207) (1998). The issue in that case was whether an employee, a Registered Nurse, was entitled to an education allowance for training or education she had taken as a Registered Psychiatric Nurse. This training or education took place before the employee became a Registered Nurse. Deputy Chairperson Evelyne Henry decided that an education allowance was payable. The collective agreement in that case had the same preamble as in the case before me but Appendix “B”, section B(c), was different.

[19] The *Gervais, supra*, decision uses “training” and “education” interchangeably. It also states that the French version did not intend for “post-graduate to qualify all nursing education and training but is included in what must be considered” (page 9). Another decision (*Bainbridge v. Treasury Board (Health and Welfare)* (Board file 166-2-16132) (1986)) stated, “It is post-graduate nursing training or post-graduate nursing education which ... must be utilized in the performance of nursing duties to be compensable”. Deputy Chairperson Henry did not take that as determinative “of the current issue” before her (page 9). Instead, she adopted the following statement from *Bainbridge, supra*, of the test to be applied:

*The allowance has been made available for those who have acquired a nursing-specific, job related education which is then put to use in the fulfillment of those particular duties attached to specified positions. (page 9 of Gervais, supra).*

[20] From this review of previous cases I conclude that the phrase “post-graduate nursing training or nursing education” includes training or education that was obtained before the nursing education or nursing training that is the primary aspect of an employee’s position. In *Gervais, supra*, training in psychiatric nursing was held to justify an allowance for a Registered Nurse, even though the psychiatric training took place before the training as a Registered Nurse. As for the application of “post-graduate” I conclude that the approach in *Gervais, supra*, is the only way to reconcile the English and French versions of the preamble to section B. That is, “post-graduate” was not intended to qualify all of nursing training or nursing education, but it “is included in what must be considered”. The test is whether an employee has acquired nursing-specific training or education, as explained in *Bainbridge, supra*.

[21] Further, Section B narrows the entitlement to an education allowance by requiring that the training or education be “utilized in the performance of the duties of the position”. It is possible that an employee could have the necessary education or training but it is not utilized in the work of the employee. No allowance is payable in that event (*Bainbridge, supra*).

[22] Finally, Appendix “B”, section B, contains five specific references to education, from (a) to (e), which entitle employees to five different allowances, ranging from \$550 to \$2,500. For example, in this case the grievor seeks an allowance for “Three one-year university courses” in the amount of \$1,500. The employer has agreed to pay \$550 for “recognized speciality training course, 3-6 months”. The last sentence of section B states that only one allowance will be paid for the highest qualification.

[23] From this language I conclude that three questions are relevant to a request for an educational allowance under section B of Appendix “B”:

- (a) Has the employee taken “post-graduate nursing training or nursing education”?
- (b) Is the education or training “utilized in the performance of the duties of the [employee’s] position”?
- (c) Does the employee meet the circumstances of one of the five allowances? Section B(c)(i) lists a number of specific courses in areas such as “Administration” “Community Health”, “Gerontology” and others. Section B(c)(iii) also uses these descriptions.

[24] I will address each of these questions in turn.

(ii) *Post-Graduate Nursing Training or Nursing Education*

[25] With regards to “post-graduate nursing training or nursing education” the grievor is a Registered Psychiatric Nurse. His training in nursing included theory on mental disorders, therapeutic communications (for example, verbal and non-verbal cues), medication for various disorders and clinical training. The grievor’s course work for his degree in psychology included human perception, personality, social psychology, infant and child development, drugs and behaviour, adult development and aging and others.

[26] I accept that psychology is not the same as psychiatry. Definitions of each are:

“Psychiatry”: The branch of science that deals with the diagnosis, treatment, and prevention of mental illness.

“Psychology”: The science dealing with mental processes, both normal and abnormal, and their effects upon behaviour.

*Taber’s Cyclopedic Medical Dictionary*, 18th Edition, 1997.

The parties did not rely on any differences between psychiatry and psychology. For the purposes of this grievance, I find there is significant overlap between the two sciences.

[27] Similarly, neither party raised the issue of whether education obtained before licensing as a nurse, as in this case, was significant. As above, the *Gervais, supra*, decision concluded that education or training taken before the primary education of an employee may justify an education allowance.

[28] I conclude that the course work in psychology taken by the grievor can be appropriately included as part of the nursing training or education of a Psychiatric Nurse. It is education or training that is specific and job-related to psychiatric nursing.

(iii) *Utilized in the Performance of the Position*

[29] The next issue is whether the grievor utilized his university education in psychology in the performance of his position.

[30] The evidence on this point is that many of the inmates at the Regional Treatment Centre suffer from mental illnesses including bipolar illnesses, suicidal ideation and depression. The grievor relied on the courses described above to provide him with an understanding of the underlying issues of behaviour with his patients. Courses in topics such as Drugs and Behaviour and Social Psychology are obvious examples. Also, courses in statistics are used for research and they enhance the grievor’s ability to interpret findings. Based on this evidence, and the overlap between education in psychology and psychiatric nursing, I conclude that the grievor utilized his education in psychology during the performance of his duties as a psychiatric nurse. This is not a case where, for example, the employee seeks an allowance for a degree in education (*Bainbridge, supra*).



[31] I also note that the employer has agreed to pay the grievor an allowance of \$550 for “Recognized speciality training course, 3-6 months”. As described in the June 2, 2003 letter from the employer, “Management did ... take into consideration some of the courses taken to achieve your Psychology Degree”. From this I think it can be taken that the employer recognizes that the grievor’s specialized education in psychology is useful to his work as a nurse.

(iv) *The Specific Requirements of Section B(c)*

[32] Does the grievor meet one of the five specific requirements in section B? This is where the main difference between the parties exists.

[33] A previous decision on section B is *Krenus, supra*. In that case the grievor was pursuing individual courses towards her completion of a Bachelor’s degree in nursing. She ultimately received the education allowance under Appendix “B”, section B(d), when she completed the degree. But, before then, she requested that she receive an allowance for each course taken towards her degree. The grievance was denied.

[34] Board member Beth Bilson Q.C. concluded that the word “course” had to be interpreted in accordance with the context of the collective agreement:

*[23] ... the context in which a particular term is used is one of the most significant factors in determining the meaning. In this instance, one of the indicators of the meaning of the term “course” here is the wording of the other items in the list of educational accomplishments which is a trigger for additional salary. In paragraph B(a) and B(b) the term “course” is clearly used to refer to a specialized training program which leads to a particular professional credential.*

...

*[24] Considering these along with the post-graduate degrees listed in B(d) and B(e), the list is one of “courses” or complete programs which lead to the conferring of an additional professional designation or credential.*

*[25] A single university class or course is not of this nature. Individual courses are building blocks for a diploma, certificate or degree, but the completion of each one does not in itself confer any particular status.*

*[26] There are two further reasons why it would seem anomalous to interpret paragraph B(c) as referring to individual university courses. One is the question of why the limit of three of these courses would be chosen for*

recognition, rather than, say, the completion of one year of a longer program. In segments of 6 credit units, a typical four-year degree program described in the calendar which was put in evidence might require 20 “courses”, and there does not seem any particular reason why an employee would be rewarded for taking three of these. Even allowing for the fact that a program might have course requirements which are not directly relevant to nursing, it is difficult to see the logic of placing the cap at three.

[27] The second point is that, if the argument of the bargaining agent is that two 3 credit courses could be combined to fit into the term “one-year university course”, this is an awkward way to indicate this. There is certainly nothing in the provision which specifically permits this, and it would seem likely that if individual university courses were what the drafters of the provision had in mind, they would have indicated this in more detail.

[35] I agree with the reasoning and the result of the *Krenus, supra*, decision. The language of Section B of Appendix “B” does not support educational allowances for individual university courses.

[36] The facts before me are different than *Krenus, supra*, in at least one important respect. In this case the grievor has completed his university degree. He is not asking for an allowance for individual courses he has taken that lead to his degree. In this sense he has satisfied the requirement set out in the *Krenus, supra*, decision: a professional “credential” (paragraph 24) has been conferred on him and he has his “degree” (paragraph 25). I conclude that the *Krenus* decision assists the grievor to obtain an educational allowance in the case before me.

[37] The grievor also needs to comply with the requirements in section B(c)(i), in order to obtain the allowance of \$1,500 under section B(c)(iii) for “Three one-year university courses”. In particular, his education has to be in one of the fields of study listed or any other field approved by the employer. The employer has not approved any field of study under section B(c)(i).

[38] One of the fields of study listed is “Mental Health («santé mentale»)”. Since Appendix “B” is for allowances for nurses, and the grievor is a Psychiatric Nurse, I think it is reasonable to conclude that the reference to mental health is, among other things, aimed at psychiatric nursing. The above definition describes psychology as the science dealing with mental processes, both normal and abnormal, and their effects upon behaviour. I think it is also reasonable to conclude that education in psychology

is education in mental health. The latter is a broad term that is capable of including psychology.

[39] Another matter arises from the language of section B(c) and the facts of the case before me. The grievor has a degree - which includes more than three university courses - but he seeks an allowance based on three university courses. He is clearly not entitled to the allowance for a Bachelor's degree (nor does he seek it) under section B(d) because his degree is in psychology rather than nursing. As the employer points out, section B(c) refers to "Three one-year university courses" and it does not refer to a university degree. Instead, again, section B(d) provides for an allowance of \$2,000 for a "Bachelor's degree in nursing". It is submitted by the employer that the grievor has a degree, that event is covered by section B(d) but only for a Bachelor's degree in nursing and, therefore, he is not entitled to an allowance under section B(c)(iii).

[40] In my view, this approach to section B of Appendix "B" is problematic, as illustrated by the following comparison. An employee working in administration with a certificate or diploma in Administration, obtained after a one-year university course, would be entitled to an allowance of \$1,200 under section B(c)(i). I take it that the employer would not challenge the allowance in this case. However, another employee (also working in administration) who obtained a Bachelor's degree in Administration, obtained after completion of several courses, would be entitled to the lowest allowance or, perhaps, no allowance. This second example is analogous to the facts in this case and the employer opposes payment of an allowance under section B(c)(i) here. The logic, it is submitted, is a result of the language of section B: only a Bachelor's degree in Nursing is recognized (Section B(d)) and taking individual classes was not intended by the parties to justify an allowance. The *Krenus, supra*, decision is also relied on for the submission that individual courses do not justify an allowance.

[41] This approach does harm to the idea of education allowances generally. The structure of section B of Appendix "B" demonstrates that increasing levels of education will result in increasing levels of allowances. For example, three one-year university courses receive a larger allowance than a single one-year university course. But, an employee with a university degree (other than in Nursing), in one of the fields of study in section B(c)(i), receives less than half (\$550 compared to \$1200) of another employee with a certificate based on a one-year university course. This assumes the

employer recognizes that the employee is entitled to the minimum allowance under section B(a).

[42] The employer in this case agreed to pay the grievor the minimum allowance of \$550 for his degree in psychology, after he filed his grievance. The degree was seen as “Recognized speciality training, 3 - 6 months” or, as described in the June 2, 2003 letter from the employer, “Management did ... take into consideration some of the courses taken to achieve your Psychology Degree”. Therefore, it is not in dispute that the grievor’s education in psychology is of value to the employer; what is in issue is the amount of that value. Other than this general recognition, I can see no compelling logic for giving the grievor the lowest allowance in section B.

[43] It is true that a degree is not exactly the same as three university courses. I did not hear any bargaining history to explain the history of why one, two and then three university courses were selected as the thresholds for education allowances. The *Krenus, supra*, decision comments on this language as well.

[44] However, the objective is to interpret the language in a manner that is consistent with the agreement as a whole. As above, when a degree obtained after completion of numerous university courses is given, at best, minimal recognition compared to a certificate based on a one-year university course, the result harms one of the important elements of education allowances. On the other hand, a conclusion that a degree (or other certificate, diploma) obtained after several courses is equivalent to “Three one-year university courses” is consistent with the idea that increases in allowances are based on increases in education.

[45] I conclude that section B should be read as it is written and then interpreted by the *Krenus, supra*, decision. That is, when an employee has completed three one-year university courses and has completed the degree (diploma or certificate) that includes those courses, he is entitled to the allowance in section B(c)(iii).

[46] For all the above reasons, I make the following order:

Order

[47] For all of the above reasons, the grievance is allowed. His education in psychology is utilized in the performance of his duties as a Psychiatric Nurse. The grievor is entitled to an education allowance of \$1,500 pursuant to Appendix "B", section B(c)(iii). I retain jurisdiction for a period of ninety days from the date of this decision if the parties are not able to agree on an effective date for payment of this allowance.

BURNABY, April 11, 2005.

**John Steeves,  
adjudicator**