

Date: 20140207

File: 166-02-35978

Citation: 2007 PSLRB 17



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**DAVID W. MCKAY**

Grievor

and

**TREASURY BOARD  
(Correctional Service of Canada)**

Employer

Indexed as

*McKay v. Treasury Board (Correctional Service of Canada)*

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

**REASONS FOR DECISION**

***Before:*** Barry D. Done, adjudicator

***For the Grievor:*** Carolyn LeCheminant-Chandy, Public Service Alliance of Canada

***For the Employer:*** Stephan J. Bertrand, counsel, and Andrew Unger,  
student-at-law

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Heard at Kingston, Ontario,  
October 24 and December 8, 2006.

## REASONS FOR DECISION

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### **I. Grievance referred to adjudication**

[1] David McKay is employed by the Correctional Service of Canada (CSC) at Frontenac Institution in Kingston, Ontario. His position is classified at the GS-ST5-04 group and level, and his title has been referred to variously in the evidence as Stores Officer, Stores Person and Shipper/Receiver. The collective agreement (Exhibit G-1) that applied at the time of the grievance was the one between the Treasury Board and the Public Service Alliance of Canada for the Operational Services Group (expiry date: August 4, 2003).

[2] On May 16, 2002, Mr. McKay grieved (Exhibit G-11) against the non payment of a monthly allowance for the packaging and labelling of dangerous goods for shipping. The provision for this monthly allowance is found in the collective agreement, at clause 6.01 (Exhibit G-1):

...

#### ***Dangerous Goods***

**6.01** *An employee certified pursuant to the Transportation of Dangerous Goods Act and who is assigned the responsibility for packaging and labelling of Dangerous Goods for shipping in accordance with the above Act shall receive a monthly allowance of seventy-five dollars (\$75) for each month where the employee maintains such certification.*

...

[3] At the hearing of this grievance, 17 exhibits were filed, and five witnesses were called to testify.

[4] 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 ("the former Act").

### **II. Summary of the evidence**

#### **A. For the grievor**

[5] David McKay began his stores position with the CSC in 1995. The stores area at Frontenac Institution looks after the needs of Collins Bay Institution and Regional

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Headquarters, in addition to Frontenac Institution. Working in stores at Frontenac Institution are three stores officers, all classified at the GS-ST5-04 group and level, who share the same generic work description, and a supervisor classified at the GS-ST5-07 group and level. Mr. McKay identified three work descriptions:

- Exhibit G-3: Stores Officer - dated August 4, 1993;
- Exhibit G-4: Stores Officer - updated March 5, 2002; and
- Exhibit G-5: Stores Officer - dated October 10, 1980.

[6] Exhibit G-3 was given to Mr. McKay only in the last week before the hearing by his supervisor, Ian Hogan. Mr. McKay stated that the contents of that work description are accurate.

[7] Exhibit G-4 was provided to Mr. McKay by a representative of human resources, at his request, in 2003. Mr. McKay believes that that work description is also accurate.

[8] Exhibit G-5 was given to Mr. McKay by Mr. Hogan "last Friday."

[9] Mr. McKay drew my attention to Exhibit G-3, at page 4, point number 6, where, under the heading "Physical Dexterity", the following words are found: "Required to handle dangerous goods in a safe manner."

[10] Mr. McKay next spoke of his training and certification. He stated that he had attended three training sessions in the transportation of dangerous goods, as required and paid for by his employer. Following each training session, he was given a certificate (Exhibits G-6, G-7 and G-15) covering the period January 10, 2002, to January 13, 2008.

[11] There are nine classes of goods that Mr. McKay was trained on that are considered dangerous goods. These are listed in Exhibit G-8, an excerpt from the *Transportation of Dangerous Goods Act, 1992* (S.C. 1992, c. 34).

[12] In 2002, before Mr. McKay's first training session on dangerous goods, the stores area at Frontenac Institution received four 45-gallon drums of butane. Some of the drums were leaking and a carrier refused to accept them for shipping without proper packaging and labelling, which the later training allowed Mr. McKay to do.

[13] Exhibit G-9 is a sample of labels that are on boxes received in the stores area. Each label bears a number referring to the class of dangerous goods contained in the package.

[14] The frequency of receiving dangerous goods at Frontenac Institution varies from twice per week to once per month. Exhibit G-10, a package of material safety data sheets describing dangerous goods received over the past year, is typical of the categories of dangerous goods received: primer, soap, fuel, paint, drain cleaner, farm fertilizer, etc.

[15] The practice in the stores area was that “whoever is there goes and gets the next shipment.” That changed in February 2003 when individual stores officers were assigned the task of handling dangerous goods on a six-month rotation. It has happened, since the implementation of the six-month rotational system, that the stores officer designated to deal with dangerous goods has been away or unavailable when needed, as that officer could have been on a training course, on various types of leave, escorting a distribution of goods to Collins Bay Institution, etc. When the designated stores officer is away, no one is assigned to replace him, as happened when Stores Officer Gerry Clarke was off on sick leave for more than one week. There are also situations (spilled goods for example) when more than one stores officer is required to deal with dangerous goods.

[16] Mr. McKay believes that the requirement to deal with dangerous goods is an ongoing requirement, and that the payment of the allowance should also be ongoing and not on a rotational basis.

[17] In cross-examination, Mr. McKay stated that he relied on the wording of the collective agreement as a basis for his entitlement to the allowance and not on his work description.

[18] While some dangerous goods are urgent and cannot wait to be dealt with, others are less urgent and can await the return of the designated stores officer. Alternatively, the supervisor is certified and can assist. However, designated or not, as a professional, Mr. McKay would simply do it.

[19] As Mr. McKay's work description states that it is his responsibility to deal with dangerous goods, he believes that the implementation of assigning the handling of dangerous goods on a six-month rotational basis is a violation of the collective agreement. In addition to being responsible for that duty by his work description, Mr. McKay relies on past practice in stores. He was given clear directions by his mentors and colleagues upon his arrival in stores, as well as by his immediate supervisor, Mr. Hogan, that handling dangerous goods was part of his job.

[20] For one whole year, in 2004, no stores officer was assigned the responsibility according to the six-month rotational assignment, yet the requirement continued. This is another example of a flaw in the rotational system, in addition to the problem of the absence of the designated officer. Moreover, Mr. McKay stated that he had only been assigned on two occasions over more than three years. Given that there are only three stores officers, and Mr. Hogan was not included in the rotation, Mr. McKay should have had one additional assignment.

[21] Once on-site, dangerous goods come under the "Workplace Hazardous Materials Identification System" (WHMIS) and are no longer considered dangerous goods until they are prepared for shipping.

[22] Ian Hogan is the Chief of Material Management for both Frontenac Institution and Collins Bay Institution. Three stores officers and one canteen officer report to him, and he is familiar with their work descriptions. Exhibit G-3, the work description effective August 4, 1993, is the most current and is the work description for Mr. McKay's position. Mr. Hogan believes that Exhibit G-4 was the work description done for the Universal Classification System (UCS) and was not made official. Exhibit G-3 was found by Mr. Hogan in an appraisal file and, although accurate, is not overly detailed. The term "hazardous goods", mentioned in that exhibit, applies to both dangerous goods and the WHMIS. Mr. Hogan was trained and is certified to handle dangerous goods until 2008, and all stores personnel were trained in both the packaging and labelling of dangerous goods.

[23] Mr. Hogan can only remember one occasion when dangerous goods had to be repackaged and relabelled: the butane drums example in 2002. On that occasion, all three stores officers were involved, as well as himself.

[24] It is possible that stores officers can be required to repackage larger containers of dangerous goods into smaller containers for distribution to different departments within the worksite and to correctly label the packages for the end user.

[25] As supervisor, Mr. Hogan expects his staff to check all material safety data sheets, determine which category of dangerous goods is being dealt with, as well as check with the manufacturer, if necessary. Dangerous goods arrive monthly and it is possible that staff may forward them to another recipient. Packages containing dangerous goods can arrive leaking. It cannot be predicted when that may happen, so no specific stores officer is assigned to go and retrieve any particular package, as the requirement applies to all three officers as well as Mr. Hogan.

[26] The six-month rotational system was not in place in 2002. It has happened since it was implemented that the designated officer has been away from work. One example was an absence of one stores officer, who was on annual leave for three weeks. On other occasions, the designated officer was not in the stores area but in another part of the institution. When the designated officer is away or unavailable and an urgent situation involving dangerous goods presents itself, the rotation is not changed and Mr. Hogan's staff automatically do what is necessary under the WHMIS. This could involve repackaging in preparation for shipping.

[27] During the 1990s, staff had to package and label biomedical waste, including repackaging, sealing and placing it in storage until it was picked up for destruction.

[28] Mr. Hogan acknowledged, during his cross-examination, that the functions of packaging and labelling are found under the *Transportation of Dangerous Goods Regulations*, while the rules related to the handling of dangerous goods are found under the WHMIS. Under both systems, a stores officer handles dangerous goods, but the WHMIS applies to handling within the workplace while dangerous goods apply to transportation by highway. For example, when sending dangerous goods to a site within the institution, neither the *Transportation of Dangerous Goods Act, 1992*, nor the allowance is triggered.

[29] When dangerous goods need to be returned to a sender, there is no need to either repackage or re-label them unless they are to be signed for. Then new shipping documents must be completed and re-verified, as the *Transportation of Dangerous*

*Goods Act, 1992*, is triggered. That *Act* is not triggered when cleanup of a leak is required until after the cleanup of the leak is completed.

[30] In terms of whether handling dangerous goods is an urgent matter, staff are trained not to wait but to remove them as soon as possible, as there are safety and health implications and risk of an incident rises if dangerous goods are allowed to sit.

[31] Exhibit E-1 is a memorandum dated August 16, 2002, concerning entitlement to the allowance.

[32] Mr. Hogan restated that the work description in Exhibit G-3 is accurate and describes the duties currently being done. Mr. Hogan stated: "I don't find the rotation system effective."

### **B. For the employer**

[33] Christopher Stafford is the Assistant Warden, Management Services, at Frontenac Institution. As the Division Head of Management Services, he supervises the chiefs of six departments, including Mr. Hogan. Mr. Stafford is familiar with the allowance in question.

[34] In January 2002 assignments of stores persons for handling dangerous goods were not consistent and were done on an ad hoc, hit-and-miss basis. Even in November 2002 there was confusion concerning the assignments and a lack of training for the stores persons. The matter was discussed between regional wardens and the memorandum dated August 16, 2002, referred to in paragraph 31 above (Exhibit E-1), was created to clarify entitlements to the allowance, although Mr. Stafford does not know if that exhibit was distributed within Frontenac Institution.

[35] If problems arise concerning the absence of the officer assigned to a given six-month rotation, one month assignments can be used or the responsibility can be contracted out to an external source.

[36] The six-month rotational system was implemented in February 2003, and that decision was made by Lincoln Wong, the Regional Comptroller of the Ontario Region, CSC, in consultation with a group of assistant wardens. Exhibit G-14 shows these rotations, beginning with Mr. McKay, from February 17 to August 15, 2003, and ending with Gerald Clarke, from July 1 to December 31, 2006.

[37] Mr. Stafford's file confirms that there were no assignments made for a period in excess of 16 months: August 30, 2003, to December 31, 2004.

[38] Exhibit G-15 is a training certificate for Mr. McKay valid until 2008.

[39] Mr. Stafford agreed that dangerous goods can arrive in the wrong amount and that they can be damaged or leaking when they arrive.

[40] Lincoln Wong is the Regional Comptroller of the Ontario Region, CSC. Under his overall responsibility for finance and budget are material management, contracting and procurement. He is familiar with both the allowance and Mr. McKay's grievance.

[41] As the provision of an allowance for the packaging and labelling of dangerous goods is a new provision in the collective agreement (Exhibit E-1), Mr. Wong was involved in discussions with Mr. Stafford and National Headquarters to determine how the allowance would be implemented. No assignments were made at the early stage of the discussions, as there did not appear to be a requirement.

[42] It was determined in late 2002 that there need only be one stores officer assigned on a rotational basis to ensure adequate coverage. Mr. Wong's role was restricted to recommending this change; he was not the one responsible for deciding to implement the change.

[43] Mr. Wong stated that the rotational system was not put in place as a reaction to the grievance Mr. McKay filed on May 16, 2002.

[44] Laura Darby began as Chief of Classification in the Ontario Region, CSC, in August 2006. She is quite familiar with work descriptions; their purpose is "to describe work as assigned by the manager."

[45] Exhibit E-2 is the "Classification System and Delegation of Authority Policy", as modified on July 23, 2004. This policy contains a definition of the term "work description":

...

*Work description(description de travail) - a document approved by the respective manager that describes the work requirements of a position or a job. A work description contains all the information that the appropriate classification standard requires for its evaluation.*



...

[46] Ms. Darby noted that Exhibit G-5, the 1980 work description, contains its classification on its face whereas Exhibit G-3 does not. She stated that if a work description is not classified, it does not officially apply to the job. Rather, the CSC's policy is to rely on the work description that was last classified.

[47] Ms. Darby checked her classification files and stated that Exhibit G-3 was not classified for Mr. McKay's position. Those files contain a work description dated May 2, 1980, but not Exhibit G-5, which is dated October 10, 1980.

[48] Ms. Darby agreed, in cross-examination, that classification is a two-step process:

- 1) the creation of an accurate work description; and
- 2) the classification of the duties described in that work description.

[49] Neither Exhibit G-4 nor Exhibit G-5 is in her files. Ms. Darby believes that Exhibit G-3 could possibly apply to another stores officer position.

[50] Although the employer had looked for information to update the stores officer work description in 1992, nothing was done.

[51] The 1980 work description has not formally been reviewed in 26 years, although the normal practice requires a cyclical review every five years.

### **III. Summary of the arguments**

#### **A. For the grievor**

[52] The issue to be determined is whether Mr. McKay was assigned the responsibility for packaging and labelling dangerous goods. Mr. McKay was and is assigned that responsibility by his work description, and since it is included in his work description he can be asked to do this at any time.

[53] The employer cannot, by implementing a rotational assignment, change the collective agreement provision regarding payment for handling dangerous goods.

[54] The provision of an allowance at clause 6.01 of the collective agreement is new language. The only case on point is that of *Hupée et al. v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 62, by adjudicator Sylvie Matteau, upholding the

grievances. That decision should be followed, unless the employer can demonstrate that it is clearly wrong.

[55] As the requirement for packaging and labelling dangerous goods is ongoing, the corrective action should also be ongoing from January 2002 until the present, in keeping with Exhibits G-6, G-7 and G-15 (the training certificates).

## **1. Evidence supporting the fact of assignment**

### **a. Transportation of Dangerous Goods Act, 1992 – Interpretation section**

...

*“dangerous goods” means a product, substance or organism included by its nature or by the regulations in any of the classes listed in the schedule;*

*“handling” means loading, unloading, packing or unpacking dangerous goods in a means of containment for the purposes of, in the course of or following transportation and includes storing them in the course of transportation;*

...

### **b. The work descriptions**

#### **i) Exhibit G-3**

[56] This work description was signed on April 19, 1994, by Dennis Perrault, Regional Administrator, Finance/Technical and Offender Services.

[57] Mr. McKay said it was accurate.

[58] Mr. Hogan said it was accurate and is the most current one.

[59] Therefore, this work description is an authoritative work description. Contained in Exhibit G-3, under “Key Activities”, at bullet three is the following:

...

*Packaging and preparing items for storage or shipment in accordance with proper government regulations; i.e. hazardous goods, W.H.M.I.S. etc.;*

...

[60] The word “hazardous” means dangerous, and “preparing...for shipment” includes labelling according to the *Transportation of Dangerous Goods Regulations*.

[61] Under “FACTOR 3. WORKING CONDITIONS – Risk to Health”, at bullet one, it states:

*- Risk of muscle strain due to lifting heavy items, risk of minor injuries such as bruises and scrapes, possible skin irritations or respiratory problems from frequent handling of hazardous goods.*

...

[62] Under “FACTOR 4. SKILL AND KNOWLEDGE – Methods, Techniques and Practices”, at bullet two, it states:

...

*- Receiving, verifying, shipping and storing of goods;*

...

[63] Under “Physical Dexterity”, at bullet three, it states:

*- Required to handle dangerous goods in a safe manner.*

[64] The definition of “handling”, as mentioned earlier, is particularly important, as it includes loading, unloading, packing or unpacking. Mr. Hogan’s evidence was that Mr. McKay is required to perform these tasks.

## **ii) Exhibit G-4**

[65] This is the most recent work description. Mr. McKay says it too is accurate and that it was given to him following his request to the human resources department. While it generally mirrors Exhibit G-3, certain portions are noteworthy:

### ***Key Activities***

...

- *Verifies and receives/ships material coming into and going out of the institution as required by various end users.*

- *Receives and trans-ship [sic] goods being returned to suppliers to ensure that items shipped in error can be returned for replacement or credit.*

...

- *Process various shipping documents to control and route shipments.*

...

**Work Characteristics**

**Responsibility**

...

**(2) Well-Being of Individuals**

...

*Responsible for the control of protected storage areas with respect to hazardous material which contributes to the safety and well - being [sic] of all people entering the facility.*

...

**Skills**

...

**(8) Contextual Knowledge**

...

**LEGISLATION**

*Knowledge of WHMIS and Health and Safety Regulations for proper handling and storage to ensure safety of staff and offenders.*

...

**Effort**

**(11) Intellectual Effort**

...

*Co-ordination of movement and storage of numerous shipments while assessing the appropriate location and method of storage (such as secure, refrigerated). This includes assessment of adequate warehouse space, stock*

rotation for current and short-term projected goods. It also includes restriction and control of protected storage areas with respect to attractive or hazardous material. This is impacted by receipt of numerous simultaneous deliveries, direction of offender workers as part of the work team, telephone calls and drop - in [sic] clients.

...

**Working Conditions**

...

**(16) Risk to Health**

...

Frequent handling of chemicals which can be toxic, flammable and can cause skin irritation and burns.

...

**iii) Exhibit G-5**

...

Duties

...

2. Conducts Institutional warehousing procedures:

- by preparing goods for storage, repackaging, and directing to proper location;

...

3. Issues institutional stores commodities to the various sections and departments of the institution:

...

- by packaging, labeling and removing to issue area;

...

Specifications

Skills and Knowledge

Basic Knowledge - The work requires a thorough knowledge of stores procedures including: receiving, warehousing, issuing, shipping, disposal, determining quantities of

*material delivered; rotation of stock, isolating inflammable and perishable goods, the ability to supervise inmates in the performance of warehousing duties and instructing them in proper handling and safety methods. The work requires the use of chemicals, percentages and fracitons [sic] to verify quantities received and issued.*

...

## **2. Testimony**

[66] Messrs. McKay and Hogan testified that Mr. McKay was involved in repackaging and labelling the butane drums in 2002. Also, Mr. Stafford testified that when he arrived in November 2002 there was confusion about assignments, which were then done on an ad hoc, hit-and-miss basis.

## **3. Direction**

[67] Mr. McKay said that he had been directed to handle dangerous goods by the other stores persons upon his arrival at the workplace and by his supervisor. Mr. Hogan confirmed that it was Mr. McKay's job to handle dangerous goods.

[68] Unlike the provisions of clause 63.01 in the collective agreement (Exhibit G-2), which does not apply to the General Services Group, clause 6.01 provides for an allowance once an employee is certified and assigned; that employee need not perform the task. However, by introducing a system of rotating responsibility, the employer is undermining the provisions of the collective agreement and attempting to tie the payment of the allowance to the performance of the duty. This the employer cannot do, as that is not the deal struck at the bargaining table.

[69] The evidence shows that there have been occasions when either no one was assigned the responsibility or the stores person assigned the responsibility was on leave or unavailable when there was a requirement to handle dangerous goods.

[70] The employer says that situations can be dealt with by assigning another stores person to perform the duty and paying that employee for one month. Or, if more than one designated stores person is required, another stores person can be assigned on an ad hoc basis. Both of these examples illustrate the employer's misunderstanding of the entitlement to the allowance, which is that the employer believes one must first do the duty in order to be paid the allowance.

[71] Once the responsibility to package and label dangerous goods has been assigned, the only condition that the collective agreement requires for entitlement to the allowance is maintaining the certificate.

[72] As the assignment of the responsibility is in the collective agreement, a stores person cannot refuse to perform the duty. However, using the employer's system of rotation, a stores person can be expected and required to perform the duty, even when not designated, creating a situation where an employee cannot refuse to perform a duty that he will not be paid for.

**B. For the employer**

[73] Mr. McKay submitted his grievance on May 16, 2002. As corrective action, he asks to be paid the allowance in question "for the month of January 2002 and beond" [*sic*] (Exhibit G-11).

[74] Mr. McKay's grievance is not a continuing grievance. Exhibit E-1, a CSC guideline providing clarifications concerning the entitlement to the allowance, dated August 16, 2002, changes the system of assigning the responsibility for dangerous goods handling. As well, in February 2003 a six-month rotation was implemented. Those changes were not ambiguous and clarified what previously was informal and unclear. The result is that Mr. McKay could no longer rely on his work description as a source of authority for any ongoing assignment after those changes were made.

[75] Exhibit G-14, containing the individual assignments of the responsibility to handle dangerous goods, shows that Mr. McKay was given two six-month assignments: February 17 to August 29, 2003, and July 1 to December 31, 2005. Those periods he cannot claim as part of his grievance. This shows that there was no ongoing breach of the collective agreement, as alleged.

[76] Being expressly assigned a duty is different than the fact that an employee may be called upon to do a duty, such as one that generally appears in a work description.

[77] If the work description includes a requirement to perform packaging and labelling of dangerous goods, then the employee is already paid for that responsibility. Why would an employer pay additional money for the performance of a duty included in a work description? A work description is just that, and not an assignment of duties.

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Employees do not generally do all the duties in a work description, as decided in *Eksal v. Canada (Attorney General)*, 2006 FCA 50.

[78] Exhibit E-2, the “Classification System and Delegation of Authority Policy”, defines “work description” as follows:

...

*Work description(description de travail) - a document approved by the respective manager that describes the work requirements of a position or a job. A work description contains all the information that the appropriate classification standard requires for its evaluation.*

...

[79] The facts in *Hupée et al.*, which is the subject of a judicial review, are different from the facts in this grievance. The grievors in that case were doing the duties on a regular basis. As well, those grievors did not have a generic work description.

[80] While it is a very rare occurrence for Mr. McKay to package and label dangerous goods, Mr. McKay may be called upon to do so. On those occasions, employees are not assigned by their work description.

[81] Under section 7 of the former *Act*, management’s unfettered right to assign duties has not been bargained away.

[82] Management must act reasonably and in good faith in making assignments. There is no proof that the rotation system was introduced because of the grievance, nor is there proof management is seeking to undermine the collective agreement. In considering how to implement a fair process, management considered how frequently employees performed the task.

### **C. Rebuttal for the grievor**

[83] There is no real distinction between the words “assigned” and “may be called upon to do” as the employer submits. Exhibit E-2, at 6.6.2, makes this clear:

...



**6. Policy Requirements**

...

6.6. *In exercising classification authority, Deputy Heads shall promote classification competence in their managers, by ensuring that all managers:*

...

*6.6.2. ensure that work descriptions in their area of responsibility reflect the work being assigned to and performed by their employees within the organizational structure and have a reasonable and defensible effective date;*

...

[84] At the negotiating table the parties agreed that the assignment to package and label dangerous goods merits additional money, not because the performance of that duty was an additional or extra assignment.

**IV. Reasons**

[85] The clause in dispute in this grievance is clause 6.01:

...

***Dangerous Goods***

**6.01** *An employee certified pursuant to the Transportation of Dangerous Goods Act who is assigned the responsibility for packaging and labelling of Dangerous Goods for shipping in accordance with the above Act shall receive a monthly allowance of seventy-five dollars (\$75) for each month where the employee maintains such certification.*

...

[86] In order to be eligible to receive a monthly allowance, an employee must satisfy three preconditions:

1. one must be an employee;
2. one must be certified pursuant to the *Transportation of Dangerous Goods Act, 1992*; and

3. one must be assigned the responsibility for packaging and labelling dangerous goods for shipping in accordance with the above *Act*.

[87] In order to continue one's eligibility for the allowance, there is one further condition:

4. one must maintain the certification.

[88] Mr. McKay's status as an employee is not in dispute nor is his certification: Exhibits G-6, G-7 and G-15 are copies of Mr. McKay's certification documents from January 10, 2002, to January 13, 2008, without interruption. The only disagreement is whether Mr. McKay was assigned the responsibility for packaging and labelling dangerous goods (the third pre-condition).

[89] Mr. McKay bears the burden of proving an ongoing violation of the collective agreement; in this case, a recurring failure to pay a monthly allowance.

[90] Ms. Darby testified that she was quite familiar with work descriptions. They are, she stated, "used to describe work as assigned by the manager" [emphasis added].

[91] Exhibit E-2, the "Classification System and Delegation of Authority Policy", was introduced through Ms. Darby. Point 6.6.2 is consistent with Ms. Darby's definition of a work description:

*6.6.2. ensure that work descriptions in their area of responsibility reflect the work being assigned to and performed by their employees within the organizational structure and have a reasonable and defensible effective date;*

[92] The consistency is in the fact that both sources speak of work descriptions as containing work assigned to the employees [emphasis added].

[93] Three work descriptions were introduced by Mr. McKay:

- Exhibit G-3: effective August 4, 1993, and signed by Mr. Perrault on April 19, 1994;
- Exhibit G-4: last updated March 5, 2002; and

- Exhibit G-5: effective October 10, 1980; certified as accurate on October 15, 1980.

[94] Mr. McKay's evidence was that all three work descriptions are accurate. Mr. McKay's immediate supervisor's (Mr. Hogan's) evidence was that Exhibit G-3, the work description effective August 4, 1993, best described the "duties that are currently being done by the stores officers." Mr. Hogan found Exhibit G-3 in a departmental appraisal file and believes it is "accurate, but not overly detailed." It was Mr. Hogan who provided Exhibit G-3 to Mr. McKay. Further, Exhibit G-3 was certified as accurate on April 19, 1994, by Mr. Perrault, then the Regional Administrator, Finance/Technical and Offender Services.

[95] Under the heading "Correctional Service Canada Work Description" (Exhibit G-3) are the position title ("Stores Officer") and the division or location ("Ontario Region Institutions").

[96] Ms. Darby's evidence was that I should ignore Exhibit G-3, as it was not classified. Rather, Ms. Darby urges me to consider Exhibit G-5, a work description effective fully 13 years earlier than Exhibit G-3, as it contains on its face the classification group and level.

[97] On the other hand, Ms. Darby said that a cyclical review of work descriptions is a requirement and that the normal cycle for review is every five years. Exhibit G-5 has not been reviewed in 26 years, from the fall of 1980 to the fall of 2006. Ms. Darby said that the employer had looked for updating information for the Stores Officer position in 1992, which lends credence to the 1993 work description (Exhibit G-3).

[98] For the above reasons, I find that Exhibit G-3 is the work description that applied to Mr. McKay at the time of his grievance (May 16, 2002). Moreover, using Ms. Darby's definition of a work description as "work assigned by the manager", it is not relevant to me that Exhibit G-3 was not classified. What is relevant for my purposes are the duties described therein, and not their appropriate group and level. Clearly, the incumbent of the position, the immediate supervisor of the position and the manager delegated to certify its contents all agreed that the tasks contained in that document are those that the incumbent is expected to do and does perform.

[99] I agree with the grievor's representative's submission that the duties described in Exhibit G-3 clearly support a finding that Mr. McKay was assigned the responsibility for the packaging and labelling of dangerous goods for shipping. Indeed, under "Key Activities" in Exhibit G-3 is the responsibility of "packaging and preparing items for storage or shipment in accordance with proper government regulations; i.e. hazardous goods, W.H.M.I.S. etc.;"

[100] Also, under "FACTOR 3. WORKING CONDITIONS", at point number 2 ("Risk to Health") are the words "possible skin irritations or respiratory problems from frequent handling of hazardous goods" [emphasis added].

[101] Point number 4 ("Methods, Techniques and Practices") refers to "shipping and storing of goods". Point 6 ("Physical Dexterity") states that the stores officer is "required to handle dangerous goods in a safe manner."

[102] Mr. McKay's and Mr. Hogan's evidence was that the stores officers are responsible for these tasks. Whether they actually perform these tasks is not germane. It is being assigned the responsibility to perform these tasks that triggers the allowance. In that regard, I agree with adjudicator Matteau's decision in *Hupée et al.* that the work description is, in itself, an assignment of duties. This finding is supported both by Ms. Darby's definition of a work description and Exhibit E-2, the "Classification System and Delegation of Authority Policy", at 6.6.2, that requires managers to ensure ". . . that work descriptions in their area of responsibility reflect the work being assigned to and performed by their employees . . . ."

[103] However, I also agree with counsel for the employer's submission on the extent of the remedy requested. In February 2003 there was a dramatic change to how work was assigned. Following discussions between Mr. Wong and a group of regional assistant wardens of management services, which began in early 2002, on how to implement a new provision of the collective agreement, a decision was made to assign the responsibility of handling dangerous goods on a rotational basis among stores officers. This new system replaced what Mr. Stafford described as a confusing, unclear regime of ad hoc and hit-and-miss assignments.

[104] Beginning in February 2003, individual stores officers were assigned, in writing, the responsibility to handle dangerous goods for a period of six months (Exhibit G-14).

[105] Both Mr. McKay and Mr. Hogan testified that, previous to this change, the stores officer who was available would handle dangerous goods. That handling could include repackaging a damaged or leaking container containing dangerous goods and sending it back to the supplier. Mr. Hogan said that as it was impossible to predict when these situations would arise, no specific stores officer would be assigned, as the responsibility applied equally to all stores officers. That was standard operating procedure in 2002 and up to February 2003, when a specific stores officer was designated for that task.

[106] Under section 7 of the former *Act*, the employer enjoyed an unfettered right to assign duties:

*7. Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein.*

[107] This assignment was done generally and in a hap-hazard fashion via the work description, where stores officers took it upon themselves to do the work. I find that for the period from January 2002 to February 2003 Mr. McKay was entitled to rely on established practice, the directions of his supervisor and his work description as authority for being assigned. I do not agree that under the new system Mr. McKay could continue to rely on any of those. His employer made it clear, in writing from the Warden, that past practice had ceased to exist. That is the employer's statutory right. I do not agree that implementing a rotational system of assignments in any way undermines, let alone violates, the relevant collective agreement provision. That provision speaks of an employee "who is assigned. . . ." The rotational system simply clarifies who will be assigned and how. The collective agreement, not surprisingly, is silent on how assignments will be made, or even if they will be made.

[108] Nor is there evidence to support the submission that the timing of the introduction of the new system indicates bad faith. While it is true that the actual implementation occurred eight months after the grievance was submitted, the uncontradicted evidence was that the discussions that brought about the change began in early 2002, prior to the grievance. It does not strike me as suspicious that the introduction of a new allowance brought about multi-level discussions on its implementation. It was these discussions that initiated the change, and not the grievance itself.

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

*(The Order appears on the next page)*

**V. Order**

[110] I order the employer to pay Mr. McKay for each month in the period January 2002 to January 2003, inclusive, for which he was not paid the monthly allowance for the packaging and labelling of dangerous goods.

February 7, 2007.

**Barry D. Done,  
adjudicator**