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Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

UNION OF CANADIAN CORRECTIONAL OFFICERS — SYNDICAT DES AGENTS CORRECTIONNELS — CSN

Bargaining Agent

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Union of Canadian Correctional Officers — Syndicat des agents correctionnels — CSN
v. Treasury Board (Correctional Service of Canada)

In the matter of group grievances referred to adjudication

REASONS FOR DECISION

Before: Ian R. Mackenzie, adjudicator

For the Bargaining Agent: Corinne Blanchette

For the Employer: Kenneth A. Graham

Decided on the basis of written submissions
filed June 7, August 14 and 17, October 26 and November 1, 2007.

I. Group grievances referred to adjudication

[1] This decision results from two group grievances filed separately by correctional officers (''the grievors'') at Matsqui Institution and Fraser Valley Institution, both in British Columbia. The grievors alleged that they had not been paid various premiums within a reasonable time. As corrective action, the grievors requested payment of amounts owing within ten working days and payment of interest. All employees have now been paid the outstanding amounts.

[2] The group grievance from Fraser Valley Institution was referred to adjudication on January 17, 2007, and the group grievance from Matsqui Institution was referred to adjudication on March 14, 2007.

[3] The employer has objected to the jurisdiction of an adjudicator to hear the grievances, on two grounds: there is no term of the collective agreement that specifies a time limit for payment of premium pay, and an adjudicator has no authority to award interest on such payments.

[4] The Chairperson of the Public Service Labour Relations Board (''the PSLRB'') ordered a pre-hearing conference to determine whether an oral hearing was required to deal with the jurisdictional question. The bargaining agent objected to dealing with the jurisdictional objection by written submissions and asserted that as a matter of principle, employees ought to be allowed to submit evidence. After the pre-hearing conference, I determined that the employer's objection could be dealt with by written submissions. There were no material facts in dispute, and evidence was not required to address the objection. In a letter to the parties (September 18, 2007), submissions were requested on the following two issues:

. . .

> *. . . 1. Whether it is a term (explicit or implicit) of the collective agreement that payments owing are to be made within a reasonable time, and 2. whether an adjudicator has the authority to order the payment of interest on amounts owing, if those payments are not paid within a reasonable time.*

. . .

[5] The employer relied on its initial written objection to the grievances. The bargaining agent made further written submissions to which the employer replied. I have summarized the submissions below. The full submissions are on file with the PSLRB.

II. Background

[6] The Fraser Valley Institution group grievance was filed on October 13, 2006, and the Matsqui Institution grievance was filed on October 23, 2006. The wording in both grievances is almost identical. The Fraser Valley Institution grievance reads as follows:

> *I grieve that since June 26, 2006 the employer continuously failed to pay me shift differentials, week-end premiums and premium rate of pay for work on a statutory holiday and failed to compensate me within a reasonable time frame for overtime worked contrary to the collective agreement, the past practice and labour laws.*

[7] As corrective action, the grievors requested payment of all outstanding amounts within ten working days and payment of interest on the amounts due.

[8] There were no replies to the Fraser Valley Institution grievance. There was a reply to the Matsqui Institution grievance at the first level. The reply stated that payment for extra-duty work for the period from June 26 through August 31, 2006, was paid on October 13, 2006, and that payment for extra-duty work performed in September 2006 was paid on October 27, 2006.

[9] It is not disputed that payments for outstanding amounts were eventually paid to all grievors. In correspondence to the PSLRB dated August 10, 2007, the bargaining agent stated that the grievors had received the amounts owing "three (3) to five (5) months after they became entitled" to the payments.

III, Summary of the arguments

[10] Submissions were made by both parties on each group grievance separately. However, the submissions on both are identical (although not necessarily submitted on the same dates).

[11] In a letter dated June 7, 2007, the employer's representative objected to an adjudicator's jurisdiction to hear the grievances. The employer argued that since the grievors had been paid, the first part of the requested corrective action was moot. With respect to the request for interest, the employer's representative submitted as follows:

. . .

> *. . . The Employer maintains that no interest is payable, as all amounts owing, were paid to the grievors, in accordance with the collective agreement. It should also be noted, that the collective agreement specifies no timeframe for payment of the monies cited in the Bargaining Agent's reference to adjudication. Section 226 (1) of the* Public Service Labour Relations Act *outlines the powers of an adjudicator. Sub clause (i) states that an adjudicator may, in relation to any matter referred to adjudication:*
>
> > "award interest in the case of grievances involving termination, demotion, suspension or financial penalty at a rate and for a period that the adjudicator considers appropriate;" [emphasis in the original]
>
> *As the matters complained about, do not fall within the ambit of Section 226(1)(i) of the* Act*, an adjudicator would be without authority to grant the interest requested.*

. . .

[12] In a letter dated August 14, 2007, the grievors' representative submitted the following:

. . .

> *The employer's objection is groundless. There is a principle in employment and labour laws that obliges the employer to pay compensation for work performed within a reasonable period of time. The Canada Labour Code requires employers to pay wages or any other amounts to which employees are entitled within thirty (30) days from the time when the entitlement arose. The B.C. Employment Standards require employers to pay employees all monies earned in a pay period no later then eight days after the said pay period. Employees have to be paid twice a month and a pay period cannot be longer than sixteen (16) days.*

In the case at hand, the aggrieved employees received amounts owed to them three (3) to (5) months after they became entitled to such amount. There is a well-established past practice with Correctional Service of Canada in the Pacific Region to pay overtime and other amounts by the 20th of the following month.

The UCCO-SACC-CSN collective agreement sets out the grievor's entitlement to overtime pay, shift differentials and weed-end premiums. Payment of wages, overtime pay and premiums for work performed within a reasonable time is implicit to the collective agreement. Therefore, an adjudicator has jurisdiction to hear the matter. Reference should be made to Sections 36 and 226 of the Public Service Labour Relations Act:

36. The Board administers this Act and it may exercise the powers and perform the functions that are conferred or imposed on it by this Act, or as are incidental to the attainment of the objects of this Act, including the making of orders requiring compliance with this Act, regulations made under it or decisions made in respect of a matter coming before the Board.

226. (1) An adjudicator may, in relation to any matter referred to adjudication,

(d) accept any evidence, whether admissible in a court of law or not;

(g) interpret and apply the Canadian Human Rights Act **and any other Act of Parliament relating to employment matters**, other than the provisions of the Canadian Human Rights Act related to the right to equal pay for work of equal value, whether or not there is a conflict between the Act being interpreted and applied and the collective agreement, if any;

On the question of the adjudicator's jurisdiction to award damages, the Board's recent decision in Nantel vs. Treasury Board (Correctional Service of Canada), 2007 PSLRB 66, reviews the rulings of the Federal Court and Federal Court of Appeal on the right to award interest. Of importance is paragraph 57:

> "Thus the Federal Court of Appeal recognizes that complainants employed by a federal undertaking in the private sector have the right to interest on claimed overtime and holiday pay. Similarly, entitlement to interest applies to the grievor's claim for pay in this case."

. . .

[Emphasis in the original]

[13] In a letter dated August 17, 2007, the employer's representative responded as follows:

. . .

> *The Bargaining Agent has failed to address the jurisdictional issues raised in my letter of objection. Specifically,* [the bargaining agent] *has failed to demonstrate that the Employer has violated any article of the Correctional Services collective agreement which is a necessary pre-condition for the submission of a Group Grievance as stipulated in section 215 (1) of the* Public Service Labour Relations Act *(PSLRA). The Bargaining Agent's reference to "a principle in employment and labour laws" does not bring this matter within the ambit of the PSLRA. Similarly,* [the bargaining agent's] *references to the* B.C. Employment Standards *and the* Canada Labour Code *are not relevant to the issue of the Board's jurisdiction nor are her references to past practice of the Correctional Service of Canada.*
>
> *The Employer also disagrees with the Bargaining Agent's contention that:*
>
> > "Payment of wages, overtime pay and premiums for work performed within a reasonable time is <u>implicit</u> to the collective agreement." [emphasis added in the original]
>
> *The Correctional Service collective agreement is written in plain language which spells out the obligations of the parties. There are no implied obligations.*
>
> *In view of the fact that the Employer has not violated any provision of the collective agreement, the issues of damages or interest are moot. In the alternative, the Employer submits that the Board's authority to award interest is restricted, by sub section 226(1) (i) of the PSLRA, to grievances involving termination, demotion, suspension or financial penalty, which are not at issue in these references.*
>
> *Notwithstanding the foregoing, I am pleased to provide the Board with an explanation for the delay in issuing the overtime cheques. When the Correctional Services collective agreement was signed in June 2006, CSC Compensation staff was required by the PSLRA to implement the terms of the new agreement within 90 days of the date of signing. The retroactive period covered seven years and required extensive calculations for each CX employee by the Regional Compensation Advisors. In order to ensure that its legal*

> *obligations regarding the implementation of the new collective agreement were met, CSC had to give priority to the processing of the retroactive payments rather than to the processing of the overtime cheques. This was regrettable, but necessary under these unusual circumstances.*
>
> . . .

[14] In a letter dated October 25, 2007, the bargaining agent representative made the following submissions:

> *Overtime, premiums, allowances, shift differentials and premium rate for work on a statutory holiday are part of the wages or remuneration earned by the employees. We reiterate that the employer has to pay remuneration earned with a reasonable period. We wish to bring to the Board's attention that there is no specific right given to the employer in the collective agreement to withhold wage/ remuneration. The collective agreement between UCCO-SACC-CSN and Treasury Board creates a right for the aggrieved employees to be paid for the overtime worked and other benefits earned. The right is contained in express language.*
>
> . . .
>
> ***21.12 Overtime Compensation***
> *Subject to Clause 21.13, an employee is entitled to time and one-half (1 1/2) compensation for each hour of overtime* ***worked*** *by the employee.*
>
> . . .
>
> ***21.15 Meal Allowance***
> ***
> *(a)* ***An employee who works*** *three (3) or more hours of overtime immediately before or following the scheduled hour of work* ***shall be reimbursed*** *expenses for one (1) meal in the amount of ten dollars ($10.00) except where a free meal is provided.*
> ***
>
> *(b)* ***When an employee works overtime*** *continuously beyond the period provided in (a) above, he or she* ***shall be reimbursed*** *for one (1) additional meal in the amount of ten dollars ($10.00) for each four (4) hour period of overtime worked thereafter, except where a free meal is provided.*

25.01 Shift Premium
*An employee working on shifts **will receive** a shift premium of two dollars ($2.00) per hour **for all hours worked**, including overtime hours, between 3:00 p.m. and 7:00 a.m. The shift premium will not be paid for hours worked between 7:00 a.m. and 3:00 p.m.*
****

25.02 Weekend Premium
*An employee working on shifts during a weekend **will receive** an additional premium of two dollars ($2.00) per hour **for all hours worked**, including overtime hours, on Saturday and/or Sunday.*

26.05
*(a) When an employee **works** on a holiday, **he or she shall be paid time and one-half (1 1/2) for all hours worked** up to the regular daily scheduled hours of work as specified in Article 21 of this collective agreement and double (2) time thereafter, in addition to the pay that the employee would have been granted had he or she not worked on the holiday.*

Clearly, the CX collective agreement establishes an entitlement to wages, benefits and remuneration. The above-mentioned articles are written in plain English language which spells the employer's obligations to pay. The aggrieved employees have earned that compensation as evidenced by the fact that they were paid (Employer's letter date June 7, 2007: "The Employer asserts that the grievors have been paid all monies owed them in accordance with the collective agreement"). The Financial Administration Act *does not give the right to the employer to withhold wages and/or remuneration. Therefore, lacking the necessary lawful authority the employer can't successfully rely on the managerial rights provision (section 6 of the collective agreement) to justify withholding wages.*

Brown & Beatty, Canadian Labour Arbitration, 4th Edition, 8:1420 Withholding wages [states]*:*

> "To the extent that entitlement to wages and fringe benefits must be founded on the terms and conditions of the collective agreement, it follows that once entitlement is established and the compensation earned, management may not unilaterally withhold those benefits other than as part of a valid change in the method of payment".

Further, our position is echoed and supported by the decision in Hickling v. Canadian Food Inspection Agency, 2006 PSLRB 39:

> [46] One must keep in mind that overtime pay is a wage or remuneration earned by an employee. Generally, wages earned in a pay period must be paid within a certain time after the pay period ends. **In the absence of language in the collective agreement dealing with the timing of wage payments, the presumption is that the wages must be paid by the employer within a reasonable time. Unless there is a specific right given to the employer to withhold wages, wages have to be paid within a reasonable time.**

On the issue of what would be a reasonable time to pay employees, we strongly believe that the Board has to be guided by the federal and provincial minimum standards as we outlined on our previous letter. This issue is one of public order. There is no incompatibility between the collective agreement and the guidance to seek from the minimum standards. In his letter dated August 17, 2007, the employer does not deny that the practice in the Pacific Region is to pay the overtime by the 20th of the following month rather; the employer says that it is irrelevant to refer to it.

We submit to the Board that the 3 to 5 months delay to pay to the grievors the wages and remuneration owed is unreasonable. In his letter dated August 17, 2007, the employer representative was pleased to provide an explanation for the delay. However, this is not a reasonable explanation or factually accurate. Of importance, is the fact that the CSC was able to provide payment for overtime and other benefits to all the correctional officers of the Prairie, Ontario, Quebec and the Atlantic regions as per the normal practice. Not to mention also that the agreement in principle was reached sometime before the signature of the collective agreement. The CSC had prior knowledge of the new rates. Employees have a right to be paid and the no payment of wages brings disruption and dissatisfaction in the workplace, which is not the intent of the parties. Please remember that in the summer of 2006, there were occurrences where the overtime wasn't voluntary and correctional officers were ordered and forced to do it. There is only one possible conclusion here: the employer's time frame for payment was unreasonable as it is was outside what the minimum standards prescribed (See: Health Labour Relations Association and H.E.U. *[1993] 38 L.A.C. (4th) 236). If the Board is not convinced of the unreasonableness of the time frame, we believe that the Board should hear the parties* viva voce *on this issue and allow evidence.*

The adjudicator seized of the matter should have full remedial powers. In our previous letter, we mention that we rely on the decision in Nantel vs. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 66 and the decision quoted*

> *from the Federal Court of Appeal,* Pommerleau v. Autocar Connaisseur Inc., *[2000] F.C.J. No 907 (QL). We still wish to rely on these decisions. They follow the spirit of the Supreme Court decisions in* Weber v. Ontario Hydro *[1995] 2 S.C.R. 929,* New Brunswick v. O'Leary *[1995] 2 S.C.R. 967 and* Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., *Local 324, [2003] 2 S.C.R. 157.*
>
> . . .
>
> [Emphasis in the original]

[15] The employer replied to the bargaining agent's submissions as follows:

> . . .
>
> *The Employer reiterates that all of the grievances are now moot as the Employer has paid all monies owed to each grievor. The delay in payment was due to extraordinary circumstances as explained in my previous letter. The only basis the Bargaining Agent relies on to suggest that there is a live controversy relates to the payment of interest. For the reasons outlined below, it is the position of the Employer that an adjudicator is without jurisdiction to award interest in collective agreement cases. As a result, there is no live controversy and the matter is moot.*
>
> *In her submission, the Bargaining Agent cited, at length, extracts from the current CX collective agreement. However, it must be noted that none of the articles cited specify a timeframe for the payment of premium pay and allowances. Had the parties intended that there be a time limit for payment of these monies they could have negotiated language to that effect. It is the position of the Employer that the* obiter dicta *statements relied upon by the Bargaining Agent from the* Hickling *decision should not be followed. Rather than reading terms into a collective agreement that the parties chose not to negotiate, the Board should respect the process of collective bargaining and leave it to the parties themselves to provide for timeframes for implementation if they so choose; such timeframes are not uncommon in collective agreements in the public service.*
>
> *As previously stated, the Bargaining Agent's claim for interest is groundless. Section 226 (1) (i) of the PSLRA gives adjudicators the power to award interest in limited circumstances where disciplinary matters are at issue. The subject references do not deal with the disciplinary matters and consequently an adjudicator would be without jurisdiction to award interest. As there is no jurisdiction to award interest, the Bargaining Agent's case is moot. In the*

> *spirit of good labour relations, the parties should not be placed in the position of expending valuable resources to acquire an academic declaration that the employer delayed in making a payment.*
>
> . . .

IV. Reasons

[16] There is no dispute that the payments owed to the grievors were eventually paid. The grievors object to the length of time it took them to receive those payments. The grievors' position is that it is an implied term of the collective agreement that such payments must be made within a reasonable time and that the time taken by the employer to pay the amounts owing was not reasonable. As corrective action, the grievors are seeking damages in the form of interest for the delay in payment. The employer's position is that there is no implied term in the collective agreement requiring payment within a reasonable time. It is the employer's position that had the parties intended that there be a time limit for payment, language to that effect would have been negotiated. The employer also maintains that an adjudicator's authority to award interest is limited to cases involving discipline and financial penalty.

A. Is it a term (explicit or implicit) of the collective agreement that payments are to be made within a reasonable time?

[17] There is no provision in the collective agreement that requires payment of the amounts at issue here within a specific time frame. Accordingly, there is no explicit term of the agreement that payments be made within a reasonable time.

[18] The collective agreement is, however, clear that the employer is required to pay these amounts. The collective agreement clauses at issue use language such as "shall" and "will", allowing for no discretion on the part of the employer. The question is whether there is an implied requirement that these mandatory payments be made within a reasonable period of time.

[19] Unlike for most employees in Canada, there is no statutory or regulatory regime that acts as a "floor" for employment standards in the federal public service. The employment standards for those employed in the federal public service are contained in the applicable collective agreement and the Treasury Board Terms and Conditions of Employment Policy (the policy includes as Appendix A the *Public Service Terms and Conditions of Employment Regulations*). In this case, neither the collective agreement

nor the Terms and Conditions Policy or Regulations specify time limits for the payment of allowances.

[20] The grievors rely, in part, on *Hickling v. Canadian Food Inspection Agency,* 2006 PSLRB 39, to support the position that there is an implied term that payment of amounts owing shall be made within a reasonable time. *Hickling* involved the liquidation of compensatory leave credits. The collective agreement article in question specified time limits for payment of compensatory leave credits. The adjudicator's comments about the presumption of payment of wages within a reasonable time are therefore *obiter.* The statement of principle contained in that decision is a broad one:

. . .

> *[46] One must keep in mind that overtime pay is a wage or remuneration earned by an employee. Generally, wages earned in a pay period must be paid within a certain time after the pay period ends. In the absence of language in the collective agreement dealing with the timing of wage payments, the presumption is that the wages must be paid by the employer within a reasonable time. Unless there is a specific right given to the employer to withhold wages, wages have to be paid within a reasonable time.*

. . .

[21] For the reasons set out below, I agree with this principle and have concluded that the collective agreement implies that remuneration (which includes wages and allowances) is to be paid to employees within a reasonable time. I will need to hear evidence, however, to determine if, in the circumstances of this case, the delay in payment was reasonable or unreasonable.

[22] Whether an employer is under an obligation to administer the collective agreement in a fair and reasonable manner has been the subject of much discussion in the arbitral jurisprudence (see Mitchnick and Etherington, *Labour Arbitration in Canada* at 16.2 and 16.3). The arbitrator in *Blue Line Taxi Co. and R.W.D.S.U., Local 1688* (1992), 28 L.A.C. (4th) 280, summarized the discussion and conclusions as follows (at pages 287-88):

. . .

> *. . . the employer is under such an obligation* [to administer the collective agreement in a fair or reasonable manner] *in the following situations. First, if a provision of the collective agreement expressly confers a discretion on the employer, an arbitrator could conclude that it was intended that the discretion be exercised fairly or reasonable. Secondly, it has been held that an employer is implicitly precluded from acting unreasonably (in areas not expressly regulated by the collective agreement) if that might lead to specific provisions of the agreement being negated or undermined: see Metropolitan Toronto (Municipality) v. C.U.P.E., Loc. 43 (1990), 69 D.L.R. (4th) 268, 74 O.R. (2d) 239, 39 O.A.C. 82 (Ont. C.A.) [leave to appeal to S.C.C. refused 72 D.L.R. (4th) vii], and Re Westin Harbour Castle and Textile Processors, Service Trades, Health Care, Professional & Technical Employees Int'l Union, Loc. 351 (1991), 23 L.A.C. (4th) 354 (Brown).*
>
> *As I understand the law, therefore, the employer will only be answerable for the exercise of a management discretion if a link to the collective agreement can be established. Such a link might be found to exist if (a) the collective agreement expressly confers or recognizes a management discretion, or (b) the exercise of the management discretion might lead to specific provisions of the agreement being negated or undermined.*
>
> . . .

[23] In *Metropolitan Toronto (Municipality) v. CUPE, Local 43* (1990), 69 D.L.R. (4th) 268, the Ontario Court of Appeal stated:

> . . .
>
> *It is also true that parties intent on reaching a settlement do not always have the time, the incentive, or the resources to consider the full implications of each and every phrase. There is, therefore, a place for some creativity, some recourse to arbitral principles, and some overall notion of reasonableness. … The presence of an implied principle or term of reasonable contract administration was also acknowledged by Craig, J. in* [Wardair Canada Inc. v. C.A.L.F.A.A. (1988), 63 O.R. (2d) 471 (Div. Ct.)] *at pp. 476-77.*
>
> . . .

[24] In this case, the exercise of management discretion is the timing of the payment of remuneration owing under the collective agreement. If the employer acts unreasonably in processing payments under the collective agreement, the applicable

overtime and premium provisions of the agreement will be either negated or undermined. Accordingly, there is an implied requirement that payments of remuneration under the collective agreement be made within a reasonable time.

[25] Arbitrators and courts have also recognized the necessity of implying terms in contracts to give efficacy to contracts or collective agreements, also referred to as the doctrine of "necessary implications" (see Mitchnick and Etherington and *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, [1987] 1 S.C.R. 711. Also see *Air Canada Pilots Association v. Air Line Pilots Association*, 2003 FCA 160 (CanLII)). In *McKellar General Hospital and O.N.A.* (1986), 24 L.A.C. (3d) 97 (Saltman) (at p. 107), the arbitrator concluded that an arbitrator has the power to imply a term into a collective agreement if two conditions are met:

. . .

> *(1) if it is necessary to imply a term in order to give "business or collective agreement efficacy" to the contract, in other words, in order to make the collective agreement work; and*
>
> *(2) if, having been made aware of the omission of the term, both parties to the agreement would have agreed without hesitation to its insertion.*

. . .

[26] In *Air Canada Pilots Association v. Air Line Pilots Association*, the Court of Appeal relied on the same test to determine if a term was implied in a labour relations "protocol" between two unions. The Court stated, relying on the test set out in *Canadian Pacific Hotels Ltd.*, that the term must be one that, if asked, the parties would say "that they had obviously assumed".

[27] Timely payment of remuneration is at the foundation of a collective agreement. In *L/3 Communications/Spar Aerospace Ltd. and I.A.M., Northgate Lodge 1579* (2004), 127 L.A.C. (4th) 225 (Wakeling), the arbitrator noted the central importance of timely remuneration (at p. 247):

. . .

> *. . . Inevitably, collective agreements address such core issues as compensation, hours of work, vacations, discipline and seniority. Experienced negotiators understand that certain*

> *fact patterns will emerge during the life of the collective agreement and that the failure to determine the legal consequences associated with these fact patterns will create problems so significant that they must be resolved. For example, all members of negotiating committees know that workers covered by the collective agreement expect to be compensated for the work they perform for their employer and that compensation must be mutually agreed upon in advance. Workers need to be paid on a timely and regular basis and could not survive in an environment where delayed compensation following third-party determination was adopted. A collective agreement without a compensation term is not a viable agreement. See Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner), [1990] 2 S.C.R. 367, 380 ("[w]ages and working conditions will always be of vital importance to an employee"). And union members would never approve such a document.*
>
> . . .

[28] In the *Hospital Labour Relations Association* decision relied on by the bargaining agent, the arbitration board accepted, without much discussion, that it was inferred that retroactive wages were to be paid within a reasonable time. The arbitration board relied in part on *Regional Municipality of Hamilton-Wentworth and International Union of Operating Engineers, Local 772* (1982), 6 L.A.C. (3d) 147 (O'Shea). In that decision, the arbitrator held that it was inferred that the parties intended amounts owing to be paid within a reasonable time. In the result, he found that the delay was not so lengthy that it could be inferred to be a violation of the purpose or intent of the collective agreement.

[29] Payment within a reasonable period of time is required in order to give efficacy to the collective agreement. It must also have been within the intent of the parties that payment would have been within a reasonable time. It could not have been the parties' intention that the employer would be permitted to pay amounts owing under the collective agreement whenever it chose to do so. If the parties had directed their mind to the issue, they would have agreed "without hesitation" that payment would be within a reasonable time.

[30] The purpose and scope clauses of the collective agreement do not create substantive rights, but can be used as an aid to interpretation of the collective agreement. In this case, the purpose and scope clauses support the interpretation of an

implied requirement of payment within a reasonable time. The purpose and scope clauses read as follows:

. . .

> ***1.01*** *The purpose of this Agreement is to maintain harmonious and mutually beneficial relationships between the Employer, the Union and the employees and to set forth herein certain terms and conditions of employment for all employees described in the certificates issued by the Public Service Labour Relations Board on March 13, 2001 covering employees in the Correctional Group.*
>
> ***1.02*** *The purpose of this collective agreement is to establish, within the framework provided by law, orderly and efficient labour relations between the Employer, the Union and employees and to define working conditions aimed at promoting the safety and well-being of employees.*
>
> *Moreover, the parties to this agreement also share the goal that the people of Canada will be well and efficiently served.*

. . .

[31] Of particular relevance is the reference in clause 1.02 to "orderly and efficient labour relations". If remuneration is not paid within a reasonable time, labour relations between the parties will not be "orderly and efficient".

B. <u>Defining what is reasonable</u>

[32] The bargaining agent has argued that I should rely on the statutory provisions in the *Canada Labour Code* and the *BC Employment Standards Act* to determine the reasonable period of time for payment of the amounts owing. Those statutes are not applicable to the federal public service. Section 226(1)(*g*) of the *Public Service Labour Relations Act* does allow an adjudicator to interpret and apply "any other *Act* relating to employment matters", but the later reference in that section to applying it "whether or not in conflict" with the collective agreement quite clearly means that "any other *Act*" must be ones that are applicable to the federal public service. Accordingly, the statutory minimums are not applicable to these grievances.

[33] In the *Hospital Labour Relations Association* case relied on by the bargaining agent, the arbitration board used the *B.C. Employment Standards Act* as a guideline, but stressed that each case has to be looked at on its own facts. Given that the time

limits under the *Canada Labour Code* regime do not apply to the federal public service, I do not see the necessary link to be able to use those time limits as a guideline.

[34] In the absence of deadlines for payment for compensation in either the collective agreement or in statute, the determination of what is a reasonable time for payment remains to be determined on a case-by-case basis. Relevant considerations include, but are not limited to: past practice, the specific circumstances at the time, the number of transactions to process, and the capacity to process the volume of transactions. The parties have made allegations in their submissions about both the reasons for the delay in payment, and on past and present practice of the employer. These allegations, of course, are not evidence and I cannot rely on those allegations in coming to any determination on whether the delay in payment was reasonable or not. An assessment of these considerations will require a hearing to allow the parties to adduce evidence.

[35] Accordingly, a hearing to determine what, in the circumstances, was a reasonable period for payment of the amounts owed will be scheduled.

C. Does an adjudicator have the jurisdiction to award interest?

[36] The employer contends that in the absence of jurisdiction to award interest, the grievances are moot. I do not agree with this contention. If the grievors are successful in arguing that there is a breach of the collective agreement and I find that I do not have jurisdiction to award interest, the grievors will receive a declaration which will also serve as guidance for the parties for the future.

[37] In conclusion, at the hearing of this matter, I will ask the parties for further submissions on the authority of an adjudicator to award interest.

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

(The Order appears on the next page)

V. **Order**

[39] The preliminary objection of the employer is dismissed.

[40] It is an implied term of the collective agreement that remuneration owing must be paid within a reasonable time.

[41] An oral hearing will be convened to determine the merits of the grievances.

December 18, 2007.

Ian R. Mackenzie,
adjudicator