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*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

ANDRÉ GOSSELIN

Grievor

and

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

Employer

Indexed as

Gosselin 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: Léo-Paul Guindon, adjudicator

For the Grievor: Céline Lalande, Union of Canadian Correctional Officers - Syndicat
des agents correctionnels du Canada - CSN

For the Employer: Éric De Santis, counsel

Heard at Montréal, Quebec,
June 14, 2006.
(P.S.L.R.B. Translation)

I. Grievance referred to adjudication

[1] André Gosselin (“the grievor”) held a visits and correspondence officer position at the Montée St-François Institution in Laval at the time of his grievance on January 30, 2004. His grievance specified that he was being paid at the CX-01 group and level and that he wished to be paid on an acting basis at the CX-02 group and level, while retaining all of his acquired protections (under the December 22, 2003 arbitral award). This grievance was referred to adjudication by the bargaining agent, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“UCCO-SACC-CSN”), on March 31, 2005. The grievor testified that his request for compensation at the CX-02 group and level was for an indeterminate period.

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

II. Summary of the evidence

[3] The applicable collective agreement between the Treasury Board and the UCCO-SACC-CSN for the Correctional Services Group (expiry date: May 31, 2002) came into effect on April 2, 2001 (Exhibit F-2). The referral to adjudication is based on article 50 of the collective agreement, which covers pay administration. The following provisions are relevant:

50.02 An employee is entitled to be paid for services rendered at:

a) *The pay specified in Appendix “A”, for the classification of the position to which the employee is appointed, if the classification coincides with that prescribed in the employee’s certificate of appointment;*

or

b) *The pay specified in Appendix “A”, for the classification prescribed in the employee’s certificate of appointment, if that classification and the classification of the position to which the employee is appointed do not coincide.*

...

50.07 When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least one (1) working day, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.

[4] Mr. Gosselin has been working for the Correctional Service of Canada since 1969 and has held a visits and correspondence officer position at the Montée St-François Institution since 1976. The Institution's organization chart dated April 1, 1994 shows that the visits and correspondence officer position is classified at a CX-01 group and level and "is part of the AC-II standards" (Exhibit F-1). The expression "is part of the AC-II standards" means that when the position's incumbent leaves, it will be filled by a correctional officer at the CX-02 group and level.

[5] The positions were reviewed to permit the staff reductions required by the 1994 budget cuts (Exhibit F-3). The work description for a visits and correspondence officer position was changed with the addition of the following elements: entering data and using computerized information, such as the Offender Management System; participating in training rotational staff; taking part in private visit procedures; and writing reports. This new work description came into force on April 1, 2005 (Exhibit F-5). The officer position (CX-01 group and level) is protected and, once it becomes vacant, it will be replaced by a correctional officer, visits and correspondence position (CX-02 group and level). Incumbents of visits and correspondence officer positions are protected at the CX-01 group and level and are not required to do rotational work in different sectors, including cellblocks.

[6] The work description of a visits and correspondence officer indicates that he or she delivers the Visits and Correspondence Program as well as the Private Family Visit Program; controls correspondence received or sent by inmates; provides data entry into the National Offender Management System; supervises inmate cleaners assigned to his or her area; participates in the case management and correctional strategy process; and performs other duties (Exhibit F-5). The unit manager, the case management officer, the parole officer and the correctional officer (CX-02 group and level) participate in the Case Management Committee that decides, among other things, whether an inmate will be granted the privilege of having visitors or can take

advantage of private family visits. The visits and correspondence officer may submit his or her evaluation of an inmate or visitor to the Case Management Committee or the Committee may request such an evaluation from the officer. The Case Management Committee contacts the visits and correspondence officer for information required about inmates and/or visitors. The organization charts dated April 1, 1994 (Exhibit F-1) and May 1, 2004 (Exhibit E-5) indicate that the visits and correspondence officer is supervised by the unit manager. Mr. Gosselin informs the unit manager (or correctional supervisor) of any incidents in the visits and correspondence unit (Exhibit F-4).

[7] Two people handle the visits and correspondence workload at the Montée St-François Institution: Mr. Gosselin (CX-01) and Louise Parent (CX-02). They take turns performing their duties, based on a two-week rotation, as follows: one week working every day from Monday to Sunday (“seven-day workweek”), followed by a week of two days of work, Wednesday and Thursday (“two-day workweek”) (Exhibit F-6). The seven-day workweek is carried out in the visits and correspondence unit, and the officer performs the duties specified in the work description (Exhibit F-5). During the two-day workweeks, the officers are available for duties at the CX-02 group and level. During the two-day workweek, Mr. Gosselin conducts interviews with inmates in the Institution’s units, at which time he receives acting pay at the CX-02 group and level.

[8] Mr. Gosselin prepared the work schedules for the visits and correspondence unit (Exhibit F-6) as well as the shift premium report (Exhibit F-7). After he filed his grievance, the responsibility for preparing the work schedule was taken over by the correctional supervisor, who consulted him in this regard. The visits and correspondence unit is managed by the unit manager (or, in his or her absence, by the correctional supervisor) even though the visits and correspondence officer performs his or her duties alone. The unit manager or the correctional supervisor is responsible for handling issues related to visitors, but in practice the manager and supervisor endorse the officer’s decisions.

[9] Ms. Parent is paid at the CX-02 group and level, and she carries out the responsibilities of a visits and correspondence officer as part of a two-year slow rotation. She rotates the duties of this position with her correctional officer duties in other parts of the institution, including the cellblocks. She does not have the protection provided to employees at the CX-01 group and level. Her duties in the visits

and correspondence unit do not include any case management responsibilities for inmates under this program. As a CX-02 group and level correctional officer, she intervenes directly with inmates and is responsible for case management for a group of inmates. She participates in the Case Management Committee with others who work with the inmates under her responsibility. Based on the collective agreement, she uses the following definition of “slow rotation positions” (Exhibit F-8):

[Translation]

...

Slow rotation positions are defined as positions requiring a certain degree of operational continuity and consistency over an extended period. Such slow rotation positions include, but are not limited to, positions dealing with admissions and releases, visits and correspondence, from the segregation unit and the main entrance.

...

[10] During seven-day workweeks, Ms. Parent assumes the responsibilities of the visits and correspondence officer and records in the casework records any changes in the behaviour of inmates who have been granted this privilege. During two-day workweeks, she is on call for regular duties at the CX-02 group and level (meeting inmates, escorting inmates during outings, etc.).

[11] According to the information note to the Senior Deputy Commissioner (Exhibit E-10), classification at the CX-01 group and level for visits and correspondence officers came into effect on March 10, 1994. This classification was upheld by a classification grievance committee decision in June 1996. Following *Lajoie v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 117, a site audit was requested to check whether the work description for the visits and correspondence officer position was in order.

[12] Monique Porlier, Regional Manager, Classification and Organizational Design, conducted that site audit of the visits and correspondence officer position at the Montée St-François Institution on February 26, 2004. Her objective was to determine whether the work description accurately represented the work done by the employees. In her report dated March 4, 2004, she found as follows (Exhibit E-6):

[Translation]

...

In essence, we find that the responsibilities described in the work description closely resemble the work done under most of the responsibilities assigned to the employee. Aside from the fact that the tasks are often defined in more general terms and that a few clarifications or differences were noted, this description appears quite representative of the position's current reality. As a point of information, a document submitted by Mr. Gosselin, which specifies his functions, is included in Appendix III, as is the organization chart, in Appendix IV.

...

[13] At Mr. Gosselin's request, Ms. Porlier noted in her report the changes in the work that had taken place over the years due to computerization, the fact that officers have been expected to be more autonomous since the visits and correspondence supervisor position was abolished and the fact that officers are required to make decisions on their own and to exercise more judgment. The report was forwarded to head office for classification evaluation.

[14] The information note sent to the Senior Deputy Commissioner in March 2004 by Simon Coakeley, Sector Head and Jim Myles (contact), responsible for the Certification Program at headquarters, supports the conclusion in the site audit report that the visits and correspondence officer position is properly classified at the CX-01 group and level (Exhibit E-10).

[15] The classification decision on the visits and correspondence officer position dated August 31, 2004 kept it at the CX-01 group and level (Exhibit E-2). The *Classification Grievances Policy* (Exhibit E-8) and the *Classification Grievance Procedure* (Exhibit E-9) set out the different recourse options available to employees wishing to contest a classification decision. Mr. Gosselin does not remember having seen the document filed as Exhibit E-2, even though he contested that decision through a classification grievance on September 23, 2004 (Exhibit E-3).

[16] The June 29, 2005 Classification Grievance Committee report recommends that visits and correspondence officer positions be confirmed at the CX-01 group and level, with a coming-into-force date of March 17, 2004 (Exhibit E-4). Despite the addition of different duties, the Committee concluded that the final role and main purpose of the position do not appear to have changed significantly enough since the position's

previous classification to justify raising it to the CX-02 group and level. The Deputy Minister's delegate accepted that recommendation on July 5, 2005.

[17] Isabelle Morin, Unit Manager at the Montée St-François Institution since 1999, confirms the accounts provided by Mr. Gosselin and Ms. Parent concerning the structure of the visits and correspondence unit, the duties performed by the correctional officers (at the CX-01 and CX-02 groups and levels) assigned to that unit and the differences in their respective roles and responsibilities. She confirms that she gave the classification notice dated August 31, 2004 (Exhibit F-2) to Mr. Gosselin. On the document, she noted that he had refused to sign it. There was no change in the functions of the visits and correspondence officer position after that notice.

[18] Ms. Morin confirms that the Inmate Case Management Committee gives inmates the privilege of receiving the services of the visits and correspondence unit's services. The Institution's Director is in charge of the Offender Management System, and he had delegated this responsibility to the unit managers and correctional supervisors.

[19] Mr. Myles, who is in charge of the Certification Program at headquarters, confirms that the main difference in responsibilities between CX-02 and CX-01 positions is the responsibility of CX-02 group and level correctional officers for case management for a specific group of inmates. The case management matrix (Exhibit F-9) is not relevant to Mr. Myles' responsibilities, who assesses whether the correctional officer is responsible for inmate case management. The classification standard for the correctional service group (Exhibit F-10) specifies in chapter 6.1 that a correctional officer II is a member of a case management team and is responsible for a certain number of cases. Officers take turns in positions in the recreational, social, cultural and leisure programs and in the visits and correspondence unit. Chapter 6.2 of the classification standard specifies that CX-02s are responsible for providing training to correctional officers at the first level.

III. Summary of the arguments

For the Grievor

[20] Mr. Gosselin's representative submits that the visits and correspondence officer's work situation specified in *Lajoie* is identical to this case, and she states that following the unit's restructuring in 1990, the responsibilities of the visits and

correspondence officer were integrated into the CX-02 group and level correctional officers' functions. Since 1992, these functions have been carried out equally by both CX-01 and CX-02 group and level correctional officers. It was in response to the December 22, 2003 decision, which allowed CX-02 group and level acting pay for a visits and correspondence officer, that the employer decided to review the work description and to re-evaluate that position's classification.

[21] Mr. Gosselin's representative recognizes that case management responsibilities for a specific group of inmates falls under the exclusive responsibility of CX-02 correctional officers. CX-01 correctional officers do not have such responsibilities. However, the CX-01 visits and correspondence officer does specific case management for inmates who have this privilege, since he prepares a casework record for each one. That casework record is part of the case management file. According to Mr. Gosselin's representative, these responsibilities are at the CX-02 classification level, according to the responsibility matrix (Exhibit F-9) and the classification standard applicable to the Correctional Service group (Exhibit F-10).

[22] In this case, the functions of the visits and correspondence officer position are handled in turn by CX-01 and CX-02 correctional officers.

[23] Acting pay is addressed under clause 50.07 of the collective agreement, which states that an employee is entitled to acting pay for every day on which he or she is required to perform the duties of a higher classification in an acting capacity. *Lajoie* confirms entitlement to acting pay for CX-01 group and level employees who are responsible for the visits and correspondence officer position. To comply with the principle of equity, employees performing the same functions must receive the same compensation.

[24] In *Bégin et al. v. Treasury Board (Revenue Canada - Taxation)*, PSSRB File Nos. 166-02-18911 to 18917 (19900207), entitlement to compensation at a higher level was recognized when employees perform a large part of the functions of a higher classification level. This grievance should be allowed on the same basis.

For the Employer

[25] Although the wording of the grievance specifies a claim for acting pay, the grievance's real purpose is the classification level of the visits and correspondence officer position. The adjudicator has no jurisdiction to hear such a grievance under section 7 of the former *Act*, and no stipulation in the collective agreement gives the adjudicator such jurisdiction. Classification falls under the responsibilities given to the Treasury Board and to the ministers to whom it is delegated under the *Financial Administration Act*. Disagreements about classification must be handled under the *Classification Grievances Policy* (Exhibit E-8) and not under the collective agreement. The decision by the Federal Court of Appeal in *Brochu v. Canada (Treasury Board)*, [1992] F.C.J. No. 1057 (QL), confirms as much.

[26] Based on the grievance, *Lajoie* cannot apply to this case because that decision deals with a case in which the facts are different from those in this case. The evidence shows that the work description for the visits and correspondence officer position was reformulated following the publication of *Lajoie*. A classification audit of that position maintained the CX-01 group and level classification despite changes that were made to the work description. Mr. Gosselin took part in this process and exercised his right to grieve the decision. The Deputy Minister's delegate accepted the classification committee's recommendation to keep the visits and correspondence officer position classified at the CX-01 group and level. This element does not appear in *Lajoie*. In that decision, the evidence had established that a correctional officer assigned as a replacement in a visits and correspondence position had been paid on an acting basis at the CX-02 group and level. No evidence in that regard was provided in this case.

[27] In paragraph 59 of *Bungay et al. v. Treasury Board (Department of Public Works and Government Services)*, 2005 PSLRB 40, the adjudicator stated as follows:

In summary, some of the indicators that a grievance is a classification grievance and not an acting pay grievance (and therefore where an adjudicator has no jurisdiction) are:

- *the claim for acting pay is an ongoing claim and not for a specified period;*
- *the grievor has sought a reclassification, either informally or through a classification grievance;*

- *the grievor continues to perform the duties he/she has always performed and only the classification levels in the workplace have changed; and*
- *the acting pay grievance is based, in part, on a comparison with similar positions in other work areas.*

[28] Every one of those factors is present in this case, which confirms that classification is the grievance's objective.

[29] According to the evidence provided in this case, the grievor is carrying out the functions and responsibilities described in his work description. The principle set out in paragraphs 29 and 31 of *Gvildys et al. v. Treasury Board (Health Canada)*, 2002 PSSRB 86, have to be applied to this case. Those paragraphs read as follows:

Nevertheless, it is also recognized that an adjudicator does not have jurisdiction as it pertains to classification when grievors are performing the duties of their positions but are grieving that the same duties are classified at a higher level in other positions, as the classification decision of the employer can only be revised by the Federal Court. (See Dougherty and Others (Board files 166-2-25137 to 25142 and 166-2-25162), and Charpentier (supra).)

...

As Chairperson Tarte wrote in Charpentier (supra), "Although the wording of the grievances concerns the acting pay and makes no mention of 'classification', granting the redress that has been requested would be the same as a reclassification."

[30] Based on the grievance, the employer's counsel submits that the claim for acting pay cannot be allowed because the grievor did not prove that he had carried out the functions of a position classified at a higher level. The evidence shows that Mr. Gosselin assumed the duties that are specified in his work description, the classification of which was confirmed at the CX-01 group and level. In *St-Jean v. Treasury Board (Department of Labour)*, PSSRB File No. 166-02-13827 (19831213), the adjudicator specified that the grievor had to demonstrate that the employer had required him to perform the functions of a position classified at a higher level to prove his point, which is not the case here. *Few v. Treasury Board (Agriculture Canada)*, PSSRB File Nos. 166-02-17441 to 17443 (19880926), and *Shearer v. Canada Food Inspection Agency*, 2002 PSSRB 82, also found that the grievor must demonstrate that

he has performed the functions of a position classified at a higher level to get acting pay.

[31] In this case, the evidence shows that Mr. Gosselin performed duties that could be performed by the incumbent of a CX-02 group and level position. This does not change the functions into those of a position classified at a higher level. *Moritz v. Canada Customs and Revenue Agency*, 2004 PSSRB 147, dismissed a grievance in a similar situation.

[32] The evidence shows that the incumbents of a CX-02 position performing their functions in the visits and correspondence unit also perform, in addition to this unit's specific duties, case management for a group of inmates. Although the grievor performs the same duties as a correctional officer at the CX-02 group and level in the visits and correspondence unit, he does not have to provide case management for a group of inmates.

IV. Grievor's reply

[33] In *Bungay*, the grievor had requested a reclassification. In that case, the employer was the one who took the initiative following *Lajoie*; the principle that employees performing the same duties must be given the same compensation must be applied in this case.

[34] Mr. Gosselin participates in the case management process by communicating his observations to the Case Management Committee and is a member of the Visits Committee, as indicated in the site audit report (Exhibit E-6, Appendix A).

V. Reasons

[35] Mr. Gosselin filed his grievance on January 30, 2004. He requested acting pay at the CX-02 group and level, while specifying that he wanted to retain his acquired protections. The evidence shows that, following the reorganization of correctional officer positions and functions in 1992, the employer gave Mr. Gosselin the option, to take on the duties of a correctional officer at the CX-01 group and level as a visits and correspondence officer, without having to assume any of the responsibilities of other CX-02 group and level positions on a slow rotation.

[36] The new work organization that came into effect on April 1, 1995, integrated the responsibilities of the visits and correspondence unit into those of the CX-02 group and level correctional officers performing them on a slow rotation with other positions at that level over a two-year period. Moreover, the employer gave correctional officers who were assigned to visits and correspondence officer positions a chance to retain their CX-01 group and level, so as not to have to take part in the slow rotation of CX-02 group and level positions (Exhibit E-4). Correctional officers at the CX-02 group and level look after case management for specific groups of inmates, which is not part of the responsibility of CX-01 group and level correctional officers. The evidence demonstrates that Mr. Gosselin took on the duties and responsibilities described in the work description that came into force on April 1, 1995 for the visits and correspondence officer position (Exhibit F-5).

[37] The work description was changed after a site audit with certain duties and responsibilities being added. Even with those changes, the August 31, 2004 classification review kept the visits and correspondence officer position at the CX-01 group and level.

[38] In his visits and correspondence officer position, Mr. Gosselin does not have case management responsibilities for specific groups of inmates, even though he provides an evaluation report on the behaviour of inmates who have the privilege. He does not have any responsibilities for other CX-02 group and level positions on a slow rotation basis.

[39] I note that Mr. Gosselin has carried out the duties and responsibilities contained in his work description for the visits and correspondence officer position, for which the classification level has been maintained at the CX-01 group and level. In his position as a visits and correspondence officer, he has not had any responsibilities at a higher classification level. In the absence of evidence demonstrating that he may have assumed the responsibilities of a higher classification level, as stipulated in clause 50.07 of the collective agreement, I cannot allow this grievance.

[40] Although the duties and responsibilities of the visits and correspondence officer position were added to those in the work description of correctional officers at the CX-02 group and level, the grievor did not demonstrate that he assumed other responsibilities that are specific to this higher classification level. A request for judicial review of the decision that maintained the classification level of the visits and

correspondence officer position was an option for the grievor. This issue of classification cannot be decided by an adjudicator appointed to handle a grievance filed under the former *Act*.

[41] Although the *Lajoie* grievance appears to stem from a set of facts similar to this case, my reasoning from the facts in this case rests on a different base than that used by the adjudicator assigned to *Lajoie*. With all due respect to the reasoning used in that case, I do not share it and have come to a different conclusion, for the reasons mentioned above.

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

(The Order appears on the next page)

VI. Order

[43] The grievance is dismissed.

July 6, 2007.

P.S.L.R.B. Translation

**Léo-Paul Guindon,
adjudicator**