

Date: 20111101

File: 566-02-865

Citation: 2011 PSLRB 124



*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**HARRY KULLAR**

Grievor

and

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

Employer

Indexed as  
*Kullar v. Treasury Board (Correctional Service of Canada)*

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

***Before:*** [Beth Bilson, adjudicator](#)

***For the Grievor:*** [Corinne Blanchette, Union of Canadian Correctional Officers -  
Syndicat des agents correctionnels du Canada - CSN](#)

***For the Employer:*** [Chris Bernier, counsel](#)

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Decided on the basis of written submissions.

## REASONS FOR DECISION

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### Individual grievance referred to adjudication

[1] In a decision dated January 20, 2011 (*Kullar v. Treasury Board (Correctional Service of Canada)*, 2011 PSLRB 3), I upheld the grievance filed by Harry Kullar (“the grievor”) on August 26, 2006. The parties have since asked for clarification of that decision and have made written submissions on the question of whether it requires, in addition to compensating the grievor, adjusting his seniority date. In the decision, I alluded to the adjudicator’s decision in *Broekaert v. Treasury Board (Correctional Service of Canada)* 2005 PSLRB 90, in which he found that the employer had incorrectly awarded the first increment to part-time employees on the dates which they had worked the equivalent number of hours to those worked by full-time employees in a year, rather than on the anniversary dates of their hirings.

[2] The Treasury Board (“the employer”) took the position that the grievance was untimely because of the time which had elapsed since the *Broekaert* decision, which was issued in August 2005. In the context of the protracted discussions between the employer and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the bargaining agent”) concerning how the *Broekaert* decision should be applied to employees in the same circumstances, and of the Memorandum of Understanding (MOU) that was concluded between the employer and the bargaining agent in August 2006, I held that the grievance was not untimely. As the grievor’s circumstances were comparable to those of other employees who were the subjects of the negotiations that led to the MOU, it was not unreasonable for the grievor or the bargaining agent to suppose that he would be covered by the settlement that was ultimately reached.

[3] I indicated in my decision that one of the implications of those findings was that the grievor should be compensated for his loss caused by the delay in awarding his initial increment. The MOU set out that remedy as the settlement for the employees for whom the interpretation of the agreement upheld in *Broekaert* was relevant. However, the employer’s position with respect to the grievor was that he was not covered by the MOU, which required him to file a grievance and go through the grievance procedure. Finding his grievance timely, I allowed it in my decision. The grievance asked that the *Broekaert* interpretation be applied to him and that the grievor’s seniority date be adjusted to reflect that interpretation.

**Reasons**

[4] In my view, upholding the grievance and applying the *Broekaert* decision to the grievor includes both compensating him for the delay in awarding the first increment and adjusting his seniority date. The employer submitted that it and the bargaining agent agreed when implementing the MOU that the seniority date of other employees would not be adjusted. However, I was asked to deal with the specific grievance of the grievor, and I have indicated my reasons for upholding his grievance.

[5] The employer also argued that I should take into account that its counsel did not make representations about the significance of the MOU at the hearing. It is certainly true that the employer made no submissions concerning the MOU and that it chose to rely on a decision about an employee in a situation similar to that of the grievor, a decision that made no reference to the MOU. Nor did counsel for the employer indicate that the bargaining agent's argument about the MOU had taken it by surprise or that it wished for an adjournment. I cannot speak to the reasons for those choices, but I cannot find that the absence of arguments from the employer on the MOU constituted a bar to the findings I made in my decision.

[6] As I have indicated, my view is that upholding the grievance entailed both compensating the grievor for the delay in awarding his first increment and adjusting his seniority date. I reiterate my order to that effect.

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

*(The Order appears on the next page)*

**Order**

[8] The grievor is to be compensated for the delay in awarding his first increment under the terms set out in the MOU between the parties.

[9] The grievor's seniority date is to be adjusted to reflect the recalculation of his first year of service as a calendar year rather than as an accumulation of hours worked equivalent to a full-time year.

November 1, 2011.

**Beth Bilson,  
adjudicator**