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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

CLAUDE JOLY AND ROCH BERNATCHEZ

Grievors

and

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

Employer

Indexed as

Joly and Bernatchez v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievors: Catherine Quintal, Union of Canadian Correctional Officers -
Syndicat des agents correctionnels du Canada - CSN

For the Employer: Michel Girard, counsel

Heard at Montreal, Quebec,
September 11, 2012.
(Written submissions filed September 24, 2012.)
(PSLRB Translation)

I. Individual grievances referred to adjudication

[1] In December 2011 and January 2012, Claude Joly and Roch Bernatchez (“the grievors”), filed grievances against the decision by the Correctional Service of Canada (“the employer”) to not reimburse them for meal allowances that they claimed entitlement to under the National Joint Council (NJC) Travel Directive (“the NJC Directive”) and the collective agreement for the Correctional Services Group, signed on June 26, 2006 by the Treasury Board and the union, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the collective agreement”). At the grievance hearing, the matter of paid meal breaks also became an issue.

[2] Mr. Joly is a correctional officer at the Drummond Penitentiary, and Mr. Bernatchez is a correctional officer at the La Macaza Penitentiary. Both penitentiaries are located in Quebec. Mr. Joly has been a correctional officer since 2000, and Mr. Bernatchez has been one since 2005.

[3] The NJC’s terminology for designating the three daily meals will be used for the purposes of this decision. Hence, “breakfast” means the meal normally eaten in the morning, “lunch” means the meal normally eaten around noon and “dinner” means the meal normally eaten toward the end of the day. In December 2011, the NJC Directive provided allowances of \$15.35 for breakfast, \$14.60 for lunch and \$40.30 for dinner.

II. Summary of the evidence

[4] Messrs. Joly and Bernatchez testified. They called Yan Garneau as a witness. Mr. Garneau is a correctional officer at the Donnacona Penitentiary. Since 2008, he has also been the union’s regional grievance coordinator for all of Quebec. The employer called John Kearney as a witness. Mr. Kearney works for the employer in a labour relations management position. One of his duties consists of developing and writing labour relations policies. The parties submitted a joint statement of facts. The employer also submitted its Bulletin No. 2006-11 (5), dated September 2010, providing its interpretation of the collective agreement meal break provisions.

[5] On December 8, 2011, Mr. Joly switched shifts and worked from 15:00 to 23:30, for a total of 8.5 hours. He escorted an inmate outside his headquarters area from 16:15 to 22:15, during his regular shift. The vehicle left the Drummond Penitentiary at approximately 16:15 and did not arrive at the Sainte-Anne-des-Plaines Regional

Reception Centre (RRC) until 19:30, due to traffic. Mr. Joly left the RRC at around 20:30 and bought fast food since the employer told him earlier that he was entitled only to an allowance of \$14.60 for his evening meal. Mr. Joly testified that, had he received a dinner allowance, he would have eaten a full meal. After stopping for the fast food, he returned to Drummond Penitentiary, arriving at around 22:15. His shift ended at 23:30.

[6] The dispute between Mr. Joly and the employer initially was about the amount payable for the meal and the granting of a 30-minute meal break paid at time and one-half. The employer conceded the latter point at the final stage of the grievance process. The matter of the applicable meal allowance remained in dispute. Mr. Joly claimed that he had dinner when he ate at approximately 20:30 on December 8, 2011. Consequently, the employer should have provided him with an allowance of \$40.30. The employer maintained its position that the meal at the mid-point of a shift is lunch and that it correctly paid Mr. Joly \$14.60.

[7] Mr. Joly testified that the employer always paid a dinner allowance under such circumstances. Mr. Bernatchez and Mr. Garneau corroborated his testimony. Mr. Garneau said that the employer changed its position with respect to Quebec penitentiaries since the publication of Bulletin No. 2006-11 (5). Mr. Joly also testified that, when he works the evening shift, he brings a complete hot meal prepared at home and that he eats it at the penitentiary. He expects to be able to eat a full meal when he is on duty outside his headquarters area. However, the lunch allowance of \$14.60 did not enable him to do that.

[8] Mr. Bernatchez normally works variable schedules, with a pattern of 9 hours of work, then 16 hours, then 9 hours. On December 20, 2011, he escorted an inmate outside his headquarters area during an overtime shift that was not contiguous to his regular shift. In other words, it was on a day of rest. The overtime shift began at 07:00 and ended at 15:00 and was followed by a second 8-hour overtime shift, from 15:00 to 23:00, with no prior notification. During the first shift, Mr. Bernatchez and a co-worker were responsible for providing the surveillance of an inmate at L'Annonciation hospital. The parties considered it escort duty under the collective agreement. At approximately 14:30, after analyzing the tests undergone by the inmate, the physician decided that the inmate needed to be transferred by ambulance to the Cité de la santé in Laval. Mr. Bernatchez contacted the employer. It authorized him to continue his overtime shift and to escort the inmate. At approximately 20:30, two officers from the

Leclerc Penitentiary relieved him of his escort duty. Shortly after that, the employer sent someone to transport Mr. Bernatchez and his co-worker to La Macaza. He arrived at the La Macaza Penitentiary at around 22:40 and ended his shift at 23:00. Mr. Bernatchez was unable to take a meal break during either of the two overtime shifts, since no one could replace him. He and his co-worker bought food at the hospital and ate while continuing to watch the inmate.

[9] According to the joint statement of facts, Mr. Bernatchez received 16 hours of pay at double time for the overtime he worked, plus two \$10 meal allowances and two 30-minute meal breaks paid at double time. However, it appears that he did not receive those amounts once the final adjustments were made after a response to the grievance was provided at the final level. The employer withdrew the two \$10 meal allowances, along with the two meal breaks paid at the overtime rate. The parties and I agreed that I would establish his entitlements and make any necessary adjustments as needed.

[10] In their joint statement of facts, the parties agreed that the intent of Mr. Bernatchez's claim is to determine the number of meal breaks to which he was entitled and the applicable payment rate for those meal breaks, to compensate him for being unable to take meal breaks while on escort duty, and to determine the number and amounts of any meal allowances he was entitled to under Appendix "D" of the collective agreement.

[11] Mr. Kearney testified that the employer used the meal allowance rates in the NJC Directive to define the reasonable expenses to be reimbursed under Appendix "D" of the collective agreement when an inmate is escorted outside an officer's headquarters area. In the employer's view, the meal eaten at the mid-point of a shift is lunch. In exceptional cases, when the cost of an employee's meal exceeds the allowance stipulated in the NJC Directive, the employer can reimburse the actual cost of the meal upon the presentation of a receipt. Mr. Kearney also explained that Bulletin No. 2006-11 (5) was written and distributed throughout the country to ensure a uniform application of the collective agreement with respect to reimbursements of meal expenses and payments for meal breaks. He explained the contents of the bulletin and his interpretation of it. According to Mr. Kearney, before the bulletin was published, meals in travel situations were not being properly reimbursed in some regions, including Quebec.

III. Summary of the arguments

A. For Mr. Joly and Mr. Bernatchez

[12] The employer was incorrect in its conclusion that the meal payable to Mr. Joly in the middle of his evening overtime shift outside his headquarters area was lunch. It is clear that the employer referred to the NJC Directive to establish the reasonable meal expenses. However, it incorrectly interpreted that directive by reimbursing meals for shift workers based on the meal sequence “. . . in relation to the commencement of the . . . shift.” The employer correctly interpreted that directive when the collective agreement was renewed, and it cannot unilaterally change that interpretation. The employer had always paid the dinner rate for meals eaten at the mid-point of an evening shift and then decided unilaterally, as of September 2010, to pay the lunch rate for the same meal. That it could not do.

[13] According to interpretation rules for collective agreements, meaning must be given to all the words in section 3.2.9 of the NJC Directive, which states as follows:

. . .

Reimbursement of meals for shift workers shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift.

[14] Had the parties agreed that the sequence systematically begins with breakfast, then they would have worded it as such; they did not. Paying a lunch allowance at the mid-point of an evening shift, when most people are eating dinner, creates an anomaly and an injustice for employees, who receive a lower allowance. Mr. Joly would have had to pay for it had he wished to eat a full meal on the evening of December 8, 2011.

[15] Mr. Bernatchez was unable to take a meal break during his first overtime shift. Under clause 21.07 of the collective agreement, the employer must pay him a 30-minute meal break at time and one-half. Since Mr. Bernatchez was not given any notice that he would work a second 8-hour overtime shift, clause 21.07 also applies to the second shift, and the employer should pay him another 30-minute meal break, since again he was unable to take one. The second shift was contiguous to the first; therefore, clause 21.15 and Appendix “C” of the collective agreement both apply.

[16] To summarize, in addition to his salary for the overtime worked on December 20, 2011, Mr. Bernatchez is entitled to 30 minutes at double time for the first 8 hours of overtime, which the employer withdrew, and 30 minutes at time and one-half for the meal break that he was unable to take. For the second 8-hour overtime shift, Mr. Bernatchez is also entitled to the time that the employer withdrew — a 30-minute break at time and one-half, and two 30-minute breaks at time and one-half — in accordance with clause 21.15 and Appendix “C” of the collective agreement. For the entire 16 hours of overtime, he was paid one lunch and one dinner, but he should have been paid a breakfast and an additional lunch based on the rates established in the NJC Directive.

[17] Every clause in dispute in this case must be examined and understood within the broader context of the provisions of article 21 and appendices “C” and “D” of the collective agreement. Mr. Joly’s counsel reviewed the provisions most relevant to these grievances. Specifically, it was noted that refusing to provide employees working overtime with meal breaks or to pay them for missed meal breaks was completely inconsistent with the collective agreement’s other provisions.

[18] In support of their arguments, Mr. Joly and Mr. Bernatchez referred me to Brown and Beatty, *Canadian Labour Arbitration*, 4th Ed., at para 4:2100, 4:2110 and 4:2120, and to the rules of interpretation found in Chapter 3 of *Droit de l'arbitrage de grief*, 5th edition, by Blouin and Morin. They also referred me to the following decisions: *Southern Railway of British Columbia Ltd. v. Canadian Union of Public Employees, Local 7000* (2010), 198 L.A.C. (4th) 283; and *Marin v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 92.

B. For the employer

[19] Mr. Joly and Mr. Bernatchez had to prove that the employer incorrectly interpreted the collective agreement. The adjudicator’s role is to ascertain the parties’ intention when they signed the collective agreement. The parties’ intention is reflected in what they wrote. The text must be understood in its ordinary sense unless such an understanding leads to an absurdity in its application or with the rest of the collective agreement. The adjudicator cannot interpret the collective agreement otherwise and clearly cannot change its meaning or modify it. Furthermore, a monetary benefit must be expressed in clear language in the collective agreement for it to be agreed to.

[20] The NJC Directive does not apply to reimbursing meals while on inmate escort duty. The employer used that directive only to establish the amount payable for each meal. Bulletin No. 2006-11 (5) applies; it was issued to standardize and clarify reimbursement practices across the country. According to it, the meal at the mid-point of a shift is lunch. Any other meals follow that sequence. On December 8, 2011, Mr. Joly ate a meal at the mid-point of his shift, so the employer had to pay him a lunch allowance, which it did, rather than a dinner allowance, as he claimed.

[21] Clause 21.07 does not apply in Mr. Bernatchez's case because it does not apply to overtime on a day of rest. The overtime provisions are consolidated and constitute a coherent whole. The parties' intention was to not apply that provision to overtime hours. As for clause 21.15, it does not apply to a day of rest. Had that been the case, the parties would have included it in the wording of that provision or elsewhere in the collective agreement.

[22] Clause 21.07(c) does not apply to Mr. Bernatchez's first shift on December 20, 2011; nor does clause 21.15. For the first eight hours that he worked, in addition to his salary, Mr. Bernatchez was entitled to lunch at the mid-point of his shift. For the second shift, Mr. Bernatchez was entitled to two paid 30-minute breaks. The employer admitted that it did not pay him for those breaks. He was also entitled to one dinner and one breakfast.

[23] In support of its arguments, the employer referred me to the following decisions: *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30*, 2002 NBCA 30; *Lamothe et al. c. Canada (Procureur général)*, 2009 CAF 2; *Chafe et al. v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112; *Lannigan et al. v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 31; and *Kranson and Sawchuk v. Canadian Food Inspection Agency*, 2009 PSLRB 76.

IV. Reasons

[24] These grievances raise the following questions in situations in which a correctional officer working shifts provides escort duty outside his or her headquarters area:

- a) Which meal allowance applies at a shift mid-point?
- b) Which benefits were Mr. Bernatchez entitled to during his first overtime shift?

- c) Which benefits were Mr. Bernatchez entitled to during his second overtime shift, which was consecutive and contiguous to his first overtime shift?

[25] The following collective agreement provisions must be examined to decide these grievances:

...

21.07 *Except as may be required in a penitentiary emergency, the Employer shall:*

a) grant a Correctional Officer a paid thirty (30) minute period, away from his work post, to have a meal within the institution, for every complete eight (8) hour period,

and

b) notwithstanding paragraph (a) above, a Correctional Officer may exceptionally be required to eat his or her meal at their work post when the nature of the duties makes it necessary.

c) In the event that the Employer is unable to grant an employee a meal break, in lieu thereof the employee shall receive an additional one half (1/2) hour of compensation at time and one half (1 1/2).

**

21.08 *For the purpose of Clause 21.07, lunch or meal periods for each shift shall be sometime during the following hours:*

Day Shift - 10:30 to 13:30 hours (10:30 a.m. to 1:30 p.m.)

Evening Shift - 16:30 to 19:30 hours (4:30 p.m. to 7:30 p.m.)

Night Shift - 02:30 to 05:30 hours (2:30 a.m. to 5:30 a.m.)

...

21.15 Overtime Meal Allowance

**

a) An employee who works three (3) or more hours of overtime immediately before or following the scheduled hours 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.

c) Reasonable time with pay, to be determined by management, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to his or her place of work.

d) When an employee is on travel status, meal and lodging allowances shall be those provided by Treasury Board policy.

...

APPENDIX "C"

OVERTIME MEAL ALLOWANCE

In view of the unique requirements found in the Correctional Service of Canada, and for the duration of the Correctional Services Group Collective Agreement, the Employer agrees to the following interpretation and application of the Overtime Meal Allowance.

...

4. Notwithstanding the provisions of clause 21.15, when there is a reasonable expectation that an employee will work the full eight (8) hours' overtime shift, the first (1st) meal break will be allowed prior to the working of the first three (3) hours of overtime, and the second (2nd) meal break will be allowed after approximately four (4) hours of overtime have been worked.

5. Where an employee is scheduled to work overtime on a day of rest or on a designated paid holiday, the provisions of clause 21.15, and this appendix, shall be applicable to the employee only with respect to such additional overtime hours which the employee may work in excess of the employee's prior scheduled hours of overtime on that day without prior notification.

6. In the event that the Employer is unable to grant an employee reasonable time off with pay for the purpose of taking an overtime meal break, in lieu thereof the employee shall receive an additional one-half (1/2) hour of overtime compensation at the same overtime rate of the shift completed.

APPENDIX "D"

INMATE ESCORTS

For the duration of the Correctional Services Group Collective Agreement, the Employer agrees to the following:

1. To the extent practicable, the Employer will endeavour to avoid assigning Correctional Officers on inmate escorts on other than their regular working days.

2. When an officer is required to escort an inmate outside of the Headquarters area, the employee will be compensated as follows:

a) the total period during which the officer is escorting the inmate or has the inmate under visual surveillance will be considered as time worked and the officer will be compensated at the applicable straight time and/or overtime rate;

b) an officer who is required to escort inmates at a time which is outside the officer's normal regular scheduled hours of work will be compensated at the applicable overtime rates;

...

e) all hours included between the time of reporting to the institution until the time of return shall be considered as hours worked when these hours are consecutive without interruption by overnight stopover for a suitable rest period;

...

3. When an officer is required to escort an inmate outside of the officer's Headquarters area the officers will be subject to the following travelling conditions:

a) an officer will be reimbursed for reasonable expenses incurred as normally defined by the Employer

...

[26] The following provisions of the NJC Directive must also be examined for the purposes of these grievances:

...

3.2.9 Meals

A traveller shall be paid the applicable meal allowance for each breakfast, lunch and dinner while on travel status.

Meal allowances shall be reimbursed in accordance with the rates specified in Appendix C or D, as applicable.

...

Reimbursement of meals for shift workers shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift.

...

[27] The NJC Directive provision that specifies the sequence of reimbursements for shift workers reads as follows in English:

Reimbursement of meals for shift workers shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift.

[28] The jurisprudence and the doctrine submitted by the parties are quite useful as reminders of the general rules of interpretation for collective agreement wording. However, they are of little use in understanding the simultaneous application of the different collective agreement provisions at issue in this case, other than specifying that the employer defines what constitutes a reasonable period under the terms of clause 21.15 of the collective agreement (see *Kranson and Sawchuk*). The issues raised by these grievances will be examined next.

A. Which meal allowance applies at a shift mid-point?

[29] The employer claimed that it alone can establish the meal sequence during inmate escorts under clause 3(a) of Appendix "D" of the collective agreement. Its policy is described in Bulletin No. 2006-11 (5) and is unequivocal: the meal at the mid-point of a shift is lunch. Although "[translation] dinner" appears in Bulletin No. 2006-11 (5), it is clear that the North American terms for meals are being referred to, as is written as follows, in the same paragraph: "[translation] . . . must follow the sequence of breakfast, dinner and supper." That shows that the intention of the employer's bulletin is that lunch is the meal payable at the mid-point of a shift.

[30] In Mr. Joly's opinion, the applicable mid-point meal is dinner, if the mid-point of the shift occurs in the evening. Appendix "D" of the collective agreement does not apply; the NJC Directive applies instead. Under its subsection 3.2.9, the meal sequence

is established “. . . in relation to the commencement of the . . . shift,” which implies that the evening meal is dinner.

[31] In my opinion, whether the NJC Directive or the employer’s policy is applied, the answer is the same. The mid-point meal for shift workers is always lunch, regardless of the time of day, evening or night on which it falls.

[32] For someone working seven- or eight-hour days on travel status, it is well known that, at least in Canada, breakfast is the meal eaten early in the morning, lunch is the meal eaten at noon or shortly after that and dinner is the meal eaten toward the end of the day. In the context of knowing when each meal is normally eaten, it is interesting that the parties to the NJC Directive decided to specify the exact sequence of meals for shift workers’ reimbursement.

[33] In line with the rule of interpretation that each word has a meaning and that each provision has a utility, it seems clear to me that the NJC Directive shift worker provision is meant to distinguish shift workers from others under its purview. Had the parties meant for those employees to be reimbursed for a breakfast in the morning, a lunch at noon and a dinner at the end of the day, then they would not have written a special provision for them. However, they did, and it should be given meaning such that shift workers are distinguished from others.

[34] Given everything discussed earlier, I find that, under the NJC Directive, as it is expressly written, meal reimbursement for shift workers is based on the sequence of breakfast, lunch and dinner in relation to the start of a shift. Using that interpretation, regardless of the time of day or night at which it falls, the mid-point meal is always lunch, followed by dinner and breakfast, if necessary, for longer shifts. The employer correctly reflected that interpretation in Bulletin No. 2006-11 (5). In other words, the employer did not breach the collective agreement by reimbursing Mr. Joly a lunch allowance for the meal he ate on the evening of December 8, 2011, since that meal fell in the middle of his shift.

B. Which benefits were Mr. Bernatchez entitled to during his first overtime shift?

[35] To answer this question, it is necessary to read clauses 21.07 and 21.15 of the collective agreement along with appendices “C” and “D” and the NJC Directive. When faced with difficulty interpreting a collective agreement, the rule is to refer to the

specific clause that addresses a particular situation, rather than the general clause, to establish the parties' rights and responsibilities. Ignoring the specific clause would amount to overlooking the meaning intentionally expressed by the parties in that specific clause. In this context, it is clear that clauses 21.07 and 21.15 are more general provisions and that appendices "C" and "D" are more specific provisions.

[36] Both clause 21.15 and Appendix "C" are entitled "Overtime Meal Allowance" and are complementary. They deal with paying for meals and meal breaks during overtime contiguous to a shift. Neither applies to Mr. Bernatchez's first overtime shift. The purpose of clause 21.15 is to ensure a meal break and payment for meals during overtime worked just before or after an employee's regularly scheduled shift, which was not the case for the first overtime shift. Furthermore, article 5 of Appendix "C" expressly states that neither that appendix nor clause 21.15 applies if the employee must work overtime on a day of rest and has received prior notification. Clause 21.15 and Appendix "C" apply only to overtime worked without prior notification, and the evidence showed that only Mr. Bernatchez's second shift met that stipulation.

[37] Under clause 2(e) of Appendix "D" of the collective agreement, all hours included between the time of reporting to the institution and the time of return are to be considered hours worked. In other words, regardless of whether a meal break occurs, the employer must pay for all those hours. The employer cannot reduce the salary payable for the escort period by deducting the time that the employee would have taken for a meal break.

[38] Appendix "C" specifically applies to meal allowances and meal breaks that are payable during overtime, but clause 21.07 makes no mention of overtime. Thus, I do not see how one could abstract the specific wording of articles 5 and 6 of Appendix "C" to instead place them within the context of the more general wording of clause 21.07 when establishing meal breaks payable as overtime. Similar to clause 21.07, article 6 of Appendix "C" provides an additional one-half hour of overtime compensation in lieu of a missed meal break, but article 5 of Appendix "C" stipulates that the benefits payable in that appendix apply only to overtime worked without prior notification. The result is that, in this situation, contrary to overtime situations with no prior notification or to normal work hours (clause 21.07), the collective agreement does not impose a penalty on the employer for not granting Mr. Bernatchez a meal break during his first shift.

[39] For his first overtime shift, from 07:00 to 15:00 on December 20, 2011, Mr. Bernatchez was entitled to eight hours at double time, as confirmed in the joint statement of facts submitted by the parties. Under clause 2(e) of Appendix “D” of the collective agreement, all hours between the time of reporting to the institution and the time of return are considered as hours worked. In other words, regardless of whether a meal break occurs, the employer must pay the employee for all those hours.

[40] Mr. Bernatchez was outside his headquarters area while escorting an inmate. Therefore, he was entitled to a meal reimbursement as stipulated in Appendix “D” of the collective agreement. The evidence demonstrated that he was reimbursed based on the allowance rates set out in the NJC Directive. Since Mr. Bernatchez’s shift began at 07:00, he was entitled to a lunch allowance of \$14.60 at the mid-point of his shift.

C. Which benefits were Mr. Bernatchez entitled to during his second overtime shift, which was consecutive and contiguous to his first overtime shift?

[41] The evidence showed that Mr. Bernatchez was not scheduled to work a second overtime shift on December 20, 2011. Approximately 30 minutes before his first shift ended, the employer asked him to continue working and to remain on escort duty since the inmate needed to be escorted to another hospital. He ended up working a second eight hours of overtime contiguous to the first eight hours that he had already worked.

[42] As was the case for the first 8 hours of overtime, Mr. Bernatchez was entitled to 8 hours at double time for the hours worked from 15:00 to 23:00. Once again, whether or not he stopped to take time for meal breaks, the employer had to pay him for eight consecutive hours of work under clause 2(e) of Appendix “D” of the collective agreement.

[43] Since he was escorting an inmate outside his headquarters area during the second shift, Mr. Bernatchez was entitled to the reimbursement of reasonable meal expenses “. . . as normally defined by the Employer . . . ,” as stipulated in clause 3(a) of Appendix “D” of the collective agreement. Mr. Kearney testified that the employer uses the meal allowance rates in the NJC Directive to define the reasonable reimbursable expenses mentioned in Appendix “D” of the collective agreement when an employee escorts an inmate outside his or her headquarters area. Since I already determined that Mr. Bernatchez was entitled to a lunch allowance at the mid-point of his first overtime

shift, it follows that he was entitled to a dinner allowance of \$40.30 and to a breakfast allowance of \$15.35 later in the evening, for a total of three meals over the course of his 16-hour workday (from 07:00 to 23:00) outside his headquarters area.

[44] All that remains is to establish Mr. Bernatchez's right to payment for meal breaks between 15:00 and 23:00. I have already determined that, in a situation such as his, clauses 21.07 and 21.15 of the collective agreement do not apply.

[45] However, Appendix "C" of the collective agreement stipulates that, when a reasonable expectation exists that an employee will work the full eight hours of an overtime shift, the employer must grant the first meal break at the beginning of the shift and the second meal break after four hours have been worked. If the employer is unable to grant reasonable time off for a meal break, it must pay the employee one-half hour of overtime compensation at the same overtime rate as the shift. However, those benefits do not apply to overtime worked on a day of rest unless the shift is worked with no prior notification in addition to the scheduled overtime for that day.

[46] The evidence showed that the second overtime shift was not scheduled. Mr. Bernatchez agreed to work the second shift when requested by the employer to meet a last-minute requirement resulting from the physician's decision to transfer the inmate to Laval. Mr. Bernatchez was unable to take any meal breaks. The employer did not dispute his testimony on that point, which means that it must pay him two half-hours at double time, with each half-hour representing one of the two meals breaks that he was entitled to and that he was unable to take.

[47] In conclusion, on December 20, 2011, the employer should have paid the following to Mr. Bernatchez: 17 hours at double time, the total of 16 hours worked and 1 hour for the 2 evening-shift meal breaks that he was unable to take. He should also have been paid, in the following order, a lunch, a dinner and a breakfast allowance.

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

(The Order appears on the next page)

V. Order

[49] Mr. Joly's grievance is dismissed.

[50] Mr. Bernatchez's grievance is allowed in part.

[51] The employer should have paid Mr. Bernatchez 17 hours at double time for the 16 hours he worked on December 20, 2011 and for the 1 hour of meal breaks that he was unable to take, plus meal allowances for one lunch, one dinner and one breakfast at the rates set out in the NJC Directive.

[52] The employer must pay Mr. Bernatchez the amounts owing within 60 days of my decision.

[53] I will remain seized of Mr. Bernatchez's grievance for 90 days from the date of my decision.

October 17, 2012.

PSLRB Translation

**Renaud Paquet,
adjudicator**