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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

ROGER BEAL

Grievor

and

TREASURY BOARD
(Solicitor General Canada – Correctional Service)

Employer

Before: [Guy Giguère, Deputy Chairperson](#)

For the Grievor: [Michael Tynes, Public Service Alliance of Canada](#)

For the Employer: [Harvey Newman, Senior Counsel](#)

Heard at Moncton, New Brunswick,
March 27, 2003.

DECISION

[1] Roger Beal grieved on June 16, 1997, that his penological factor allowance (PFA) was reduced from \$1600 (continual maximum) to \$800 per year (continual medium), while in fact he was supervising maximum-security inmates on an ongoing basis. He requested that his PFA be reinstated at the maximum level.

[2] At the final level of the grievance process, Mr. Beal's grievance was partially upheld, as the employer concluded that he had frequent contact with inmates at a maximum-security institution and frequent contact with inmates at a medium-security institution for a blended PFA of \$1280.

[3] Mr. Beal's grievance was referred to adjudication and on October 25, 2002, I rendered a decision on his grievance. I first found that, as Mr. Beal submitted, he had continual exposure to inmates for the purpose of establishing the PFA. As the evidence was that he had custody for several weeks and months of inmates housed in maximum-security units, I also found that he should receive a PFA at a continual maximum level for those periods of the year. To this extent, his grievance was allowed and I retained jurisdiction, as the parties requested, since they were to determine the periods for which Mr. Beal was entitled to receive the continual maximum level PFA.

[4] On November 25, 2002, Mr. Tynes wrote to the Board requesting that the Board schedule a date for the matter to be heard, as the parties had difficulty with the application of my decision. He indicated that this difficulty arose because the employer considered that Mr. Beal was not entitled to any additional payments of a PFA based on my decision.

[5] On March 27, 2003, before the hearing started, the parties agreed to proceed through informal discussions in mediation in view of reaching a settlement. Through these discussions, the parties agreed that over a period of 4 years, Mr. Beal had custody for 20 months on a continual basis of inmates housed in maximum-security units. However, the parties were unable to reach an agreement. At the outset of the hearing, both representatives stated that it was not necessary to proceed with a formal hearing and agreed that the information presented during the course of mediation could be used by me to come to a decision.

[6] The employer indicated it would not recuperate any sums from the grievor if, as a result of the decision following this hearing, it was determined that there had been an overpayment in PFA to Mr. Beal.

[7] The employer explained it had been agreed that over 4 years, Mr. Beal had custody on a continual basis of inmates housed in maximum-security units for a period of 20 months; therefore, he had custody on a continual basis of inmates housed in a medium-security institution for the rest of the period (28 months). This entitled Mr. Beal to a PFA at the continual maximum level, for a period of 20 months, of \$2666 and a PFA at the continual medium level, for a period of 28 months, of \$1866, for a total PFA of \$4532. Since Mr. Beal received, at the final level of the grievance process, a blended PFA of \$1280 during a four-year period for a total of \$5120, he was not entitled to any additional amount as a result of the decision I issued on October 25, 2002.

[8] The grievor submitted that he should receive the difference between the continual maximum PFA and the blended PFA he had received for the 20-month period for which the employer agreed he had custody of inmates housed in a maximum-security unit. The grievor further submitted that he should receive a blended PFA for the remaining period of 28 months as the employer had granted to him at the final level of the grievance process.

[9] As I found in my decision of October 25, 2002, that Mr. Beal had custody of inmates at the continual level, it follows that for the period of time he did not have custody of inmates housed in maximum-security units, he should receive a PFA at the continual medium level, as he had custody of inmates housed in a medium-security institution. Accordingly, Mr. Beal is not entitled to a blended PFA at the frequent maximum and frequent medium levels for the period of 28 months still in dispute. For these reasons, I find that no additional payments of the PFA are necessary in this matter.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, April 10, 2003.