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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

ROGER TOUSIGNANT AND DENIS PARADIS

Grievors

and

TREASURY BOARD
(Correctional Service of Canada)

Employer



Before: Léo-Paul Guindon, Board Member

For the Grievors: Glen Chochla, Public Service Alliance of Canada

For the Employer: Stéphane Hould, Counsel

Heard at Sherbrooke, Quebec,
from February 23 to 25 and
at Montréal, Quebec,
from June 8 to 10, 2004.

DECISION

[1] On February 15, 2002, the grievors filed grievances requesting that they be paid at the WP-04 level as of February 19, 1999, for the duties and responsibilities that they had undertaken since that date.

[2] In addition to pay at the higher classification level, the grievors requested the interest incurred at the Treasury bond rate and an annual lump sum of \$2,000, as of February 19, 1999, to compensate them for the difficulties they had experienced and their expenses in relation to the grievances.

[3] The grievances are based on clause 64.07 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services group (signed on November 19, 2001; expiry date: June 20, 2003). Clause 64.07 reads as follows (Exhibit G-1) :

64.07

- (a) *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 three (3) consecutive working days or shifts, 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.*
- (b) *When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered as a day worked for purposes of the qualifying period.*

[4] The grievors' duties and responsibilities in their program officer positions were modified over the years as the Correctional Programs division of the Correctional Service of Canada evolved. The chronology of events that underlie the grievances goes back to the program officer position description in force in January 1996 (Exhibit G-17). In May 1996, the Classification Committee recommended that the program officer position be classified at the WP-03 level (Exhibit G-18). The WP-03 classification level was recognized in December 1997, thus assigning the same classification level to program officers and case management officers.

[5] This parity was only briefly viable because the case management officer position was replaced by that of parole officer, which was classified at the WP-04 level on January 16, 1998, (Exhibit G-6). The employer then had to reconsider whether other positions might be affected by that decision, and the description of the program

officers' duties also had to be reviewed in the context of the new Universal Classification Standard project. If a reclassification were necessary, it would be retroactive to January 16, 1998.

[6] A new program officer position description was written and given to the employees on February 2, 1999. Messrs. Tousignant and Paradis filed grievances against the position description, which they considered incomplete (Exhibits G-8 and G-9). The grievors also asked to have the classification level reassessed following the modification of the position description.

[7] In its responses at the various grievance levels, the employer acknowledged the need to review the program officer position description (Exhibits G-10 and G-11). A new position description was written following the settlement that was reached by the parties on July 6, 2001, resulting from mediation. This description was in force on the date of the grievances, that is, in March 1999. The grievors asked the employer to provide them with the rating and position classification level before the end of September 2001 (Exhibit G-19). The Classification Committee report issued at the end of September 2001 recommended maintaining the position classification level at WP-03 (Exhibit G-20).

[8] The modified position description resulting from the mediation settlement recognized that program officers had a role to play in assessing offender needs in relation to the correctional programs (specified in the inmate correctional plan) and the risk of reoffending with respect to the criminogenic factors. Before the changes, these duties were listed only in the parole officers' position description. According to the grievors' testimony, the new duties were distinguished by the following elements appearing in the update of September 10, 2001 (Exhibit G-21):

[TRANSLATION]

Key Activities

- *Advises the Head, Programs, on the delivery of new programs and/or the renewal of programs relating to his/her specialty and proposes new resources.*

...

- *Evaluates offenders' needs and level of needs in relation to the specific goals of the programs to which*

they are referred and reviews the needs identified in the correctional plan.

...

- *Assesses the offenders' progress, assesses the risk of reoffending in relation to the criminogenic factors dealt with in the post-program assessment... informs and advises the decision-makers (NPB, CMT, etc.) on offenders' progress in relation to their specific needs.*

...

- *Completes the program assessments in the context of the regional initial assessment.*

...

- *With the Chief, Programs, contributes to the supervision of new employees in the area of his/her specialty.*

...

Responsibilities

(1) Information used by others

...

Shares the information in the progress reports with the offender to inform him of his performance in the program. This information is used by the CLOs to adjust the correctional plan.

...

[9] The review of work descriptions for workers in the Programs sector is continuing. The National Committee on Living Skills emphasized in the report of its May 26 to 28, 1999 meeting that the objective for the review of work descriptions was to assign the WP-04 classification level to all groups working in the Programs sector (Exhibit G-7). The employer would have taken into account the possible impact of the Universal Classification Standard on the evaluation of the program officer position description and its classification (April 2000, Exhibit G-12). Another factor to consider is the impact on financial and human resources and the organizational changes to which the revision of this position could lead (April 2000, Exhibit G-13). The Senior Personnel Committee also emphasized the issue of costs in relation to the reclassification of the program officer positions and the problems of conversion to the

Universal Classification Standard (June 2000, Exhibits G-14 and G-15; October 2000, Exhibit G-16).

[10] As a result of this initiative, new correctional program officer and social program officer positions were announced on January 23, 2002 (Exhibit G-23). The Assistant Commissioner, Correctional Operations and Programs, stressed that the program officers would have increased responsibilities in terms of assessing the offenders' risk of reoffending and determining inmate progress. The new correctional program officer positions would be created and classified at the WP-04 level, beginning on April 1, 2002.

[11] The Assistant Commissioner stressed in his memorandum of January 23, 2002, that the duties related to program delivery had increased as a result of the application of the Commissioner's Directive establishing a framework for the development and management of correctional programs. The Directive stated that the program and site accreditation process had been in place since January 1999 and explained the importance of quality control and staff training and certification (Exhibit G-24).

[12] An appointment without competition process was implemented to staff the new correctional program officer positions (WP-04) (Exhibit G-27). The selection process was open to persons holding positions as program officers (WP-03) who were eligible according to the following steps:

[TRANSLATION]

1. The employee must complete the declaration of interest questionnaire that will be sent to the National Selection Committee;
2. A candidate assessment is completed by his/her manager;
3. Candidates must participate in a mandatory three-day training session and will be assessed by the trainers;
4. The National Selection Committee will determine whether the candidate meets the requirements and is qualified for the new position;
5. Qualified employees will receive a letter of offer for the new position.

[13] A similar process was applied for the new social program officer positions (WP-03), which were also created on April 1, 2002, but differed in the length of the mandatory training, which was five days.

[14] The training offered to program officers was intended, among other things, to develop their skills in three key areas (Exhibit G-32):

[TRANSLATION]

...

- *Ability to determine the needs of the population and to contribute to management program planning.*
- *Ability to review the correctional plan and the presentations with a view to participating in the programs to ensure compliance with program criteria.*

...

- *Ability to assess and manage the risk and report on it in the context of the program.*

...

[15] According to the grievors, these skills had to be acquired by the program officers so that they could be responsible for the key activities specified in the program officer work descriptions since 1993 (Exhibit G-33):

The first skill indicates that the incumbent

[TRANSLATION]

Advises the Chief, Programs, on the delivery of new programs and/or the renewal of programs related to his/her specialty and proposes service contracts;

The second skill indicates that he or she

[TRANSLATION]

Conducts the pre-program assessment for the admission of participants to the program;

Assesses the participant in the particular program;

The third skill is already included in factor #4 of knowledge and skills:

[TRANSLATION]

Knowledge of the case management strategy.

The fourth skill indicates that he or she

[TRANSLATION]

Analyses and evaluates the quality of the delivery of contract services.

Seeks new professional resources in his/her area of specialization.

[16] According to the grievors, these skills (which were covered in the training) had to be acquired by the program officers in order to take on the following key activity, stated in point 4 of the key activities in the January 1996 position description (Exhibit G-18):

[TRANSLATION]

...

4. *Prepares post-program reports; informs program staff of the gaps and progress achieved by program participants in terms of correctional plan objectives; recommends appropriate interventions in terms of risk management.*

...

[17] The same activities were specified again in the work description written in October 2001 (Exhibit G-21) and were quoted in paragraph 9 of this decision.

[18] The statement of qualifications for the program officer position (revised in July 1997) specifies the following (Exhibit G-34):

[TRANSLATION]

KNOWLEDGE

Mission and corporate objectives.

Risk/Needs Assessment process of the Correctional Service of Canada.

...

ABILITY AND SKILLS

...

Ability to analyse the results of the Risk/Needs Assessment, case reviews and client interviews and to recommend programs at the appropriate intensity level.

...

Ability to participate effectively in case conferences held in the context of the Risk/Needs Assessment for offenders as well as in the development of correctional plans.

...

[19] The grievors explained that program officers had to be skilled in risk assessment with respect to the factors explained in the "Standing Instructions (726)" for Correctional Program Management, dated January 12, 1999 (Exhibit G-35). According to these Instructions, program officers had to have training in risk assessment in order to be able to determine if an offender can participate in a program. The factors defined in the Offender Intake Assessment and the risk of reoffending were taken into consideration in this activity. If the program officer determined that the program was not suitable for the offender, the case was referred to the parole officer who had to explain the reasons to the Program Board, which made the final decision.

[20] The grievors admitted, in their testimony, that their duties and responsibilities as program officers evolved over the years. The program officers wanted their position description to be complete and recognized at the national level when the Universal Classification Standard was implemented. They learned to manage the risk and assess it against the criminogenic factors in carrying out their duties and working with the parole officers, who had had training in this area. As of 1999, program officers were more involved in meetings with inmates and assessing inmates against their correctional plans and the evaluations in their files. In July 2001, their assessments concerning the correctional plans and the changes that were to be made to them were added to the description of the duties that they were to share with the case management officers. Prior to 1999, approximately 15% of the inmates who had been referred to programs could be refused by the program officers because the parole officers were not very familiar with the programs. Today, approximately 5% of the inmates are refused for the programs specified in their Initial Correctional Plan. Now,

program officers recommend the modifications to the inmate correctional program, which must be modified by the parole officer and the case management team. Since 1999-2000, the National Parole Board has asked with increasing frequency to see the program officers' reports.

[21] The grievors' comparison of the program officer position description (July 2001; Exhibits G-21 and G-22) and the correctional program officer position description (April 1, 2002; Exhibit G-25) showed that 90% of the duties and responsibilities were identical. For them, the "new" duties appearing in the correctional program officer position description (WP-04) were performed by the program officers although they were not included in their job description (WP-03).

[22] Ewen Newton, a classification officer, explained that the elements from the correctional program officer position description that had a line drawn through them (Exhibit G-39 b) appeared in the 2001 program officer position description (Exhibits G 21 and G-22). The underlined passages in Exhibit G-39 b) are not found in the 2001 program officer position description. The "mechanical" comparison in Exhibit G-39 b) only compares the words that were used and does not refer to the substance of the responsibilities. Mr. Newton explained that Denis Barbe, Acting Director, Reintegration Programs at NHQ, wrote the 2002 correctional program officer position description. Mr. Newton had knowledge of the correspondence concerning the evaluation of the grievors' grievances and recommended to Brenda Marcoux, a labour relations adviser, that she discuss the points it raised with Mr. Barbe.

[23] Denis Barbe presented the background of the programs. Education programs have been in place since 1988, and personal development programs began to be developed. At that time, the courses were provided by correctional officers or teachers, and there was no program officer position. Between 1990 and 1995, program officer positions were created and classified at the WP-02 level and, later, the WP-03 level. A program accreditation process was instituted under a committee of international experts. The programs offered by the institutions were evaluated by a committee from another region to ensure quality control. The program officers received training and follow-up was done by video for national certification. Graduates (criminology; psychology; social sciences etc.) were recruited to staff program officer positions because they had a role to play in inmate risk management.

[24] The development of reintegration programs led the Service to involve the program officers in the case management teams and in needs identification and assessment. In his testimony, Mr. Barbe identified the three different elements in the new position description for correctional program officers, which are explained in Exhibit G-42 as follows:

[TRANSLATION]

1. *Full member of the management team for confirmation of or information about program referrals resulting from the Offender Intake Assessment. This implies consultation with program officers in developing correctional plans (at the Intake Assessment and/or during the reviews), and the participation of program officers on the Program Board where clinical discussions are held concerning program enrolments for each case. The role of correctional program officers is no longer merely to communicate information, but the officers may also challenge and even ultimately effect a change in a parole officer's decision. The role of the correctional programs officers at these meetings is therefore much broader.*
2. *Following their participation in the Intake and ongoing Assessment process, the program officers must advise the Chief, Programs, on the needs of the population in the unit where they work (this includes all offenders in the responsibility centre). It involves the participation by program officers in correctional planning meetings where program priorities are discussed for the entire population.*
3. *In assessing program participants, they must take risk management into account by using the new Template introduced by NHQ as part of the national training program on risk management.*

...

[25] In his testimony, Mr. Barbe explained the elements of the key activities that had been modified in the correctional program officer position description (Exhibit G-25):

[TRANSLATION]

Key Activities

- *As a member of the case management team, evaluates and analyses data on the offender to determine whether the offender should participate*

in a program to influence the risk factors related to reintegration.

- *Analyses and interprets test results and prepares detailed post-program reports based on the assessments and intervention objectives.*
- *Evaluates offender program needs on an ongoing basis and interprets offenders' progress and their participation in the programs against the objectives listed in the correctional plan.*
- *Provides expert advice concerning the development and revision of correctional plans, taking into account offender needs and appropriate risk reduction programs.*
- *Completes the assessments for the programs as part of the Intake Assessment process. Determines current and future needs of offenders and group of offenders for programs and plans accordingly.*
- *Offers direct counselling and group sessions to offenders in institutional and community settings.*
- *Actively intervenes with offenders who have been steered to programs to motivate and encourage them to participate in the programs and to modify their behaviour.*
- *Offers effective correctional programs based on national standards relating to the offenders' criminogenic needs. Strict quality assurance procedures must be used to ensure compliance with national standards and accreditation requirements for effective program delivery. Many officers deliver a variety of programs at varying intensity levels to meet offenders' needs.*
- *Promotes the results of the correctional programs as they relate to reintegration potential. Informs, gives expert advice and offers awareness sessions to Correctional Service staff concerning accreditation requirements, national standards, quality assurance measures, psychometric assessment instruments, program content, intervention objectives and their relationship to reintegration, the target clientele, post-program reports and results.*
- *Provides liaison with other employees (parole officers, psychologists, correctional officers and unit managers) to ensure the exchange of relevant*

information about offender participation in the programs.

- *Forges links with government and non-government organizations so that they can offer programs or program components.*

[26] The training to qualify program officers as correctional program officers involves three elements:

[TRANSLATION]

- Knowledge of correctional programs as a whole.
- Role of the correctional program officer in relation to the institutional Program Board.
- Risk assessment management.

[27] The participants' manual distributed during the training specifies the risk management elements that must now be included in the post-program report (Exhibit E-3). The comments concerning management of the risks specified by Mr. Barbe are presented as follows (Exhibit G-42):

[TRANSLATION]

...

Comments:

In the current position description for the two employees, there is a reference to risk assessment, i.e., inmate progress is analysed in relation to the contributing factors.

Risk management as conceived in the new position description and presented in risk management training involves the knowledge and application of the four components of risk management (Intake Assessment; planning; delivery and evaluation of the changes) and the ability to recommend risk management strategies to reduce the level of risk in each case. Risk management strategies such as those taught in the training may include programs other than those for which the officer was trained, or pre-incident indicators of disorganization or indicators announcing an increased level of need, etc.

[28] According to Mr. Barbe, these components, which are not found in the post-program reports made by the program officers (Exhibits E-5 to E-7), have become the

focus of the reports required of the correctional program officers and must now comply with the assessment template specified in Exhibit E-3.

[29] According to the employer, the program officers participated in the case management committee in 1996. They were recognized as an integral part of the committee in the 1999 position description. In the new correctional program officer position, they participated in the committee at the same level as parole officers. Program officers could recommend that an inmate be turned away from a course or steered to another course but, according to the position description that was in force in 1999, it was the Program Board that decided. The new correctional program officer position description in 2001 broadened the scope of this intervention.

[30] The Deputy Commissioner, Human Resources, was advised by Ms. Marcoux concerning these grievances. Ms. Marcoux was one of the correspondents in Exhibits G-35 to G-46. At the time of the meeting with the employees, which is explained in Exhibit G-40 a), Ms. Marcoux had not learned of the mechanical comparison between the program officer position descriptions and the correctional program officer position description (Exhibit G-39 b)). Ms. Marcoux explained that, in October 2002, she was still waiting for answers from Cowansville's institutional management about the duties of the new position that were being applied (Exhibit G-41). In the grievance summary filed as Exhibit G-45, she concluded:

[TRANSLATION]

...

A number of discussions were held with the Reintegration Programs Division, the Classification Division and local management (Warden of the institution and the employees' former supervisor) to make sure that the employees, before April 1, 2002, had not been performing the duties that were part of the new correctional program officer position description (WP-04). It was difficult to obtain a clear answer to this question since local management said that, in practice, the employees' duties had not really changed since the new position description (WP-04) became effective. Since the differences between the two positions are very technical and not very obvious to those who are not specialists in the area, local management seems to find it hard to draw a clear line between the old program officer position (WP-03) and the new correctional program officer position (WP-04). In fact, as can be seen in the document prepared by Mr. Barbe, the

duties are not really new; it is how they are done and the context in which they are done that has changed.

...

[31] Gilles Lacasse, Assistant Warden, Correctional Programs, Cowansville Institution, was consulted regarding the three elements identified by Mr. Barbe in Exhibit G-42. According to his assessment, explained in Exhibit G-43, the employees would be able to show that the elements specified in points 1 and 2 of Exhibit G-42 were part of their duties before 2002. On the subject of risk management, he wondered whether the employer could show that major changes had been applied, apart from the form, since the training to qualify correctional program officers.

Arguments

For the grievors

[32] The grievors' representative submitted that since 1998, the employer had recognized that program officers should be classified at the same level as parole officers.

[33] The program officer position description was clarified in July 2001 and applied retroactively to February 1999. The position classification was maintained at the WP-03 level in September 1999 (Exhibit G-20).

[34] The employer decided to create a new correctional program officer position and a position description was written in January 2002 (Exhibits G-23 and G-25). The employees took the training successfully, thus qualifying themselves for the new positions. These correctional program officer positions were classified at the WP-04 level.

[35] The grievors' grievances are therefore based on clause 64.07 of the collective agreement and allege that they had performed WP-04 level duties since February 19, 1999, and were entitled to be paid at this level.

[36] The evidence clearly shows that the grievors substantially performed the duties of a level WP-04 position. A comparison between the program officer position descriptions and the correctional program officer position descriptions shows only a small difference arising from the training that they received before their appointments,

which did not disqualify them from receiving pay at the WP-04 level for the period between February 19, 1999, and April 1, 2002.

[37] The employer, in fact, reclassified the former program officer position at the WP-04 level and, consequently, it must pay the employees who took on the duties of this level. The decision of the Federal Court in *Stagg v. Canada (Treasury Board)*, [1993] F.C.J. No. 1393 (QL), finding that the employee was entitled to be paid at the higher classification level after he had performed duties that were later held to belong to the higher classification level, should apply in these cases. According to the principle set out in *Charpentier v. Treasury Board (Environment Canada)* (PSSRB File Nos. 166-2-26197 and 26198 (1997) (QL)), once the employer recognizes that the position has a higher classification, the employee is entitled to be paid at this level if he has performed the duties of this position and recognition of these facts does not amount to a retroactive reclassification.

[38] In *Macri v. Treasury Board (Indian and Northern Affairs)*, PSSRB File No. 166-2-15319 (1987) (QL), the adjudicator decided that the employee had performed the duties of a higher classification level although the employer had assessed the classification of this position at a lower level. According to the Federal Court of Appeal (*Her Majesty the Queen in right of Canada and Lenda Macri*, [1988] F.C.J. No. 581), in rendering that decision, the adjudicator did not usurp the functions of the classification officers.

[39] These grievances are not about the classification of the position but rather the pay attached to the duties performed by the grievors for a given period. This approach was followed in the Board's decision in *Woodward v. Treasury Board (Fisheries and Oceans Canada)*, 2000 PSSRB 44, and by the Federal Court of Appeal in *Blais v. Her Majesty the Queen*, [1986] F.C.J. No. 918, and should be applied to these grievances.

[40] A comparative study of the position descriptions filed during argument underscores the fact that the grievors performed 89.8% of the duties listed in the correctional program officer position description. This shows that they performed, on an acting basis, a large portion of the duties of a higher classification level, thereby entitling them to be paid at this level under clause 64.07 of the collective agreement. The grievors' representative admitted, in his reply, that the employer had increased the involvement of the program officers in risk assessment although not substantially.

[41] According to the evidence presented at the hearing, the grievors participated in risk assessment against criminogenic factors and since February 1999 played a role in connection with inmate correctional plans. These duties were not substantially modified in the new correctional program officer description, the employer recognizing that only the evaluation form had been modified (Mr. Lacasse). Ms. Marcoux explained that she found it hard to distinguish between the two functions. Mr. Barbe acknowledged that, apart from the post-program evaluation report, the duties were similar and the employees had participated in the risk assessments and correctional plans as program officers. He contended that the training gave them a broader knowledge of the programs as a whole, but the grievors' testimony shows that they had had this knowledge before and had been putting it into practice since 1999.

[42] Concerning the employer's preliminary objection that the grievances had been submitted late, the grievors argued that the grievances had been submitted within 25 days of their becoming aware of the content of the correctional program officer position description, dated February 15, 2002 (Exhibit G-25).

For the employer

[43] Through the grievances which are the subject of these cases, the grievors have attempted to circumvent the decision on the classification of their correctional program officer position at the WP-03 level, which was dated September 28, 2001 (Exhibit G-20). Following the grievances filed by the grievors in February and March 1999 (Exhibits G-8 and G-9) concerning the position descriptions, a new program officer position description was written and signed by the grievors on October 9, 2001 (Exhibits G-20 and G-21). The decision that the position was level WP-03 is being challenged before another body and has not been finalized.

[44] The grievors have asked the adjudicator to compare the content of the program officer position descriptions and the correctional program officer position descriptions according to the allegation that they are similar. This exercise applies to the nature of the classification and does not fall within the adjudicator's jurisdiction.

[45] No evidence was submitted to show that the grievors performed duties that went beyond their work descriptions for the program officer position that they held between February 1999 and April 2002. On the contrary, the grievors testified that

they performed duties in relation to risk assessment and participation in the case management teams and that these duties were described in Exhibits G-21 and G-22.

[46] The grievance adjudicator has no jurisdiction over classification matters and this principle applies when the grievors perform the duties of their positions but allege in their grievances that these duties are classified at a higher level in other positions. The decision in *Gvildys v. Treasury Board (Health Canada)*, 2002 PSSRB 86, favours this approach and should be applied since the facts alleged are similar to the facts of these cases.

[47] Even if the grievors had shown that the program officer positions and the correctional program officer positions were identical in terms of their duties and responsibilities, the adjudicator cannot have jurisdiction over these cases, which are in the nature of a classification exercise. This principle was established in *Dougherty and Treasury Board (Solicitor General of Canada - Correctional Service)*, PSSRB File Nos. 166-2-25137 to 25142 and 166-2-25162 (1994) (QL).

[48] In these cases, the grievances appear to have been a backdoor attempt to obtain a recognition that the program officer positions should be reclassified at a higher level. The reasoning of the Federal Court judge in *Chadwick v. Canada (Attorney General)*, [2004] F.C.J. No. 605 (QL) can be applied *a contrario* to these cases.

[49] According to the evidence, the new correctional program officer positions, which were classified at the WP-04 level, include new responsibilities in terms of the three elements specified in the e-mail filed as Exhibit G-42. The key aspect of the new responsibilities is risk assessment and the full-fledged involvement of correctional program officers on the case management team and the Program Board. The correctional program officers participate in planning meetings for the entire institutional population, thus performing a broader role. A new report template taking risk management into account in the evaluation of the participants was also introduced by headquarters.

[50] In the alternative, the grievors did not show that they had substantially performed the duties of a level WP-04 position since February 1999. They claimed that their duties did not change. This contrasted with the position of the employer who showed that the expectations for the new correctional program officer position had increased. The new elements on which the evaluation reports now had to be centred do

not appear in the reports made by the program officers before the introduction of the new correctional program officer positions (Exhibit E-5).

[51] In the alternative, the decision in *Coallier*, [1983] F.C.J. No. 813, should be applied, since there is no reason to make the decision retroactive more than 25 days before February 15, 2002.

Reasons for decision

[52] In their grievances, the grievors ask to be paid at the WP-04 level because they had performed the duties and responsibilities for this level in the period beginning on February 19, 1999, until April 1, 2002. These grievances are based on clause 64.07 of the collective agreement, which provides that when an employee is required by the employer to substantially perform the duties of a higher classification level and performs those duties for at least three consecutive working days or shifts, the employee is entitled to the pay for this classification level.

[53] Since the grievors are seeking to be paid at the WP-04 level for this period, which is from February 19, 1999, to April 1, 2002, their grievances meet the time criteria (more than three days) specified in the collective agreement. According to the reasoning of the Federal Court in *Stagg (supra)*, a grievance presented by an employee claiming acting pay, based on a similarly worded clause of the collective agreement, is a matter involving pay and not a matter of classification. Thus, the employer's argument that the grievors were attempting to have their program officer positions reclassified cannot be accepted, since it was not evident from the wording of the grievances in question.

[54] The grievors presented their grievances when they received the correctional program officer position description. Therefore, they had knowledge of the circumstances giving rise to the grievances when they received the correctional program officer position description on February 15, 2002. Since they filed their grievances that day, *Coallier (supra)* cannot apply to these cases.

[55] The evidence showed that the correctional programs in the institutions have significantly evolved since 1988. Those who deliver these programs have seen their responsibilities grow and the number of programs offered has increased. Accordingly, those who deliver the programs have become specialists trained to offer certain

specific programs and later certain families of programs. A program accreditation process was instituted; the institutions and those who deliver the programs have been evaluated and certified. These changes led to the modifications in the position descriptions of the various players and the classifications for their positions have been modified as a result of their increased responsibilities.

[56] I understand that the grievors, as the program officer's work evolved, realized that some of their responsibilities had been increased and new duties had been added and/or became more complex. This lies at the heart of their requests since 1998 to have their position descriptions modified and their grievances of February and March 1999 (Exhibits G-8 and G-9).

[57] The grievors wanted their professional involvement with the programs to be recognized as being of the same importance as that of the parole officers. In December 1997, the two functions had been classified at the WP-03 level. Unfortunately, the conversion of case management officers to parole officers again gave parole officers the benefit of a higher classification level in January 1998.

[58] These grievances were settled as a result of a settlement reached by mediation and the program officer position description was updated on September 10, 2001, and presented to the employees in November 2001 (Exhibits G-21 and G-22). Although the objective of reviewing the position descriptions was to have a WP-04 classification level assigned to all groups according to the National Committee on Living Skills (Exhibit G-7), the new job description for the program officer position was maintained at the WP-03 level in September 2001 (Exhibit G-19).

[59] At the end of January 2002, the employer announced that new social program officer positions (WP-03) and correctional program officer positions at the WP-04 level would be created on April 1, 2002 (Exhibits G-27 and E-1). For the purposes of this decision, only the correctional program officer positions are relevant. An appointment without competition process was established and the incumbents of the program officer position (WP-03) were eligible to participate in the selection process.

[60] Mr. Barbe testified that the employer specifically wanted to give a larger role to correctional program officers in the assessment of the risk presented by an inmate with respect to his criminogenic factors. He explained that the employer wanted to enhance the program officers' influence with the other players in the Correctional

Programs sector by expanding the scope of their interventions to cover all programs and formalizing their participation on the Program Board and Case Management Committee. These points are explained in Exhibit G-42. Based on this testimony, I accept that the employer did indeed want to enrich the role and duties of program officers by creating the new correctional program officer position beginning on April 1, 2002. Although the decision to classify the correctional program officer position at a WP-04 classification level was not submitted to me, I see from the evidence as a whole that these increased responsibilities in terms of risk assessment and management would be at the origin of this higher classification level.

[61] The grievors stressed that the comparative study of the position descriptions (Exhibit G-26) shows that 89.8% of the sections on the correctional program officer positions are copies of the sections on the programs officer positions of July 2001 and contain the same requirements. (See the document filed with the pleadings, entitled: Comparative Study (EC-2)).

[62] From the evidence submitted by the grievors, I find that since February 1999 they participated in the meetings of the case management team and the Program Board in addition to correctional planning meetings. The grievors also showed that they took the elements relating to risk of reoffending and criminogenic factors into account when they had to assess inmates, either on admission to a program or in post-program evaluations. They shared information from such evaluations with the other workers and the offenders, along with the information appearing in the correctional plans and the files to which they had access.

[63] These duties and responsibilities were in fact included in their program officer position description updated on September 10, 2001, as reported in paragraph 8 of this decision.

[64] The program officer position description, updated in 2001, was submitted to Classification for re-evaluation. The report of the Classification Committee, dated September 28, 2001, concluded that WP-03 was still the recommended group and level (Exhibit G-20). Without going into the details of the report, it appears that all the duties and responsibilities specified in the program officer position description (2001) were considered along with the explanations provided by Ms. Dubé (Warden of Cowansville Institution) in relation to the duties performed by the program officers. According to section 7 of the *PSSRA*, it is not within my jurisdiction as an adjudicator under the

Public Service Staff Relations Act (PSSRA) to evaluate the correctness of this program officer position classification or the classification level assigned to the correctional program officer position.

[65] The elements related to the program officer position description are at the WP-03 level. In performing the duties and responsibilities of the position description modified on September 10, 2001, the grievors performed the WP-03 level duties related to the program officer position until February 2, 1999, the date on which the modified work description resulting from the mediated settlement was submitted to them. On February 2, 1999, I must note, the position description provides a complete and up-to-date report of their duties and responsibilities, consistent with the wording of clause 55.01 of the collective agreement. If it were otherwise, the statement of duties grievances would have been upheld and would not have been settled by the parties at the mediation.

[66] Thus, until February 2, 1999, the grievors did not substantially perform the duties of a higher classification level on an acting basis within the meaning of clause 64.07 of the collective agreement. It remains to be determined whether the grievors performed level WP-04 duties beginning in February 1999 until March 31, 2002, for the period indicated by the grievances.

[67] The evidence submitted by the grievors is that they performed the same duties for a long time and that the responsibilities of assessing risk of reoffending and determining inmate progress were recognized as theirs in the modified position description of September 10, 2001. They did not testify that new duties and responsibilities had been assigned to them by the employer or had been increased between February 1999 and March 31, 2002; they had performed the same duties during the entire period in question.

[68] According to the comparative studies made by the parties, about 90% of the duties and responsibilities identified in the new correctional program officer position descriptions were included in the program officer position description. Thus, a substantial portion of the duties performed by the incumbents of both positions is identical. This fact does not mean that the programs officer "substantially performs the duties of a higher classification level" within the meaning of clause 64.07. If that were true, a program officer, by performing only the duties included in his position description, without assuming any of the specific and distinctive responsibilities of a

correctional program officer position, would be performing the duties of a higher classification level. For me to reach such a conclusion would mean accepting that the duties and responsibilities of a program officer were at the WP-04 classification level, which is outside my jurisdiction.

[69] To conclude that the grievors are entitled to be paid at the WP-04 level, I have to be able to say that, during the period at issue, ending on March 31, 2002, they performed duties specified in the correctional program officer position description that are not specified in the program officer position description. Since they testified that they had performed the same duties for a long time and that these duties were recognized when the program officer position description was rewritten, I must conclude that, between February 3, 1999, and March 31, 2002, they did not perform duties and responsibilities outside their position description.

[70] For me to allow the grievances, the grievors must have shown me that they performed duties outside their position description. The duties had to be included in the duties specified in the three elements listed by the employer (Mr. Barbe), which constituted an increase in the duties previously performed by program officers. The evidence submitted by the grievors did not show that they had been required by the employer to perform the duties of a higher classification level on an acting basis. To allow the grievances in such circumstances would, for all intents and purposes, amount to reclassifying the program officer position at the WP-04 level, which is outside the jurisdiction assigned to me by section 7 of the *PSSRA*.

[71] The new correctional program officer position, established on April 1, 2002, assigned new duties and responsibilities to the grievors and proves that, from that time forward, they were required by the employer to perform those duties and responsibilities. The grievors did not discharge the onus on them to show that they had performed the new duties and responsibilities during the period from February 1999 to March 31, 2002.

[72] The purpose of filing the exchanges of correspondence, as Exhibits G-38 to G-41 and G-43 to G-45, was to clarify the employer's position in order to provide a recommendation to the final level of the grievance procedure. The elements contained in that correspondence do not influence my evaluation concerning the correctness of these grievances. I do not need to know whether the persons who participated in developing the recommendation submitted to the decision-maker at the final level of

[78] In *Gvildys (supra)*, the evidence showed that the only difference between the two classification levels was the requirement of a university degree for the higher level position. The adjudicator's conclusion, based on these factors, is of no use here.

[79] In *Dougherty (supra)*, the facts at issue showed that correctional supervisors performed the same duties in different institutions. These duties are classified differently, and the adjudicator refused to award acting pay in that situation. This decision is of no assistance in this case.

[80] For the reasons explained herein, the grievances are accordingly dismissed.

[81] In closing, I should acknowledge that there was a long time between the hearing of the grievances and the date of this decision. I would like to reassure the parties by saying that the Board agrees with the parties on the importance of a quick resolution of all the issues before it and that it seeks to act with diligence in every case. A combination of factors unfortunately prevented this decision's being rendered more quickly. I apologize for any inconvenience that this may have caused the parties.

**Léo-Paul Guindon,
Board Member**

OTTAWA, February 7, 2005

P.S.S.R.B. Translation