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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

KAREN E. MYERS

Grievor

and

TREASURY BOARD  
(Correctional Service of Canada)

Employer



**EXPEDITED ADJUDICATION DECISION**

**Before:** Yvon Tarte, Chairperson

**For the Grievor:** Céline Lalande, UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN

**For the Employer:** Marie-Josée Décoste

**Note:** The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

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Heard at Ottawa, Ontario,  
March 21, 2005.



## REASONS FOR DECISION

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[1] This grievance involves the interpretation of clauses 32.02 and 37.01 of the collective agreement entered into by the parties for the Correctional Services group. Those clauses read as follows:

*32.02 At the Employer's discretion, an employee on education leave without pay under this article may receive an allowance in lieu of salary of up to one hundred per cent (100%) of the employee's annual rate of pay, depending on the degree to which the education leave is deemed, by the Employer, to be relevant to organizational requirements. Where the employee receives a grant, bursary or scholarship, the education leave allowance may be reduced. In such cases, the amount of the reduction shall not exceed the amount of the grant, bursary or scholarship.*

*37.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Bargaining Agent, marital status or a conviction for which a pardon has been granted.*

[2] The parties presented an agreed statement of facts as follows:

- 1- *Karen Myers has been working as a Correctional Officer 2 (CX-02) for Correctional Services of Canada since March 6, 1995. She currently works at Bath Institution in Kingston, Ontario.*
- 2- *On August 6, 2002, Karen Myers filed the following grievance:  
"Recently I was informed by the employer that I am not eligible for 100% reimbursement of my tuition, books and salary in my 3<sup>rd</sup> year of my university degree. I feel this violates article 37.01 of my collective agreement."  
Corrective Action Requested:  
"To receive 100% reimbursement of my tuition, books, and salary in my 3<sup>rd</sup> year of my university degree."*
- 3- *Within CSC, the Ontario Region has established an Education Leave Program to facilitate and encourage employees to further their education.*
- 4- *In September 2001, Karen Myers started a Degree in Criminology at Carleton University.*

- 5- In April 2002, Karen Myers heard about the Embracing Change Support for Visible Minority Staff.
- 6- On April 8, 2002, Karen Myers requested to be considered for the same benefits available to visible minorities through the Embracing Change Support Self-Identified Visible Minority Education Leave Program to complete her last 5 credits of her degree.
- 7- On May 1<sup>st</sup>, 2002, the Succession Program Committee responded to Ms. Myers that they would support Education Leave with 50% allowance and 100% tuition and books. They clarified that the mandate of the Embracing Change initiative is to fund only employees who are visible minorities and meet the criteria outline in the program. Karen Myers is not a visible minority and never self-identified as one.
- 8- Karen Myers did not accept Management's offer and pursued her study on a part-time basis while working full-time.
- 9- In November 2002, Karen Myers heard that two (2) visible minorities received 100% salary books and tuition for Education Leave through the Embracing Change Program.
- 10- The following is a summary of Ms. Myers expenses as well as re-imburement she received from the CSC under the Regional Protocol for Reimbursement of Tuition:

Academic Year	Expenses - Ms. Myers Tuition + Books	CSC Re-Imbursement
2002-2003	842.89\$	439.22\$ cheque issued in July 2003
2003-2004	444.51\$+582.51=1027.02\$ + 169.06 for books	
2004-2005	1165.44\$+1115.44\$=2280.84\$ +188.26 for books	To be processed by Bath Institution

- 11- For the fiscal year 2003-2004 the Succession Planning Committee were not in a position to approve any reimbursements due to a budgetary freeze.
- 12- Karen Myers expects to complete her Degree in Criminology in the summer of 2005.

[sic throughout]

[3] While recognizing that the granting of an education allowance is discretionary, the grievor asserts that the exercise of the employer's discretion cannot be made in a manner that is arbitrary or discriminatory (*Salois v. Treasury Board*, 2001 PSSRB 88).

[4] Since the employer has a special and more generous policy for the granting of education allowances to visible minorities, it follows, argues the grievor, that the employer's refusal to grant her a full education allowance under clause 32.02 of the collective agreement was discriminatory and in violation of clause 37.01 of the collective agreement.

[5] I commend Ms. Myers for attempting to better herself through continued education and strongly encourage the employer to help this employee in any manner it deems appropriate.

[6] The fact remains, however, that the granting of an education allowance is discretionary and that discretion, by the very terms of the collective agreement, is unfettered. I agree that such exercise of discretion cannot be tainted by considerations that would render it arbitrary or discriminatory.

[7] I cannot, however, conclude that the employer's visible minority policy taints its application of clause 32.02. Section 16 of the *Canadian Human Rights Act* (R.S.C. 1985, Chap. H-6 as amended) specifically provides that the type of special program undertaken by the employer in this case does not constitute a discriminatory practice.

[8] The grievance must therefore be denied. At the hearing, I was apprised of the fact that the employer had not responded to Ms. Myers' grievance at the second and third levels. I am troubled by that fact. The grievance process is an important conflict resolution tool provided for by statute and regulation. In order to foster healthy labour relations, it is important that the system of grievance resolution be used properly. Failure to respond to a grievance within the timeframes provided for by

regulation or a collective agreement can only hinder the promotion of harmonious labour relations, something we should all strive for.

**Yvon Tarte,  
Chairperson**

OTTAWA, March 24, 2005.