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*Federal Public Sector Labour  
Relations and Employment  
Board Act and Federal Public Sector  
Labour Relations Act*



Before a panel of the  
Federal Public Sector Labour  
Relations and Employment Board

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BETWEEN

**STÉPHANE ROY AND DANIEL BERCIER**

Grievors

and

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

Employer

Indexed as

*Roy v. Treasury Board (Correctional Service of Canada)*

In the matter of individual grievances referred to adjudication

**Before:** Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Grievors:** Olivier Rousseau, UCCO-SACC-CSN

**For the Employer:** Andréanne Laurin, counsel

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Heard at Québec, Quebec,  
May 4, 2018, and January 22 and 23, 2019.  
(FPSLREB Translation)

**I. Individual grievances referred to adjudication**

[1] The grievors, Stéphane Roy and Daniel Bercier, each filed a grievance about remuneration for their duties as instructors. Mr. Roy filed his grievance on December 22, 2011, and Mr. Bercier filed his on January 6, 2012. The two grievances were referred to adjudication on April 11, 2012, and May 4, 2012.

[2] The wording of both grievances invoked the same collective agreement articles but differed as to dates. Mr. Roy's grievance reads as follows:

[Translation]

*Between June 1, 2011, and December 21, 2011, I provided training to correctional officer recruits for a period of 453 hours. The majority of the duties that I carried out were of a higher classification, specifically, CX-3.*

*I request that I be remunerated as set out in clauses 45.03 [sic] and 49.07, specifically that I receive the allowances provided in 43.05 and the CX 3 remuneration provided in clause 49.07 for the period from June 1, 2011, to December 21, 2011.*

[3] Mr. Bercier's grievance stated the following:

[Translation]

*Beginning on November 3, 2010, I provided training as an instructor to CX recruits (correctional officers) for a period of 1200 hours until December 23, 2011. The majority of the duties that I carried out were those of a higher classification, specifically CX-03.*

*I request that I be remunerated as set out in clauses 43.05 and 49.07, specifically that I receive the allowances provided in 43.05 and the CX-03 compensation provided in 49.07 for the period from November 3, 2010, to December 23, 2011, for a total of 1200 hours.*

[4] The grievors worked for the Correctional Service of Canada (CSC) as correctional officers at the CX-01 group and level. They belonged to the bargaining unit represented by the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN), which is the bargaining agent that concluded the applicable collective agreement with the employer, the Treasury Board of Canada. It expired on May 31, 2010 ("the collective agreement"). Its text was adduced at the hearing.

[5] On November 1, 2014, the *Public Service Labour Relations and Employment Act*

(S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continued under and in conformity with the *Public Service Labour Relations Act* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[6] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act*, the *Public Service Labour Relations Act*, and the *Public Service Labour Relations Regulations* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* (“the Act”), and the *Federal Public Sector Labour Relations Regulations* (“the Regulations”).

## II. Summary of the evidence

[7] At first, in their grievances, the grievors claimed the allowance paid for instructor duties at the CX-3 level and the instructor allowance under clause 43.05 of the collective agreement. At the hearing, they withdrew the request for acting pay at the CX-03 level to claim only the instructor allowance under clause 43.05 of the collective agreement, which reads as follows:

*43.05 When an employee acts as an instructor, he shall receive an allowance equal to two dollars fifty cents (\$2.50) per hour, for each hour or part of an hour.*

[8] At the time of the events that gave rise to the grievances, the grievors fulfilled a role entitled, “internship coordinator”.

[9] Despite the similarity of the grievances and despite the fact that both grievors worked at Donnacona Institution, the employer’s response to the two grievances at the first level of the grievance process was quite different. In Mr. Bercier’s case, the first-

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*Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act*

level response included the following rationale for denying the grievance :

[Translation]

...

*The duties of instructors of new recruits are not mentioned anywhere in article 43 of your collective agreement. In addition, at the national level, the instructor of recruits position is not recognized. It is not mentioned anywhere that the training you provided is recognized by the region and that it must be remunerated as an instructor.*

...

[10] In Mr. Roy's case, the employer justified its first-level decision to deny the grievance in the following terms:

[Translation]

...

*The job description for your CX-01 position includes training responsibilities, and you were not required to carry out a large part of the duties of an employee at a higher classification.*

*In addition, clause 43.05 of the CX Collective Agreement provides that "When an employee acts as an instructor, he shall receive an allowance equal to two dollars fifty cents (\$2.50) per hour, for each hour or part of an hour." It seems that you received this allowance and that you were also correctly remunerated for the period during which you acted as an instructor.*

...

[11] In fact, Mr. Roy did not receive the allowance provided in clause 43.05. At the final level of the grievance process, Messrs. Bercier and Roy received the same response. They have no right to additional remuneration, whether acting pay or an allowance for training. The final-level response letter addressed to Mr. Roy presents the employer's reasoning as follows:

[Translation]

...

*This is a response to your grievance of December 22, 2011, in which you contest your employer's refusal to pay you the instructor allowance provided in clause 43.05 and the allowance provided in clause 49.07 of the correctional officer (CX) collective agreement for the 453 hours you spent preparing new recruits for employment. As a corrective measure, you claim the payment of this allowance in the amount of \$2.50 per hour and remuneration at the CX-03 level for the 453 hours.*

*Before reaching this decision, I considered all the submitted information. In accordance with clause 49.07 of your collective agreement, an employee must be required “by the employer to perform the duties of a higher classification level” and to “perform those duties for at least eight (8) hours of work”. Without that, it is not possible to grant acting pay. Yet, nothing in the file shows that you perform the duties of a higher level during at least eight hours of work.*

*In addition, the service you provided during the 453 hours was part of coaching or mentoring and not training, strictly speaking. In effect, you showed new employees how to carry out their duties, but that service does not correspond to the criteria required for it to be training that confers an entitlement to the instructor allowance.*

*As a result, I inform you that your grievance and the requested correctives measures are denied.*

...

[12] Messrs. Bercier and Roy testified at the hearing. Maxime Kalifa Sanu, correctional officer, and Hughes Demers, instructor, testified for the grievors. Testifying for the employer were Josée Tremblay, Donnacona Institution’s warden, and François Charest, a correctional manager in charge of scheduling and deployment from 2007 to 2014. I have summarized all the testimony in the following paragraphs, except for that of Mr. Demers. He testified about specialized training that he provided to CX-02s on external security systems for which he received the instructor allowance.

#### **A. Daniel Bercier**

[13] Mr. Bercier worked 25 years for the CSC until his retirement in 2017. Before that, he worked in correctional services at the provincial level for 5 years.

[14] He always held CX-1 positions, first as a security officer, then as a dog handler, and after that as a dog master. In 2008, he received trainer and instructor training at the college at which correctional officers are trained. He was the dog master for dogs on perimeter-security duty at the institution and not for the drug-detecting dogs. He was the instructor for the dog masters. The employer ended the canine team in 2012 or 2013, for budgetary reasons.

[15] During the period in question, he trained interns who came from CEGEP (in Alma or the Gaspésie) and had incomplete correctional service training. Thus, he was tasked with completing their training. According to Mr. Bercier, it was more than simply mentoring, since that consists of demonstrating the work and explaining

procedures; the demonstration is essentially visual. There is no monitoring and nothing in writing, in contrast to training.

[16] When he became an internship coordinator at Donnacona Institution, he was given work tools that he deemed were insufficient. Therefore, he created his own recruit evaluation tool. He improved it in 2011 and called it the “Doc Dan”, and it is still used today. The document allowed an enhanced assessment of interns. Management approved it.

[17] Mr. Bercier received the instructor allowance from 2008 to 2010. In 2010 or 2011, the employer stopped paying it.

[18] At the hearing, Mr. Bercier described the training he provided to new recruits. After the initial orientation came detailed instruction on inmate control — how the control posts, walkways, and windows worked; how to react; and how to report a use of force. The training had to cover all aspects of the institution. At the college, the recruits learned the broad outlines of how institutions work, but they were mainly taught about minimum- and medium-security institutions. At Donnacona Institution, they had to learn everything about how a maximum-security institution functions.

[19] At the hearing, Mr. Bercier provided details about the [translation] *Recruit Evaluation Report* (the first version of Doc Dan), which he completed to evaluate a new recruit who unfortunately had failed the training. He explained different aspects of the evaluation and why the recruit did not meet the requirements. Essentially, in this case, stress overcame the recruit and prevented the recruit from reacting appropriately to situations at the institution, which can cause real and immediate danger for other employees and other inmates. The report ended with Mr. Bercier’s recommendation that the recruit could not work as a correctional officer in a maximum-security institution such as Donnacona Institution. He encouraged the recruit to pursue a career in a lower-security institution.

[20] Mr. Bercier commented on the second version of Doc Dan, to which he had added other features, to make it more useful. In the older version, boxes were ticked to indicate the performance level, with a few lines for the evaluator to provide examples to justify the evaluation. In the newer version, Mr. Bercier added sections after the performance boxes, namely, “Instructor’s remarks on performance”, “Positive areas/areas needing improvement”, and “Action plan (set objectives)”. At the end of the report, space was provided for “Instructor’s general comments” and “Comments

from the deputy director, operations”.

[21] Mr. Bercier testified that as part of his internship coordinator duties, he had been in charge of training, and he filled out the form. Therefore, he was responsible for evaluating new recruits. He also worked with officers transferred from other institutions who needed training in a maximum-security institution. As an example, he mentioned work he had done with an officer who had experienced difficult times because of behavioural and substance-use issues. Mr. Bercier helped the officer integrate into Donnacona Institution.

### **B. Stéphane Roy**

[22] Mr. Roy trained at the college in 1989 and was then assigned to the Port-Cartier Institution for two years. In September 1991, he arrived at Donnacona Institution. From that point, he occupied a CX-1 correctional officer position there. He was at the CX-2 level on an acting basis for around two years.

[23] Beginning in 2011, he became an internship coordinator for around two-and-a-half years. Jean Simard, his supervisor at the time, had asked whether he was interested. He responded in the affirmative and was accepted into the internship coordinator team that included Mr. Bercier and Nicolas Boissonneault. Mr. Roy asked Donnacona Institution’s deputy warden about taking the instructor course, but she would have told him that his experience would suffice.

[24] Mr. Bercier suggested to him that he would be entitled to an instructor allowance, but he never received it; hence, this grievance. For his part, Mr. Bercier had ceased receiving the allowance at that time.

[25] Mr. Simard provided him with a recruit-training schedule, and he would suggest a corresponding work schedule, to ensure that recruits would be exposed to the three work shifts: day, evening, and night.

[26] He learned about his internship coordinator duties by consulting documents that were kept in a padlocked filing cabinet to which only the instructors had access. All training files were stowed in the cabinet.

[27] At the hearing, Mr. Roy spoke about a document entitled [translation] *Internship Guide*, which described 10 days of training for new recruits following their training at the college. He agreed with the description of the internship period in the document.

The passage reads as follows:

[Translation]

...

*The 10-day internship period comes at the end of formal training at the College. This internship period consists of practical training in the work environment before the official swearing-in and graduation. As with the training at the College, the internship period requires supervision, objectives to achieve, monitoring, and an evaluation. It is understood that an internship coordinator will escort each recruit/intern in the workplace during the practical training period.*

...

[28] Specifically, Mr. Roy's role was to act as an internship coordinator. He stated that he also used the document entitled [translation] *Internship Program*, which set out the training for new recruits. The document describes preparations before the recruits arrive and receiving them on the first day, and it then details the training to be provided for nine days (which would be evaluated using the Doc Dan document). The *Internship Program* document provides the following details on what the training must include, and it specifies the internship coordinator's responsibilities:

[Translation]

...

***During the nine days:***

***1) They must meet with (employees):***

- a) Employee Assistance Program (name)*
- b) The union (name)*
- c) WHMIS [Workplace Hazardous Materials Information System] (name)*
- d) The warden (see secretary several days in advance)*
- e) Ergonomics (name)*
- f) DW [deputy warden] Josée Tremblay*
- g) Health and Safety (name)*
- h) Fire (name)*
- i) SIO [security intelligence officer]*

***2) To meet the needs of Donnacona Institution, recruits***



*perform 4 hours of cell-block control per day.*

*3) Cover alarms (cell and fire).*

*4) Walk the walkways with them, give them post orders and an explanation, and leave them on their own so that they find their bearings.*

*5) Send them into control T twice if possible, even if they are on a 240 line.*

*6) Show them the escort routine (interior garbage, truck search). Can be done as a group.*

*7) Go with them on mobile patrol and explain everything. Do not forget to show the button for the weapon and for the sector alarms depending on the direction we turn and the two revolving lights above the screen station (blue to alert the manager, and red, the same thing but urgent). Show the towers at the same time.*

*8) Do the other posts, with control and isolated posts as priorities.*

### ***Afternoon of the last day***

*Evaluations can be started earlier for comments.*

*During the 10 internship days, under the coordinator's supervision, the recruit goes through all the workstations with the coordinator or paired with experienced volunteer officers. The coordinator has screened the officers because they will be a good example for the recruit to follow.*

[29] A different document serves to orient and evaluate correctional officers who come from other institutions and whose internship lasts 5 days instead of 10.

[30] Mr. Roy dealt with another document, entitled [translation] *Checklist of Duties*, which was intended to show the duties the intern performed during each shift. He explained that the internship coordinator had to teach each task. Another evaluation document was filled out at the end of each four-hour shift that the recruit had to work each day in a control post. The internship coordinator filled it out and signed it, along with the intern. The headings are as follows:

- Mastering control consoles
- Mastering alpha waves [radio communications with codes]
- Mastering telephone communications

- Is comfortable with 2 or 3 simultaneous demands
- Mastering intercom communications in control posts
- Mastering Alpha communications, telephone
- Ability to hear alpha waves and answer the telephone at the same time
- Work with control post and range mirrors
- Ability to work effectively with mirrors without turning around
- SECURITY: situation management

Counts:

Searches

- Team spirit

[31] Then there is a section for the internship coordinator's comments and a marking grid for the grades to be entered under the different headings, as follows:

[Translation]

*Good (+ or -): Needs improvement. (B)*

*Satisfactory: Able to do the work. Can do the work without supervision. (S)*

*Unsatisfactory: Unable to perform control duties without supervision. (U)*

[32] Mr. Roy used the improved Doc Dan, as did Mr. Bercier, to conduct overall evaluations of new recruits. He sent that document to the college to report on the internship. On occasion, he made a negative recommendation, and management decided to extend the internship period from 5 to 10 days. In that case, a different internship coordinator generally took charge of the recruit.

[33] Mr. Roy stated that he was an internship coordinator, beginning in June 2011, for about a year. It has been six years since he was one.

### **C. Maxime Kalifa Sanu**

[34] Mr. Sanu arrived at Donnacona Institution as a correctional officer at the CX-01 level in June 2011. He had completed a 13-week correctional training program at the Collège de Laval. The training covers all aspects of working as a correctional officer. It deals with the laws and policies that apply to the institutional environment, teaches conflict-management techniques, instructs recruits on all the equipment they will have to use, and teaches techniques for resolving the different problems they will encounter.

[35] The training is necessarily theoretical to a great extent, in the sense that it cannot include the reality of a particular institution.

[36] On his arrival at Donnacona Institution, he was part of a group of about seven new recruits welcomed by two internship coordinators. The first day was dedicated to a tour of the institution and many administrative details. According to Mr. Sanu, the document [translation] *Recruit Training Program* is fairly consistent with his memory of the training. During the nine days of training, the internship coordinators instruct the recruits on all aspects of working at the institution. At the end of the training, one internship coordinator meets individually with each recruit to discuss the recruit's strong points and areas needing improvement. Mr. Sanu remembers the feedback session but does not remember a document.

[37] Mr. Sanu specifically recalls instructions about the control post during his training. Control posts are armed positions, surrounded by windows, which look out on inmate living areas. Inmate movement is controlled by doors with activation buttons located inside the control post. Initially, the internship coordinator indicates the buttons that correspond to specific doors (cell, section, corridor, etc.). Gradually, the recruit becomes responsible for activating the doors.

[38] Another aspect of the training deals with radio waves, which in the beginning, according to Mr. Sanu, are incomprehensible, because communication is entirely in code.

[39] Experienced correctional officers at different posts can demonstrate how to do some things, but recruits pose their questions to the internship coordinators, not to the correctional officers. The internship coordinators take the time to explain the reasons for actions, generally from a security perspective. Many of the actions become automatic for correctional officers. The internship coordinators can explain them.

[40] Another dimension of institutional reality involves everything that touches on the security perimeter outside the institution, including patrols, the main entrance, and gate management. The internship coordinators also provide that training. Patrol officers also share their experience, but again, the internship coordinators provide explanations.

[41] On seeing the Doc Dan, Mr. Sanu remembered that the last evaluation meeting dealt specifically with its content.

[42] Mr. Sanu testified that he now provides training as part of the diversity awareness program. He is remunerated for that training.

#### **D. Josée Tremblay**

[43] Ms. Tremblay has been the warden of Donnacona Institution since April 2015. She has worked there for 27 years. From 2010 to 2012, she was the deputy director, operations, and from 2012 to April 2015, she was the deputy warden of the institution.

[44] Donnacona Institution is a maximum security institution that houses violent and maladjusted inmates. In addition, Donnacona Institution has the distinction of having a large number of “incompatible populations”, meaning groups of inmates whose allegiances could trigger a great deal of violence between them. To put it another way, a member of group X cannot be allowed to cross paths in a corridor with a member of group Y. The risk of serious injury is too great. As of now, Donnacona Institution has 11 incompatible populations.

[45] Ms. Tremblay spoke about a document entitled [translation] *Intern Welcome Program* (“the IWP document”) that according to her has been used since 2015, when the program was implemented. She added that before then, there was no such program. The *Intern Welcome Program* is intended to fulfil Donnacona Institution’s specific requirements. It is a particularly complex institution, given its configuration and inmate population.

[46] According to its foreword, Valérie Caron and Annie Perreault designed the IWP document. They are internship supervisors at Donnacona Institution. They did not testify at the hearing. Therefore, one can only suppose that they were inspired largely by documents already being used by officers in 2011, including the Doc Dan (second version), since those documents are found in the IWP document.

[47] The internship program now lasts 14 days, and the IWP document provides details on each day (which were summarized in the previous documents). The document used to evaluate the interns (pages 14 to 21 of the IWP document, which has 28 pages in total) is identical to the Doc Dan.

[48] Ms. Tremblay confirmed that since 2015, those who provide the *Intern Welcome Program* and who are now called “intern guides” have received the instructor allowance as per clause 43.05 of the collective agreement. According to her, the program is now more structured and better defined, and it includes closer supervision. Ms. Tremblay relied on the increased complexity of Donnacona Institution. She acknowledged that if today, there are 11 incompatible populations, there were already at least 7 in 2011.

[49] She did not explain why Mr. Bercier ceased receiving the instructor allowance and why Mr. Roy never received it, except to say that the increased complexity of the institution requires a well-structured recruit training program. She did not know whether the correctional officers responsible for internships had received special training.

#### **E. François Charest**

[50] Mr. Charest arrived at Donnacona Institution in 1986. From 2007 to 2014, he was responsible for scheduling correctional officers, which is quite complex. Three shifts must be arranged, and officers must be assigned based on their schedules, vacations, days off, and mandatory training.

[51] When the grievors carried out their internship coordinator duties, he gave them a few days for planning the 10 days of internship. The grievors prepared the recruits’ attendance schedule so that they could learn the duties of the different positions in the institution.

[52] According to Mr. Charest, an important part of the grievors’ internship coordinator duties was finding correctional officers who would be good mentors for the recruits. Some officers were more receptive to the idea and were happy to share their knowledge and experience. Therefore, one of the grievors’ duties was to target correctional officers who could optimize the internship experience for the recruits.

[53] The grievors assigned officers to demonstrate the positions to the recruits, but they also provided a follow up, by asking the correctional officers how the recruits

were doing, by holding a meeting at the end of each day to check in and answer questions, and by providing more intensive support for recruits who needed it.

[54] If an internship coordinator stated that a recruit needed a bit more training, Mr. Charest's manager would confirm to him that he could give the internship coordinator and the recruit a few additional days.

### **III. Summary of the arguments**

#### **A. For the grievors**

[55] Mr. Bercier was trained as an instructor. According to the evidence, he looked after recruits from the beginning to the end of their internships. He organized their schedules, planned their days, and accompanied them during the required period, which was two and sometimes three weeks long. He was relieved of his regular duties while he looked after recruits.

[56] Mr. Bercier worked on documents necessary to internships, specifically the main evaluation tool, Doc Dan, which his manager approved. For a time, his work as an instructor was recognized in that he was paid an allowance that then ended, without explanation.

[57] Mr. Roy fulfilled the instructor role with the recruits, although he did not have the training that nevertheless, he had requested. He worked with Mr. Bercier in welcoming, supervising, and evaluating new recruits. He was tasked with teaching them things they had not learned at the college, meaning duties specific to the institution, such as searches, armed control, use of a radio and its codes, perimeter patrols, etc.

[58] The grievors had a great deal of autonomy. They were trusted to train new recruits and to evaluate them, to determine whether they were ready to assume all the duties of a correctional officer in a maximum-security institution. The document used today by intern guides is a reflection of the documents that the grievors developed.

[59] What distinguishes the work of instruction from mentoring, which the employer maintains was their duty, is the degree of autonomy and responsibility. The correctional officer who acts as a mentor is not responsible for the recruit. The officer must show the recruit the duties but will not evaluate the recruit or correct the recruit's errors. The grievors were not mentors. They chose mentors for the recruits, as Mr. Charest testified.

[60] According to the grievors, there is no logic in refusing to pay them the allowance owed to them, given that the guides who do the same work today at Donnacona Institution receive it. The employer's witnesses acknowledged that training is required for recruits who enter Donnacona Institution. The training received at the college is insufficient. Ms. Tremblay's argument, which is that the situation is now more complex and justifies paying an allowance for an internship, does not hold up. The reality of a penitentiary institution requires an internship for new arrivals, even for experienced correctional officers if they are not familiar with Donnacona Institution. That need has always existed.

[61] Messrs. Sanu and Demers testified that the training they provided was remunerated. There is no reason to refuse the instructor allowance to the grievors. Their duties were much more than mentoring.

[62] According to the grievors, their duties involving new recruits' internship can be defined as training by considering the following characteristics:

1. there is a transfer of knowledge;
2. the correctional officer occupation requires the knowledge;
3. the knowledge transfer is structured, with a defined program, schedule, and content; and
4. the knowledge is transferred at the employer's request.

[63] *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), which the employer cited, does not apply to this case. When Mr. Bercier learned that his allowance would be cut, he approached his manager, who said that he was awaiting a response from management. When it was confirmed that the allowance would cease, Mr. Bercier ended his instructor role. In Mr. Roy's case, he was promised the allowance. It was not paid, and he filed a grievance. In all the responses to the grievances, at all levels, the employer never raised an objection with respect to the time frame; it could not then invoke it at adjudication. The grievors performed duties for which they had a right to remuneration; it should have been paid.

[64] The grievors ask for a clear interpretation of clause 43.05 of the collective agreement. Mr. Bercier requests remuneration for 1200 hours, as stated in his grievance. There was no evidence to the contrary. Mr. Roy specified 453 hours in his

grievance, from June 2011 to December 21, 2011. At the hearing, it was maintained that there were supposedly additional hours, from December 2011 to June 2012, and from June 2012 to December 2012.

[65] The grievors also claim interest at the legal rate and reimbursement for reasonable expenses for attending the hearing and ask the Board to order a specific date for the reimbursement, if appropriate.

#### **B. For the employer**

[66] This is a matter of interpreting clause 43.05 of the collective agreement, which deals with an employee who acts as an instructor and not an employee who shows new employees by example the tasks that are to be carried out.

[67] The program became more structured in 2015 due to the particular nature of Donnacona Institution. It is increasingly more complex, as Ms. Tremblay testified.

[68] The grievors' basic role consisted of mentoring, which was part of their regular duties. The description of the duties for correctional officers at the CX-01 level, which all the witnesses acknowledged, includes the following mention among the duties: "The incumbent participates in supervising recruits upon their arrival in a correctional environment."

[69] The employer makes a distinction between the grievors' situation and those in which the Board found that instruction had occurred. It cites the following decisions: *Jones v. Treasury Board (Correctional Service of Canada)*, 2013 PSLRB 70, and *Enger v. Treasury Board (Correctional Service of Canada)*, 2018 FPSLREB 6. I will return to them in my analysis.

[70] Finally, the employer cites *Coallier and Canada (Attorney General) v. Timson*, 2012 FC 719, as authorities on the time frame for submitting grievances and reiterates the rule that financial compensation in the case of a continuing grievance can go back only to the time set out for filing the grievance.

#### **IV. Analysis**

[71] The parties submitted case law to me, which I reviewed. In my analysis, I will mention only those decisions that appear relevant to the issue I have to decide. Essentially, it has to do with determining the meaning of the word "instructor" in clause 43.05 of the collective agreement, which provides paying the allowance to an



employee who “acts as an instructor”.

[72] *Jones* had to do with paying acting pay at the CX-03 level to correctional officers who provided recertification training on self-contained breathing apparatus (SCBA). Given the withdrawal of that aspect of the grievors’ request, this decision does not truly apply in this case. Nevertheless, I note that in that case, the training allowance in clause 43.05 was paid to the correctional officers.

[73] In *Enger*, the issue was whether correctional officers who were part of the emergency response team and who provided training on that team’s work had the right to pyramid allowances. In fact, the collective agreement provided an allowance for training and one for work performed as a member of the emergency response team. The second allowance specifically covered training periods for those receiving the training.

[74] The Board ruled in *Enger* that there was no obstacle to pyramiding allowances since the emergency response team members who acted as instructors fulfilled both roles, and the allowances targeted different work.

[75] In *Enger*, the employer did not contest the instructor role of the correctional officers who agreed to that role in the team. It contested pyramiding the two allowances. The description of the instructor’s role in *Enger* is the following:

...

*4 While engaged in training of ERT members as an instructor, Mr. Enger and the other instructors prepare the training by watching relevant videos, setting scenarios, securing munitions and safety equipment. During training instructors are responsible for ensuring that safety protocols are followed, that the national training standards set by the employer are met, attendance of students is recorded and students are tested. When he is not actively instructing a session, the grievor assists other instructors during their sessions. Mr. Enger instructs all aspects of the ERT certification and recertification course. He is given credit for the hours spent instructing towards his own ERT recertification requirements (see training transcript exhibit 5 page 5).*

...

[76] In light of the evidence I heard, it seems to me that the role the grievors played with the new recruits largely corresponded to a definition of an instructor. I agree with the grievors in that when they were internship coordinators, they provided instruction within the meaning of clause 43.05 of the collective agreement.

[77] The grievors asked me for a definition of “instruction” so that this type of situation is not repeated. It is not the Board’s role to provide a definitive definition that will resolve all situations. The parameters that follow made me decide that the grievors’ action constituted instruction and not mentoring.

[78] First criterion: organization over time. The training was provided over 10 days, and the documents detailed the training’s content. This was an organized program with the very specific goal of demonstrating to recruits all the different facets of the institution. The grievors were responsible for this program during the 10 days of its duration. Mr. Charest testified that he relieved them for 1 or 2 days to prepare and then for the duration of the program.

[79] Second criterion: the nature of the duties. The instructors dedicated themselves entirely to the training during the 10 days. They were relieved of their regular duties, contrary to the officers who acted as mentors, who did not provide a follow up, while the instructors ensured that the recruits retained what they had learned.

[80] Third criterion: evaluation. The instructors were in charge of evaluating the recruits. They pointed out things that needed improvement, recommended success or failure, and recommended extending the training, if necessary.

[81] That last criterion appears to me as the most important as it is a measure of the instructor’s responsibility. The instructor must judge whether the recruit has or has not acquired the training. This responsibility has nothing to do with mentoring and everything to do with instruction by determining whether the training was successful.

[82] Today, the training program is longer, but it is essentially the same program that the grievors provided. That is evidenced by the fact that the internship evaluation tool is in all ways identical to the one that Mr. Bercier developed. One of the decisive factors in my decision is that currently, the instructor allowance is granted to the recruit guides (as they are now called). According to the testimonies of Ms. Tremblay and the grievors as well as the *Intern Welcome Program* document, the recruit guides perform the same duties that the grievors performed when they were responsible for the internships.

[83] In my opinion, the grievances are not continuing within the meaning of *Coallier*. This is not about remedying an ongoing situation. Instead, this is about one-time grievances for a failure to pay an allowance that was owed. The grievors filed their

grievances within 25 days of the end of the training provided, when it became clear that despite the past practice, the CSC would not pay the instructor allowance provided in clause 43.05 of the collective agreement. I do not see that there was a delay in filing the grievances, and I am encouraged in this interpretation by the fact that the CSC never raised it at any of the levels of the grievance process. I do not see that paragraph 20 of the *Timson* decision, cited by the employer, applies. The allowance owed to the grievors for their work as instructors is not in the nature of monetary damages. It has to do with an amount due as remuneration for work performed.

[84] In *Coallier*, the Federal Court of Appeal decided that the employee who waited 2 years to claim the salary he was due could claim the increase beginning only 25 days preceding his grievance because nothing would have prevented him from filing a grievance from the outset. The grievors' uncontested testimony is very different. Mr. Bercier had always received the allowance and had expected to continue receiving it. He suggested to Mr. Roy that it would be paid. According to the grievors' testimony, their immediate supervisor stated that he would look into it, suggesting that he also expected that the allowance would be paid as before.

[85] It was not illogical to wait to see how things would be resolved. That has nothing to do with the inaction seen in *Coallier*. As soon as it was certain that the allowance would not be paid, at the end of the training, the grievors filed their grievances.

## **V. Remedy**

[86] It is a well-established principle that the Board decides grievances as they were filed with the employer (*Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.)). In his grievance, Mr. Bercier claims 1200 hours of allowances, while in his, Mr. Roy claims 453 hours. At the hearing, the grievors pointed out that Mr. Roy had worked more hours in later training sessions. I believe it, but that is not the grievance before me. As a result, I grant the allowance provided in clause 43.05 of the collective agreement based on the hours indicated in the grievances filed in December 2011 and January 2012.

[87] The grievors also claim interest at the legal rate and reimbursement for reasonable expenses for attending the hearing and ask the Board to order a specific date for the reimbursement, if appropriate.

[88] The Board has the authority to grant interest under s. 226(2)(c) of the *Act* in the case of a grievance "... involving termination, demotion, suspension or financial penalty ...". Since Parliament defined the authority to grant interest, it follows by simple interpretation that the Board does not have the authority to grant interest in other circumstances, such as those in this case.

[89] The grievors also requested reimbursement for their reasonable expenses for attending the hearing, since they have retired. Their attendance at the hearing was a fundamental labour relations right, but I do not see how I can order the employer to reimburse their expenses. This is a simple interpretation of the collective agreement; there was no malice by the employer.

[90] The order includes a specific date for reimbursing the amounts the grievors are due.

[91] For all of the above reasons, the Board makes the following order:

*(The order appears on the next page)*

**VI. Order**

[92] The grievances are allowed.

[93] The employer shall pay Mr. Bercier the instructor allowance provided in clause 43.05 of the collective agreement, specifically \$2.50 per hour, for the 1200 hours of training provided between November 3, 2010, and December 23, 2011.

[94] The employer shall pay Mr. Roy the instructor allowance provided in clause 43.05 of the collective agreement, specifically \$2.50 per hour, for the 453 hours of training provided between June 1 and December 21, 2011.

[95] The employer shall pay the amounts due no later than 45 days after the date of this decision.

May 1, 2019.

FPSLREB Translation

**Marie-Claire Perrault,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**