

**Date:** 20210519

**File:** 566-02-11579

**Citation:** 2021 FPSLREB 54

*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

**ALEXANDRE LAVOIE**

Grievor

and

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

Employer

Indexed as

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

In the matter of an individual grievance referred to adjudication

**Before:** Renaud Paquet, a panel of the Federal Public Sector Labour Relations and  
Employment Board

**For the Grievor:** François Ouellette, counsel

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

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Decided on the basis of written submissions,  
filed March 12 and 31 and April 16 and 22, 2021.  
(FPSLREB Translation)

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**REASONS FOR DECISION****(FPSLRREB TRANSLATION)**

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**I. Individual grievance referred to adjudication**

[1] On April 3, 2015, Alexandre Lavoie, the grievor, grieved the decision of the Correctional Service of Canada (“the employer”) to not pay him compensation for 30 minutes of overtime for two evening shifts that he worked in March 2015.

[2] The grievance reads as follows:

[Translation]

*Description of grievance*

*I grieve my employer’s decision to not pay me compensation for 30 minutes of overtime (the equivalent of a meal break) for evening shifts that I worked on 2015-03-27 and 2015-03-29, a break I feel I was entitled to because the evening OT [overtime] shifts were contiguous with my regular shifts scheduled for those days. The employer violated paragraph 4 of Appendix “C” of the CX collective agreement and paragraph 2(b) of the February 2012 labour relations (Bulletin# 2012-01), which states that when there is a reasonable expectation that an employee will work a full shift, he or she must be granted a meal break before the first three hours of OT and a second meal break after he or she has worked four OT hours. Yet, for that day shift, I had only one meal break scheduled in the institutional itinerary. Since the second could not be provided by the employer, it must be paid.*

[3] The employer dismissed the grievance at each level of the grievance procedure. Mr. Lavoie referred the grievance to adjudication on September 15, 2015, with the support of the bargaining agent, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the bargaining agent”). The applicable collective agreement is the one between the employer and the bargaining agent for the Correctional Services Group that expired on May 31, 2014.

[4] Both parties summarized the issue in this case as follows: “[Translation] Was Mr. Lavoie entitled to a second meal break when he performed 7 hours and 30 minutes of overtime immediately after his regular shift?” Mr. Lavoie’s view was that he was entitled to the second meal break, but the employer argued the opposite. The grievance and the parties’ arguments referred to several collective agreement provisions, which are reproduced at paragraph 38 of this decision, and to a policy of the employer, the relevant excerpts of which are reproduced at paragraph 49.

## II. The parties' specific request

[5] On November 4, 2020, the parties jointly addressed the Federal Public Sector Labour Relations and Employment Board ("the Board") and requested the following:

[Translation]

**File:** *Alexandre Lavoie (566-02-11579)*

*To whom it may concern:*

*This is a joint request by the parties for the aforementioned grievance.*

*The grievance concerns an interpretation of the collective agreement that binds the parties on the issue of granting meal allowances during overtime.*

*Considering the significant number of grievances that deal with the same issue and the same interpretive questions as the aforementioned grievance, the parties agree that it would be appropriate to proceed with a hearing of a "typical" grievance. The resulting decision would serve as a reference for deciding all similar cases.*

*In the spirit of the principles of proportionality and the economy of judicial resources, the parties jointly request that the aforementioned case constitute the typical case at issue and that, therefore, it be prioritized over other grievances of the same nature.*

...

[6] The Board accepted the parties' joint request and notified them. It subsequently scheduled a hearing for March 23 and 24, 2021. On March 15, 2021, the Board agreed to the parties' joint request to proceed based on written submissions, and to the joint statement of facts they signed on March 12, 2021.

## III. Summary of the facts

[7] The facts of the grievance are not in dispute. On March 11, 2021, the parties presented a joint statement of facts signed by their respective lawyers. That statement was accompanied by several documents that the parties also jointly submitted. I repeat the essence of the statement of facts in the paragraphs that follow.

[8] Mr. Lavoie has worked as a correctional officer at the CX-01 group and level for the employer since January 9, 2012. At the time of the facts that gave rise to the grievance, he was working at the Drummond Institution in Quebec.

[9] At the time in question, Mr. Lavoie was assigned to a regular day shift of 8 hours and 30 minutes, from 07:30 to 16:00. Mr. Lavoie worked for 7 consecutive days, followed by 3 days off. He then worked for 7 consecutive days, followed by 4 days off. Over a 3-week cycle, Mr. Lavoie worked an average of 40 hours per week. During his regular shifts, he was entitled to an unpaid meal break of 30 minutes.

[10] The collective agreement provides that the day-shift meal break must be taken between 10:30 and 13:30. It also provides that the evening-shift meal break must be taken between 16:30 and 19:30.

[11] On March 27, 2015, Mr. Lavoie worked a regular shift from 07:30 to 16:00. Before that shift, he worked 30 minutes of overtime on a medical escort from 07:00 to 07:30. At around 13:25 on March 27, 2015, Mr. Lavoie received a call in which he was offered overtime for the evening shift, which he accepted. He then worked 7 hours and 30 minutes of overtime continuously beyond his regular shift, from 16:00 to 23:30. The employer then provided Mr. Lavoie with a free meal and granted him approximately 30 paid minutes to allow him to take his meal break.

[12] On March 29, 2015, Mr. Lavoie worked a regular shift from 07:30 to 16:00. At around 13:18 on March 29, 2015, Mr. Lavoie received a call in which he was offered overtime for the evening shift, which he accepted. He then worked 7 hours and 30 minutes of overtime continuously beyond his regular shift, from 16:00 to 23:30. The employer then provided Mr. Lavoie with a free meal and granted him approximately 30 paid minutes to allow him to take his meal break.

#### **IV. Summary of the arguments**

##### **A. For the grievor**

[13] Mr. Lavoie disagreed with the employer's interpretation and submitted that based on a rigorous analysis of the collective agreement and the applicable law, the Board must find that the employer violated the collective agreement and that Mr. Lavoie was entitled to a second meal break after the seventh hour of overtime that he worked immediately after his regular shift.

[14] Interpreting a collective agreement clause hinges on the modern principle of interpretation that the terms must be understood according to their ordinary meaning and in harmony with the context of the agreement, its purpose, and the parties' intent.

[15] It appears that the dispute between the parties is rooted in the ambiguity of the term “reasonable expectation” in paragraph 4 of Appendix “C” of the collective agreement. In fact, the paragraph sets out an employee’s entitlement to a second meal break during an overtime shift “... when there is a reasonable expectation that an employee will work the full eight (8) hours’ overtime shift ...”.

[16] The analysis of the ordinary meaning of the words “reasonable expectation” states that it is not necessary for an employee to actually work an eight-hour overtime shift to be entitled to both meal breaks; it is enough for there to be a reasonable expectation that it will occur. The concept of reasonable expectation does not appear anywhere else in the collective agreement.

[17] The case law has dealt with the interpretation of similar terms, particularly in criminal law; few decisions really apply to this case. When determining whether there is a “reasonable expectation” that something will take place, the Supreme Court of Canada favours an individual approach based on the specific facts of each case.

[18] In the context of his grievance, Mr. Lavoie agreed to work the evening overtime shift immediately after his regular eight-and-a-half-hour shift. Even if the employer’s intention was to have him work only seven-and-a-half-hours, was there a reasonable expectation that he would work eight hours? Due to the unpredictable nature of a correctional officer’s work and the possible need for urgent intervention during incidents, the answer to this question must be yes. By its very nature, a correctional officer’s work is unpredictable and requires increased availability during events that occur suddenly and that are beyond the employee’s control. Mr. Lavoie’s job description includes several such provisions.

[19] Another potential source of ambiguity is the use of the phrase “Notwithstanding the provisions of clause 21.15”, which appears at the beginning of paragraph 4 of Appendix “C” of the collective agreement.

[20] In its ordinary meaning, the term “notwithstanding” is used in this case to indicate that paragraph 4 of Appendix “C” applies despite the provisions of clause 21.15. This implies that when the two provisions are opposed, paragraph 4 of Appendix “C” would take precedence. It also implies that the two provisions are indeed opposed on some points.

[21] In that respect, a parallel reading of the two provisions makes it clear that they are opposed on the issue of the duration of meal breaks. In fact, clause 21.15(c) of the collective agreement provides that the meal break constitutes “[r]easonable time with pay, to be determined by management ...”, which presupposes the employer’s decision-making discretion as to its duration. Conversely, paragraph 4 of Appendix “C” provides expressly that the duration of meal breaks is a “half (½) hour”. The phrase “Notwithstanding the provisions of paragraph 21.15” indicates that the duration of the meal break is indeed a half-hour in the circumstances; it is not a duration that is left to the employer’s discretion.

[22] Therefore, a parallel reading of the provisions of the collective agreement indicates that employees are entitled to be reimbursed for expenses incurred for meals during overtime at the times set out in clause 21.15 of the collective agreement, as well as meal breaks at the times set out in Appendix “C”, the latter of which is a half-hour duration “notwithstanding” clause 21.15.

[23] The search for the parties’ intention is the essential principle for interpreting the collective agreement. On reading paragraph 4 of Appendix “C” of the collective agreement, it appears that the objective sought by the parties was to allow some flexibility for both the employee and the employer. In fact, the provision does not set out a precise time for taking meal breaks; it establishes only certain guidelines. That is, the first meal break must be granted before the first three hours of overtime and the second after the employee has worked approximately four hours of overtime. That interpretation is also confirmed in the employer’s labour relations bulletins.

[24] The general guidance on meal-break entitlements is provided in clause 21.07 of the collective agreement. An employee who works 7 hours or more of overtime is entitled to 2 free meals provided by the employer or to 2 allowances of \$10 to help the employee defray the costs of the two meals. In this case, since Mr. Lavoie worked 7.5 hours of overtime, it is clear that he was entitled to 2 free meals or 2 allowances of \$10. Although he was entitled to two meals, according to the employer’s interpretation, the grievor was only entitled to a single meal break.

[25] Such an interpretation would be contrary to the meaning of clause 21.15 of the collective agreement, which sets out the entitlement to reimbursement for a meal or to a free meal after three and then four hours of overtime and that provides that time

must be granted to the employee to allow him or her to take a meal break. When read as a whole, it's clear that the objective of the collective agreement is to grant a meal break to allow the employee to take each of the meals provided or reimbursed by the employer.

[26] Of course, the employer is free to not grant a meal break to allow the employee to consume his or her second meal, but the employer must then pay 30 minutes of overtime to that employee. In a nutshell, the only consistent approach is the following: an employee who works seven-and-a-half overtime hours immediately after his or her regular shift is entitled to two meal allowances (or two free meals), as well as two meal breaks to consume those meals. If the employer does not grant one of the meal breaks, it must compensate the employee as provided in clause 21.07(c) of the collective agreement.

[27] Mr. Lavoie referred me to Brown and Beatty, *Canadian Labour Arbitration*, 4th Edition (2012); Morin et Blouin, *Droit de l'arbitrage de grief*, 6e éd. (2012); and Côté P.A., *Interprétation des lois*, 2e éd. (1990). He also referred me to the following decisions: *Imperial Oil Strathcona Refinery v. Communication, Energy and Paperworkers' Union of Canada, Local 777*, 2010 CanLII 98276 (AB GAA); *Hilewitz v. Canada (Minister of Citizenship and Immigration)*; *De Jong v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57 (CanLII), [2005] 2 S.C.R. 706; *Union of Canadian Correctional Officers-- Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN) v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 22 ("UCCO-SACC-CSN"); *Joly v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 112; *Bernatchez v. Treasury Board*, 2014 FC 27; and *Kranson v. Canadian Food Inspection Agency*, 2009 PSLRB 76.

## **B. For the employer**

[28] According to the employer, in the overall context of the collective agreement, Mr. Lavoie was entitled to a single meal break during his overtime. Applying the collective agreement to the operational context must make sense. It is also necessary to give meaning to each of the words and each of the provisions of the collective agreement.

[29] Mr. Lavoie had the burden of demonstrating on a balance of probabilities that the employer violated the collective agreement. The employer argued that it did not

violate the collective agreement and that Mr. Lavoie was entitled only to one meal break during his overtime.

[30] The Board's jurisdiction is limited by the terms and conditions set out in the collective agreement. The Board must determine the intent of the parties when the collective agreement was signed. The case law has established several principles that enable this exercise to be carried out. The terms of the collective agreement must be considered in their usual and ordinary meaning. The collective agreement in its entirety forms the context in which the words are to be interpreted. Otherwise, the ordinary meaning could conflict with other provisions. Each word of a collective agreement provision must be interpreted to mean something to avoid redundancy. If a provision confers a financial advantage, the intent must be clearly expressed. A more detailed provision of the collective agreement takes precedence over a generic one. Finally, the fact that a provision seems unfair is no reason to ignore that provision when it is clear.

[31] The employer submitted that Appendix "C" of the collective agreement is a specific provision compared to clause 21.15, which is a general provision. Appendix "C" covers only situations in which there is a reasonable expectation that the employee will work 8 hours of overtime. This was not the case for Mr. Lavoie since he was assigned to work overtime shifts of 7 hours and 30 minutes. In fact, Mr. Lavoie worked only one shift of 7 hours and 30 minutes, and he was not called to work beyond his scheduled shift on either March 27 or March 29, 2015.

[32] Since there was no reasonable expectation that he would work eight hours of overtime, Appendix "C" did not apply in this case. However, it is still relevant for interpreting clause 21.15 of the collective agreement. This clause specifies that an employee who works three or more overtime hours immediately before or after his or her scheduled hours of work shall be reimbursed expenses for one meal in the amount of \$10, except when a free meal is provided. Clause 21.15(b) specifies that when the overtime hours exceed the time provided in paragraph (a), the employee shall be reimbursed for one additional meal in the amount of \$10 for each four-hour period of overtime worked after that, except when a free meal is provided. Clause 21.15(c) in no way indicates that the employee would be entitled to two meal breaks in this case, but rather that a reasonable time determined by management would be granted to allow him or her to take a meal break at his or her place of work.



[33] Appendix “C” specifies that when there is a reasonable expectation that an employee will work a full eight-hour overtime shift, two meal breaks shall be granted; the first half-hour meal break shall be granted before the first three overtime hours are worked, and the second half-hour meal break shall be granted after around four overtime hours have been worked. The employer argued that a meaning has to be given to all the provisions to avoid redundancy. Consequently, the reasonable expectation that the employee would work an overtime shift of eight hours or more is a precondition for granting a second meal break during the overtime period.

[34] Mr. Lavoie argued that due to the different emergency situations he faces as part of his work, it is always possible to work beyond his initially scheduled hours. However, there is no statement in the facts that supports this claim. Although correctional officers might have to respond to emergency situations as part of their work, there is nothing to indicate that the response has to be carried out beyond normal working hours on a daily basis.

[35] As well, in the event that it would be likely that a correctional officer must work a full eight-hour overtime shift due to the nature of his or her duties, the words “when there is a reasonable expectation” in Appendix “C” of the collective agreement would lose their meaning. The collective agreement in this case applies only to correctional officers. Therefore, the nature of their work is necessarily taken into consideration during the negotiation of their collective agreement. In particular, it is clear that emergency situations that can arise in a penitentiary were considered during the collective agreement negotiations as, among others, they are referred to in clauses 21.02(b), 21.02(c), 21.07, and 21.16 of the collective agreement. The parties chose to not repeat those terms in clause 21.15 or in Appendix “C”.

[36] The employer argued that the underlying intent of the parties in clause 21.15 of the collective agreement was to provide a reasonable time, determined by management, to individuals working overtime contiguously with their regular shifts. Paragraph 4 of Appendix “C” specifies that if there is a reasonable expectation that an employee will work a full 8-hour overtime shift, he or she will then be entitled to 2 meal breaks during his or her overtime shift. Since Mr. Lavoie worked only 7 hours and 30 minutes of overtime, he was entitled to only one meal break during that period.

[37] The employer referred me to the following decisions: *Joly, Arsenault v. Parks Canada Agency*, 2008 PSLRB 17; *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112; *Doran v. Treasury Board (Correctional Service of Canada)*, 2018 FPSLRB 1; and *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55.

## V. Reasons

[38] Mr. Lavoie referred a grievance to adjudication that challenged the employer's decision to not grant him compensation for a second meal when he worked 7 hours and 30 minutes of overtime immediately after his regular shift. The grievance and the parties' arguments refer to the following provisions of the collective agreement:

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

- a) grant a correctional officer a paid thirty (30) minute period, away from his work post, to have a meal break within the reserve, for every complete eight (8) hour period, and*
- b) notwithstanding paragraph (a) above, a correctional officer may exceptionally be required to take their meal break at their work post when the nature of the duties makes it necessary.*
- c) In the event that the Employer is unable to grant an employee a meal break, in lieu thereof the employee shall receive an additional one half (1/2) hour of compensation at time and three quarters (1 3/4).*

...

### **21.15 Overtime meal allowance**

- a) An employee who works three (3) or more hours of overtime immediately before or following the scheduled hours of work shall be reimbursed expenses for one (1) meal in the amount of ten dollars (\$10.00) except where a free meal is provided.*
- b) When an employee works overtime continuously beyond the period provided in paragraph (a) above, he or she shall be reimbursed for one (1) additional meal in the amount of ten dollars (\$10.00) for each four (4) hour period of overtime worked thereafter, except where a free meal is provided.*
- c) Reasonable time with pay, to be determined by management, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to his or her place of work.*
- d) When an employee is on travel status, meal and lodging allowances shall be those provided by the National Joint Council Travel Directive.*

...

**APPENDIX "C"****Overtime meal allowance**

***Effective January 1, 2014, all references and entitlements related to designated paid holidays no longer apply to employees working shifts in accordance with clause 21.02 of this agreement.***

*In view of the unique requirements found in the Correctional Service of Canada, and for the duration of the Correctional Services Group collective agreement, the Employer agrees to the following interpretation and application of the overtime meal allowance.*

- 1. The overtime meal allowance will not be paid when an employee is provided with a meal(s) at departmental expense.*
- 2. The "free meal" to be provided in lieu of the overtime meal allowance means a regular full-course meal as prepared in the institution where the employee is employed.*
- 3. A snack or sandwiches will not be considered by the Employer as a full-course meal.*
- 4. Notwithstanding the provisions of clause 21.15, when there is a reasonable expectation that an employee will work the full eight (8) hours' overtime shift, the first (1st) half ((1/2) hour meal break will be allowed prior to the working of the first three (3) hours of overtime, and the second (2nd) half (1/2) hour meal break will be allowed after approximately four (4) hours of overtime have been worked.*
- 5. Where an employee is scheduled to work overtime on a day of rest or in the case of a day worker on a designated paid holiday, the provisions of clause 21.15, and this Appendix, shall be applicable only with respect to such additional overtime hours which the employee may work in excess of the employee's prior scheduled hours of overtime on that day without prior notification.*
- 6. Notwithstanding the above paragraphs, in the event that the Employer is unable to grant an employee reasonable time off with pay for the purpose of taking an overtime meal break in situations of both contiguous and non-contiguous overtime shifts, in lieu thereof the employee shall receive an additional one half (1/2) hour of overtime compensation at the same overtime rate of the shift completed.*

[39] According to the joint statement of facts, Mr. Lavoie was assigned to a regular day shift from 07:30 to 16:00. During his regular shifts, he was entitled to one unpaid meal break of 30 minutes. On March 27 and 29, 2015, Mr. Lavoie worked his regular shift from 07:30 to 16:00. In the early afternoon of March 27 and 29, 2015, the

employer called Mr. Lavoie and offered him overtime for the evening shift. Mr. Lavoie agreed; he then worked 7 hours and 30 minutes of overtime from 16:00 to 23:30 contiguous with his regular shift. Each time, the employer provided him with a free meal and granted him approximately 30 minutes with pay to take a meal break.

[40] The employer argued that it had abided by the collective agreement by granting a single meal break to Mr. Lavoie on March 27 and March 29, 2015. Mr. Lavoie argued that the employer should have granted him or paid him for two meal breaks on both March 27 and March 29, 2015.

[41] I carefully studied the arguments submitted on Mr. Lavoie's behalf, but nothing in those facts leads me to find that paragraph 4 of Appendix "C" of the collective agreement applies in this case.

[42] The employer asked Mr. Lavoie to work 7 hours and 30 minutes of overtime, not 8 hours. Of course, I agree with the argument that unpredictable or emergency situations can arise in a correctional institution, but as the employer argued, it is part of the general work environment for correctional officers. None of the facts submitted supports the argument that on March 27, 2015, and March 29, 2015, there was a reasonable expectation that Mr. Lavoie would work a full eight-hour overtime shift. Nothing in the submitted facts distinguished those two days from other workdays in a correctional institution. As well, there is no supporting evidence to substantiate the theory that in reality, an offer of 7 hours and 30 minutes of overtime most often, "probably", or "reasonably" translates into 8 hours or more of overtime. In the absence of such facts or data, my view is that paragraph 4 of Appendix "C" of the collective agreement does not apply. On that point, I agree with the employer that the reasonable expectation that the shift would be 8 or more hours is a necessary (or indispensable condition) for paragraph 4 of Appendix "C" to apply.

[43] I should add that paragraph 4 of Appendix "C" of the collective agreement refers to a reasonable expectation that the employee will work "... the full eight (8) hours' overtime shift ...". According to the joint statement of facts, Mr. Lavoie was assigned to a regular day shift of 8 hours and 30 minutes, from 07:30 to 16:00. Mr. Lavoie worked an average of 40 hours a week on a 3-week cycle. During his regular shifts, he was entitled to 1 unpaid meal break of 30 minutes. Therefore, 1 shift was

equivalent to 8 hours of work. The offer of overtime on March 27 and 29, 2015, was not for a full 8-hour shift; rather, it was for 7 hours and 30 minutes.

[44] Since the specific provision of paragraph 4 of Appendix “C” does not apply, the general provision of clause 21.15 must be consulted to determine the number of meal breaks Mr. Lavoie was entitled to on March 27 and March 29, 2015.

[45] According to clause 21.15(a) of the collective agreement, after three hours of overtime immediately following his regular hours of work, Mr. Lavoie should have received a free meal provided by the employer or he should have been reimbursed an amount of \$10 to cover the expenses of such a meal. As he began his overtime at 16:00, he was entitled to such a meal as of 19:00.

[46] According to clause 21.15(b) of the collective agreement, after four hours of overtime following the three hours referred to in clause 21.15(a), Mr. Lavoie should have received a second free meal provided by the employer or reimbursed an amount of \$10 to cover the expenses of such a meal. As he began working overtime at 16:00, Mr. Lavoie was entitled to a first meal as of 19:00 and a second meal as of 23:00.

[47] According to clause 21.15(c) of the collective agreement, Mr. Lavoie was entitled to a reasonable time determined by the employer to allow him to take a meal break.

[48] In fact, the employer offered Mr. Lavoie only one free meal and granted him 30 minutes to consume it on both March 27 and March 29, 2015. My interpretation of the collective agreement is that the employer should have provided a second free meal to Mr. Lavoie or reimbursed him \$10. Be that as it may, the issue raised by the parties concerns the number of meal breaks that apply in this case, rather than the number of payable meals, even though the two issues could be linked.

[49] Mr. Lavoie’s grievance also refers to paragraph 2(b) of the employer’s Bulletin # 2012-01. I agree with the Board member’s comment in *Doran* that the employer’s bulletins “... are commonly used to standardize and clarify a national approach towards certain provisions of a collective agreement ...”. I would add that they at least allow for a better grasp of the employer’s interpretation of it. Paragraph 2(a) of the bulletin is also useful to better grasp that interpretation. The two paragraphs read as follows:

[Translation]

**2. Meal breaks during overtime hours immediately before or after scheduled work hours****a) Reasonable paid time for a meal break**

*At clause 21.15 (c), "Reasonable time with pay, to be determined by management, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to his or her place of work." The time shall be determined based on the circumstances in effect at the institution. It must be reasonable; that is, sufficiently long to allow an employee to eat his or her meal without undue haste. Normally, the period may be for a duration of up to 30 minutes. Correctional officers may go to the designated smoking area outside the perimeter during the break if it is operationally feasible. The correctional officer must be able to return quickly to his or her post.*

**b) Number of meal breaks**

*In accordance with clause 21.15(a), an employee who works three or more hours of overtime immediately before or following the scheduled hours of work shall receive a \$10 meal allowance. When an employee works overtime continuously beyond the first meal break, he or she is entitled to one additional meal for each four-hour period of overtime worked after that. The meal break shall be scheduled during the period in which the meal allowance is payable, except for the first meal break. In fact, in accordance with paragraph 4 of Appendix "C", when there is a reasonable expectation that an employee will work eight hours of overtime, the first meal break shall be granted before the employee works the first three overtime hours; the second break shall be granted after four hours of overtime.*

[50] The bulletin conforms with the provisions of the collective agreement.

Paragraph (a) specifies a reasonable period for taking a meal break. That period must be sufficient to allow an employee to consume his or her meal, which is normally up to 30 minutes. Paragraph (b) repeats clause 21.15 of the collective agreement about the number of meals. It also states that the employee who "... works overtime continuously beyond the first meal break ... is entitled to one additional meal break for each four-hour period of overtime worked after that ...". When this paragraph is applied to Mr. Lavoie's situation, it means that he was entitled to a second meal break if he was required to work 7 hours of overtime, especially as the bulletin states that "... the meal break shall be scheduled during the period in which the meal allowance is payable ...". There is an exception to this rule for the first payable meal break period under paragraph 4 of Appendix "C" of the collective agreement, which does not apply in this case.

[51] This means that, according to the collective agreement and the clarifications provided in Bulletin# 2012-01, if there is a reasonable expectation that the employee will work the full eight hours of overtime, he or she will have a meal break before working the seven hours of overtime and another meal break after four hours of overtime (paragraph 4 of Appendix “C” of the collective agreement). As provided in clause 21.15(a) of the collective agreement, if the employee works three or more hours of overtime, he or she is entitled to a meal. As provided in clause 21.15(b), if the employee works an additional four hours after the three hours, he or she is entitled to another meal. Clause 21.15(c) provides that a reasonable period will be allowed for taking a meal break. Bulletin# 2012-01 specifies that this period must be sufficiently long for the employee to consume the meal and that it could be up to 30 minutes.

[52] The dispute between the parties seems to me limited to situations in which the employee is called to work between seven and eight hours of overtime immediately before or after his or her regular shift. As in Mr. Lavoie’s case, when an employee is asked to work seven or more hours of overtime without a reasonable expectation that he or she will work eight hours, clause 21.15 of the collective agreement applies. The employee is entitled to a first meal when he or she has worked three hours and a second when he or she has worked seven hours; each meal must be accompanied by a meal break or payment for a meal break. It would make no sense to claim that clause 21.15(c) applies only to the first meal. If the employer pays for or provides a meal, the employee must be able to consume it.

[53] There is no indication that clause 21.15(c) of the collective agreement would apply only to the first meal. In the absence of such clarification, I must rely on the general context of the collective agreement, on the interpretation of Bulletin# 2012-1, and, I would add, on common sense. An employee must have time to consume the meal he or she is being paid for. The collective agreement and Bulletin# 2012-1 outline a reasonable period or a period of 30 minutes. The dispute between the parties does not concern the length of the meal break; it concerns the number of meal breaks or paid 30-minute periods.

[54] Based on all the aforementioned, I find that Mr. Lavoie was entitled to 2 meal breaks for each of the periods of 7 hours and 30 minutes of overtime he worked on March 27 and March 29, 2015.

[55] The case law submitted by the parties is of limited help given the facts those decisions rely upon. In *Doran*, the Board determined that the correctional officers were entitled to a single meal break while on escort duty during a shift of more than 12 hours. The issue was not about overtime as is so in this case. In *Joly*, the issue was meals and meal breaks during an escort. In such situations, the different provisions of the agreement apply. In *UCCO-SACC-CSN*, the Board had to review the imposition of involuntary overtime hours, which is not the case here. In *Kranson*, the adjudicator pointed out that employees must be able to take their meal breaks rather than be compensated for them. That principle is not being contested in this case. In *Arsenault* and *Chafe*, the adjudicators recalled the customary rules used to interpret a collective agreement. Those rules were applied in this case.

[56] The employer also referred me to *Wamboldt*. In that decision, the adjudicator mentioned that a benefit that has a monetary cost to the employer must have been clearly and expressly stated in the collective agreement. While I do not disagree with that assertion, it must be put into context. In *Wamboldt*, the grievor wanted to be compensated for the time he spent preparing with his lawyer or union representative for his hearing. As the collective agreement did not expressly provide for payment for preparation time, the adjudicator dismissed the grievance. The dispute in this case is entirely different. In my view, when read together, the collective agreement and the employer's Bulletin# 2012-1 expressly provide for a second paid meal break after seven hours of overtime.

[57] It is clearly not for me to change the text of the collective agreement to correct for outcomes that might not have been anticipated at the outset by the parties. That task is up to them. Until then, they must accept what they have negotiated.

[58] For reasons unknown to me, Mr. Lavoie did not claim payment for a second meal for the overtime he worked on March 27 and 29, 2015, even if he was entitled to it. I leave it to the parties to discuss that matter.

[59] For all of the above reasons, I allow Mr. Lavoie's grievance.

*(The Order appears on the next page)*



**VI. Order**

[60] The grievance is allowed.

[61] I order the employer to pay Mr. Lavoie 2 half-hours of overtime at the applicable rate within 60 days of my decision.

[62] I remain seized of this matter for 90 days from the date of this decision.

May 19, 2021.

FPSLREB Translation

**Renaud Paquet,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**