Date: 20231106

Files: 566-02-10973 and 10974

Citation: 2023 FPSLREB 102

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

BETWEEN

ALAIN CHARTRAND AND MARIE-RENÉE MILHOMME

Grievors

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Chartrand v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

Before: Guy Giguère, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Christine Dutka, Public Service Alliance of Canada

For the Employer: Noémie Fillion, counsel

Decided on the basis of written submissions,
filed July 16 and 22, August 20, and September 9 and 10, 2021.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

Individual grievances referred to adjudication

[1] In April 2014, the grievors, Alain Chartrand and Marie-Renée Milhomme, worked respectively at two newly clustered institutions, the Archambault Institution and the Federal Training Centre ("the Training Centre"). Those newly clustered institutions comprised units of different security levels, and the grievors worked there in the minimum-security units.

[2] On April 24 and 29, 2014, each grievor filed a grievance on the grounds that the Correctional Service of Canada ("the employer" or CSC) refused to pay them the proper Penological Factor Allowance (PFA) after the institutions they worked at were clustered.

[3] On April 1, 2015, the grievances were referred to adjudication before the Public Service Labour Relations and Employment Board ("the former Board"; see the first paragraph of the appendix). On June 19, 2017, the former Board's name was changed to the Federal Public Sector Labour Relations and Employment Board ("the Board"; see the second paragraph of the appendix).

[4] On June 28, 2021, the parties were notified that the panel of the Board then assigned to the case had decided to proceed based on written submissions. Thus, the hearing that had been scheduled for July 14 to 16, 2021, was cancelled. On July 16, 2021, the parties submitted an agreed statement of facts and a book of documents. Their respective submissions were then made based on a schedule from July 22 to September 10, 2021.

[5] The grievors maintained that the newly clustered institutions should be considered multi-level institutions under clause 58.03 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services Group bargaining unit (which expired on June 20, 2011; "the collective agreement"). That clause states that in institutions with more than one security level (i.e., multi-level institutions), the PFA should be determined based on the institution's highest security level.

[6] The employer made a preliminary objection to the Board's jurisdiction to hear the grievances. It submitted that the newly clustered institutions are not multi-level

institutions. According to the employer, the true nature of the grievances is not an interpretation or the application of the collective agreement but the security classification assigned to the new clustered institutions, Archambault and the Training Centre.

[7] To determine the merits of the employer's objection, I must answer the following question: Are the grievances about the newly clustered institutions' security classification or about a collective agreement interpretation? If it is the first, then the preliminary objection should be allowed, because the grievances are not about interpreting or applying the collective agreement (see s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). If it is the second, then the preliminary objection should be dismissed.

[8] For the reasons that follow, the preliminary objection is allowed. I find that the grievances are indeed about the newly clustered institutions' security classification, which could not be referred to adjudication, and the files should be closed.

[9] In addition, even had I determined that the grievances are about interpreting or applying the collective agreement, they would have been denied. The employer did not breach the collective agreement in any way. Clustered institutions are a new category of institution distinct from multi-level institutions. Unlike multi-level institutions, the distinction and separation between the different security levels are maintained in a clustered institution. So, the grievors are entitled to receive the PFA based on the institution unit in which they work.

Background

[10] In 2012, as part of the federal government's *Economic Action Plan 2012*, clustering correctional institutions was devised to cut costs and increase the CSC's efficiency. Initially, the assigned employees were to perform their duties at all sites in a newly clustered institution as well as in units of different security levels. In fall 2013 and January 2014, the assigned employees were informed that the PFA would be attributed to the highest security level of a newly clustered institution as though it were a multi-level institution.

[11] On April 1, 2014, 22 institutions were merged and formed 11 into newly clustered institutions. However, the employer changed its approach to the PFA

applicable to employees of a newly clustered institution and maintained the different security levels. *Commissioner's Directive 706* was updated and explained that a newly clustered institution is different from a multi-level institution. It defined "clustered institutions" as follows:

> …
>
> ***Clustered institution**: a group of separate units of different security levels administered by one Institutional Head. The difference between a clustered institution and a multi-level institution is related to maintaining the distinction and separation of the various security levels, normally in relation to accommodation, structured activities and inmate movement.*
>
> …

[12] It also stipulated that in a newly clustered institution, employees can receive a higher-security-level PFA if they work 10 or more days in a higher-security unit, which conformed with the collective agreement.

Analysis

[13] The issue in dispute is whether the grievances are about the newly clustered institutions' security classification or are about interpreting the collective agreement.

[14] The employer submitted that the true nature of the grievors' grievances is not an interpretation or application of the collective agreement. In its view, the grievors' submissions were about the newly clustered institutions' — Archambault and the Training Centre — security classification, which does not fall within the Board's jurisdiction but that of the CSC's commissioner.

[15] The grievors maintained that the preliminary objection should be dismissed because their grievances are about an interpretation of the collective agreement. According to them, clause 58.03 stipulates that the PFA should be determined based on the institution in which an employee works, not the unit. Since the newly clustered institutions — Archambault and the Training Centre — combine several units at different security levels, the grievors submitted that the collective agreement should be applied.

[16] Section 29.1 of the *Corrections and Conditional Release Act* (S.C. 1992, c. 20) gives the commissioner the power to assign to any penitentiary, as well as a sector of a

penitentiary, a minimum-, medium-, or maximum-security classification; multiple security levels; or any other regulatory security classification.

[17] In addition, clause 58.03 of the collective agreement reads as follows:

58.03 *The payment of the allowance for the Penological Factor is determined by designated security level of the penitentiary as determined by the Correctional Service of Canada. For those institutions with more than one (1) designated security level (i.e. multi-level institutions), the PFA shall be determined by the highest security level of the institution.*	***58.03*** *Le paiement de l'indemnité de facteur pénologique est déterminé selon le niveau sécuritaire de l'établissement tel que déterminé par le Service correctionnel du Canada. Dans le cas des établissements dotés de plus d'un (1) niveau sécuritaire (c.-à-d. les établissements multi niveaux), l'IFP doit être déterminée en fonction du plus haut niveau de sécurité de l'établissement.*

[18] Clause 58.03 mentions institutions with more than one security level. However, in French, the mention is followed by "*c.-à-d.*", the abbreviation for the expression "*c'est-à-dire*". In English, it is followed by "*i.e.*", the abbreviation of the Latin *id est*, which means "that is", or "*c'est-à-dire*" in French. The expression "that is" is used to clarify and so limit the meaning of the preceding word or expression.

[19] Had the parties wished the clause to apply to all institutions with more than one security level, adding "i.e. multi-level institutions" was unnecessary. They could also have written "[translation] particularly multi-level institutions" or "[translation] including multi-level institutions".

[20] For those reasons, my opinion is that the expression "… institutions with more than one (1) designated security level …" in the collective agreement means and is limited to multi-level institutions.

[21] I conclude that by using the expression "i.e." in this clause, the collective agreement establishes that only in multi-level institutions should the PFA be determined based on the highest security level. For the other institutions, the beginning of clause 58.03 applies. The PFA is determined by the institution's security level as determined by the commissioner.

[22] These grievances were referred to adjudication under s. 209(1)(a) of the *Act*. It has been clearly established that in such cases, the Board's jurisdiction is limited to an interpretation or application of the collective agreement's provisions (see *Malhi v. Treasury Board (Department of Employment and Social Development)*, 2016 PSLREB 2, and *Spencer v. Deputy Head (Department of the Environment)*, 2007 PSLRB 123).

[23] Therefore, the Board does not have the jurisdiction to consider an institution's security classification. Thus, it cannot examine a newly clustered institution's security classification (see *Professional Institute of the Public Service of Canada v. Treasury Board*, 2017 PSLREB 41).

[24] For those reasons, I conclude that the Board does not have the jurisdiction to hear these grievances under s. 209(1)(a) of the *Act* because they are not about an interpretation or application of the collective agreement.

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

(The Order appears on the next page)

Order

[26] The employer's objection is allowed.

[27] I order the files closed.

November 6, 2023.

FPSLREB Translation

Guy Giguère,
a panel of the Federal Public Sector
Labour Relations and Employment Board

1) On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84). 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 continue 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*.

2) 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* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board, the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.