

Federal Court



Cour fédérale

Date: 20110530

Docket: T-1474-10

Citation: 2011 FC 628

Ottawa, Ontario, May 30, 2011

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

ALLEN TEHRANKARI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Allen Tehrankari applies for judicial review of the decision by Mr. Marc-Arthur Hyppolite, Senior Deputy Commissioner (the Deputy Commissioner) of Correctional Services Canada (CSC), dismissing the Applicant's third level grievance.

[2] The Applicant objects to the requirement that a minimum of \$80.00 must be kept in his savings account before he can withdraw money from his account. He also objects to the deductions

of \$0.80 per day for each day of inmate pay being made from his inmate pay for payments into the Inmate Welfare Fund in relation to cable television costs and inmate activities.

[3] For reasons that follow, I am granting the application for judicial review in part. I grant that portion of the application concerning deduction from inmate pay and returning it for re-determination. I am dismissing the portion of the application concerning the maintenance of a minimum balance in the inmate's savings account.

Background

[4] The self-represented Applicant Mr. Tehrankari is an inmate who was held at Millhaven Federal Institution's Assessment Unit before he was transferred to Kingston Penitentiary on January 14, 2010.

[5] The Applicant made his initial Offender Complaint on October 12, 2009 requesting access to the "minimum \$80.00" in his savings account. In addition, he demanded a refund for each eight dollar deduction made from his bi-weekly inmate allowance for the Inmate Welfare Fund, retroactive to March 19, 2009, unless a legal and reasonable explanation was provided why the deduction was necessary.

[6] The Acting Chief Finance for CSC responded with an Offender Complaint Response on November 18, 2009. He answered "Per paragraph 18 of Commissioner's Directive 860, you must maintain the balance of \$80.00 in your savings account."

[7] The Acting Chief Finance also stated:

Per paragraphs 9b, 33a, and 35 of the Commissioner's Directive 860, a deduction is allowed for a contribution to the Inmate Welfare Fund which will fund activities for the entire [inmate] population and pay for cable tv. At Millhaven Institution, the deduction is established as .80 per day for each day you receive pay. The Commissioner's Directive does not allow for any exemptions from this deduction.

First Level Grievance

[8] The Applicant then filed a first level grievance on November 25, 2009. The Applicant acknowledged being aware of the Commissioner's Directive, but he submitted that no reasonable explanation had been provided with respect to the practical application for withholding the \$80 minimum balance. The Applicant added that he needed access to this fund to pay for daily phone calls to his family. The Applicant also challenged the Acting Chief Finance's response that the Inmate Welfare Fund funded activities for the entire population. He submitted the Millhaven Assessment Unit was not part of the Millhaven Institution's general inmate population, and that there were no Inmate Welfare Fund required activities for inmates in the Millhaven Assessment Unit. He also submitted that cable television should not cost 80 cents per day, particularly given the times that he was double bunked. He continued to insist that the deductions were illegal.

[9] The Warden for CSC responded by concurring with the acting Chief Finance and denying the Applicant's first level grievance.

Second Level Grievance

[10] On January 27, 2010, the Applicant filed a Second Level Grievance. The Applicant declared that the Warden's response was unacceptable. He presented a list of the amounts for Inmate Welfare Fund deductions for which he believed he should be reimbursed, calculated by tallying the times when he was double-bunked (and therefore should only have to pay half the amount for cable television) and the times when he was in segregation without access to television. He also submitted he should not be charged for cable television since he did not ask for it.

[11] The Assistant Deputy Commissioner for CSC denied the Applicant's second level grievance on March 31, 2010. In particular, he cited Section 111 of the *Corrections and Conditional Release Act* (CCRA) (which was later acknowledged to be an error that should have read the *Corrections and Conditional Release Regulations* (CCRR)):

Section 111

...

(3) No moneys standing to the credit of an inmate's savings account in the Inmate Trust Fund shall be paid out of that account if the balance of the account is lower than the amount provided for in the Commissioner's Directives.

and from the Commissioner's Directive 860:

Paragraph 18: The minimum balance in the savings account shall be \$80. However, if an inmate gives direction in writing for the withdrawal of any funds in his/her savings account required for costs incurred in relation to any legal proceedings, such direction may be

acted upon without regard to any limitation. The direction may be subject only to reasonable verification that the funds are being spent for the stated purpose.

Paragraph 9: Permissible deductions from the inmates' income to be deposited in the Inmate Trust Fund shall include, in the following order of priority:

b. contributions to the Inmate Welfare Fund as set out in this directive;

Paragraph 33: Revenue for the Inmate Welfare Fund shall be derived from:

a. deductions from inmate pay;

[12] The Assistant Deputy Commissioner found that the Applicant's request for an exemption from the minimum balance was denied because the Applicant's assertions were not deemed suitable and because policy dictated a minimum balance for all offenders.

[13] He also denied the Applicant's request to be exempt from the standard deduction for the Inmate Welfare Fund, stating, "Policy affords the deduction which is established for *all* offenders."

Third Level Grievance

[14] The Applicant then commenced a third level grievance. He submitted there was no provision in the *CCRA* to permit deductions for the Inmate Welfare Fund, much less doing so without legal or reasonable cause. He also submitted that the response regarding the \$80.00 minimum savings requirement was not reasonable.

[15] The Senior Deputy Commissioner denied the Applicant's third level grievance on August 20, 2010. It is this decision the Applicant now applies for judicial review.

Decision Under Review

[16] The Senior Deputy Commissioner corrected the earlier error, noting it was section 111 of the *Corrections and Conditional Release Regulations* that contained the provisions allowing for deductions, so long as there is a Commissioner's Directive mandating a deduction from the pay.

[17] He stated that the deductions were made in accordance with paragraphs 9(b) and 33(a) of Commissioner's Directive 860, and that there was nothing in legislation or policy to exempt an inmate from paying into the Inmate Welfare Fund because they do not participate in the activities paid for through the Fund.

[18] The Senior Deputy Commissioner began by noting that some exemptions from pay deductions could be made if they interfered with the offender's ability to meet the objectives of their Correctional Plan, basic needs, or family responsibilities. After acknowledging the Applicant's reason for an exemption, that being to phone his family, he noted the Institutional Head had decided the Applicant would not be exempt from having pay deductions. The Senior Deputy Commissioner therefore found legislation and policy did not support reimbursing money contributed to the Inmate Welfare Fund, as all inmates are subject to these deductions and the Applicant had been found not to meet the criteria for an exemption.

[19] The Senior Deputy Commissioner addressed the Applicant's other issue, the \$80.00 minimum balance for inmate savings accounts. He stated that subsection 111(3) of the CCRR indicates that no money would be paid out if the balance was lower than provided for in a Commissioner's Directive. Paragraph 18 of the Directive indicates the minimum balance would be \$80.00 and could only be waived when the money was to be used for costs in relation to legal proceedings.

[20] In response to the Applicant's submission that he was entitled to a reasonable explanation for maintaining the minimum balance, the Senior Deputy Commissioner explained that the purpose of the internal grievance procedure is only to determine if the legislation and policy have been adhered to, not to debate the content of the provisions.

[21] The Senior Deputy Commissioner therefore denied the Applicant's third level grievance.

Legislation

[22] *Corrections and Conditional Release Act, S.C. 1992, c. 20 (CCRA)*

78. (1) For the purpose of
(a) encouraging offenders to participate in programs provided by the Service, or
(b) providing financial assistance to offenders to facilitate their reintegration into the community,
the Commissioner may authorize payments to offenders at rates approved by the Treasury Board.

78. (1) Le commissaire peut autoriser la rétribution des délinquants, aux taux approuvés par le Conseil du Trésor, afin d'encourager leur participation aux programmes offerts par le Service ou de leur procurer une aide financière pour favoriser leur réinsertion sociale.

(2) Dans le cas où un délinquant reçoit la rétribution mentionnée

(2) Where an offender receives a payment referred to in subsection (1) or income from a prescribed source, the Service may

(a) make deductions from that payment or income in accordance with regulations made under paragraph 96(z.2) and any Commissioner's Directive; and

(b) require that the offender pay to Her Majesty in right of Canada, in accordance with regulations made pursuant to paragraph 96(z.2.1) and as set out in a Commissioner's Directive, an amount, not exceeding thirty per cent of the gross payment referred to in subsection (1) or gross income, for reimbursement of the costs of the offender's food and accommodation incurred while the offender was receiving that income or payment, or for reimbursement of the costs of work-related clothing provided to the offender by the Service.

96. The Governor in Council may make regulations

...

(z.2) prescribing the purposes for which deductions may be made pursuant to paragraph 78(2)(a) and prescribing the amount or maximum amount of any deduction, which regulations may authorize the Commissioner to fix the amount or maximum amount of any deduction by Commissioner's Directive;

(z.2.1) providing for the means

au paragraphe (1) ou tire un revenu d'une source réglementaire, le Service peut :

a) effectuer des retenues en conformité avec les règlements d'application de l'alinéa 96z.2) et les directives du commissaire;

b) exiger du délinquant, conformément aux règlements d'application de l'alinéa 96z.2.1), qu'il verse à Sa Majesté du chef du Canada, selon ce qui est fixé par directive du commissaire, jusqu'à trente pour cent de ses rétribution et revenu bruts à titre de remboursement des frais engagés pour son hébergement et sa nourriture pendant la période où il reçoit la rétribution ou tire le revenu ainsi que pour les vêtements de travail que lui fournit le Service

96. Le gouverneur en conseil peut prendre des règlements :

...

z.2) précisant l'objet des retenues visées à l'alinéa 78(2)a) et en fixant le plafond ou le montant, ou permettant au commissaire de fixer ces derniers par directive;

z.2.1) prévoyant les modalités de recouvrement de la somme prévue à l'alinéa 78(2)b), notamment le transfert à Sa Majesté de l'argent déposé dans les comptes en fiducie créés conformément à l'alinéa 96q), et permettant au commissaire de prendre des directives pour en fixer le montant — en pourcentage ou autrement — et pour prévoir les circonstances

of collecting the amount referred to in paragraph 78(2)(b), whether by transferring to Her Majesty moneys held in trust accounts established pursuant to paragraph 96(q) or otherwise, and authorizing the Commissioner to fix, by percentage or otherwise, that amount by Commissioner's Directive, and respecting the circumstances under which payment of that amount is not required;

dans lesquelles le versement n'en est pas exigé;

[23] *Corrections and Conditional Release Regulations, SOR/92-620 (CCRR)*

104.1 (7) Where the institutional head determines, on the basis of information that is supplied by an offender, that a deduction or payment of an amount that is referred to in this section will unduly interfere with the ability of the offender to meet the objectives of the offender's correctional plan or to meet basic needs or family or parental responsibilities, the institutional head shall reduce or waive the deduction or payment to allow the offender to meet those objectives, needs or responsibilities.

104.1 (7) Lorsque le directeur du pénitencier détermine, selon les renseignements fournis par le délinquant, que des retenues ou des versements prévus dans le présent article réduiront excessivement la capacité du délinquant d'atteindre les objectifs de son plan correctionnel, de répondre à des besoins essentiels ou de faire face à des responsabilités familiales ou parentales, il réduit les retenues ou les remboursements ou y renonce pour permettre au délinquant d'atteindre ces objectifs, de répondre à ces besoins ou de faire face à ces responsabilités.

111. (1) The Service shall ensure that all moneys that accompany an inmate when the inmate is admitted into a penitentiary and all moneys that are received on the inmate's behalf while the inmate is in custody are deposited to the inmate's credit in a trust fund,

111. (1) Le Service doit veiller à ce que l'argent que possède le détenu à son admission au pénitencier et les sommes reçues par lui pendant son incarcération soient déposés à son crédit dans un fonds de

which fund shall be known as the Inmate Trust Fund.

(2) The Inmate Trust Fund shall comprise a current account and a savings account in respect of each inmate.

(3) No moneys standing to the credit of an inmate's savings account in the Inmate Trust Fund shall be paid out of that account if the balance of the account is lower than the amount provided for in Commissioner's Directives.

(4) No moneys in the Inmate Trust Fund standing to the credit of an inmate shall, except where a family relationship exists, be transferred to the credit of another inmate.

fiducie, connu sous le nom de Fonds de fiducie des détenus.

(2) Le Fonds de fiducie des détenus doit comprendre un compte courant et un compte d'épargne pour chaque détenu.

(3) Aucune somme inscrite au crédit du détenu dans un compte d'épargne du Fonds de fiducie des détenus ne peut être prélevée du compte si le solde de celui-ci est inférieur au montant fixé dans les Directives du commissaire.

(4) Aucune somme inscrite au crédit du détenu dans un compte du Fonds de fiducie des détenus ne peut être virée au compte d'un autre détenu, sauf s'il existe un lien de parenté entre ces deux détenus

Standard of Review

[24] The applicable standard of review for procedural fairness and the interpretation of legislation is correctness. However, the standard of review on the merits of decisions made by the CSC on offender grievances is reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*); *Crawshaw v Canada (Attorney General)*, 2010 FC 1110 at para 39 (*Crawshaw*).

Issues

[25] Was the Senior Deputy Commissioner's decision reasonable in refusing the Applicant's third level grievance regarding the minimum balance for the Applicant's savings account and the deduction from his inmate pay?

Analysis

Minimum Balance for the Inmate's Savings Account

[26] The Applicant submits that there is no practical reason to hold the minimum balance of \$80 in his savings account, as he is serving a life sentence without parole for at least 25 years. He says that he needs this money now to make calls to his family, and, given his lengthy sentence, it makes no sense to withhold the money from him.

[27] The Respondent points to subsection 111(3) of the CCRR which provides that such a minimum may be established by a Commissioner's Directive. The Respondent also points to the Commissioner's Directive 860 which establishes this minimum requirement at \$80.

[28] Subsection 111(3) of the CCRR reads as follows:

No moneys standing to the credit of an inmate's savings account in the Inmate Trust Fund shall be paid out of that account if the balance of the account is lower than the amount provided for in Commissioner's Directives.

[29] Commissioner's Directive 860 sets the minimum requirement in the inmate's savings account:

18. The minimum balance in the savings account shall be \$80. However, if any inmate gives direction in writing for the withdrawal of any funds in his/her savings account required for costs incurred in relation to any legal proceedings, such direction will be acted upon

without regard to any limitation. The direction may be subject only to reasonable verification that the funds are being spent for the stated purposes.

[30] The Senior Deputy Commissioner identified the relevant legislative and policy provisions, and applied them to the Applicant's situation. He noted that the only exception was for legal costs.

[31] Although the Applicant may disagree with the policy, it was open to the Senior Deputy Commissioner to dismiss the Applicant's grievance in finding that neither the legislation nor the policy allowed for an exemption for the Applicant in his circumstances. The Senior Deputy Commissioner correctly interpreted the legislation and Commissioner's Directive, and applied it to the Applicant's situation.

[32] As a result, I find the Senior Deputy Commissioner's decision with regards to the Applicant's required minimum savings account was reasonable.

Deductions from Inmate Pay

[33] The Applicant submits that the CSC is engaging in the illegal withdrawal of money from his inmate pay for the Inmate Welfare Fund. In particular, the Applicant says that the amount taken for the Inmate Welfare Fund is excessive, since his calculations show the allowable deductions for cable television should be in minimal amounts between \$0.10 to \$0.20 per working day. The Applicant complains that he should not be charged the full amount for cable television for the times he was double bunked or in segregation with no television.

[34] The Respondent outlines the legislative basis for the deductions from the Applicant's pay, rooted in section 78 of the CCRA. This provision gives the CSC the authority to make such deductions in accordance with the Commissioner's Directive 860, which establishes the policy for these deductions and sets the contribution levels for the Inmate Welfare Fund.

[35] The Respondent submits that the Senior Deputy Commissioner clearly identified the issue before him and examined the materials reviewed, including the Applicant's submissions, the Applicant's file, the response, the policy and the legislation. The Respondent therefore submits that he correctly identified the applicable law and policy and applied them to the Applicant's situation.

[36] In the course of making oral submissions, the Applicant challenged the amount deducted as being greater than the maximum allowed by paragraph 35 of the Commissioner's Directive 860. In response, the Respondent submits the amount deducted represented special circumstances, namely the cost of the cable television service for inmates.

[37] The Commissioner's Directive 860 sets out the amount that may be deducted:

35. Contributions to the Inmate Welfare Fund for approved activities shall be established by the Institutional Head on the basis of the number of inmates in the institution and the costs associated with provision of television and cable/satellite services. Barring any special circumstances, the contribution shall be between \$0.10 and \$0.60 for each remunerated day, up to a maximum of \$6 per pay period.

(emphasis added)

[38] The Respondent is correct in that the Commissioner's Directive does set out the deductions that may be made from the inmates' pay for cable television service. To this extent, I am satisfied that no issue arises about the validity of deductions from inmate's pay in accordance with the Commissioner's Directive.

[39] There is one difficulty. The amount specified in paragraph 35 the Commissioner's Direction is between \$0.10 and \$0.60 per day pay is received. The deductions made from the Applicant's account \$0.80 per day for each day pay is received at Millhaven Institute was in excess of the range provided in the Directive. The Commissioner's Directive 860 provides that this amount may be exceeded for "special circumstances". I am uncertain as to what special circumstances would warrant deductions above the specified maximum amount provided in the directive.

[40] In the Offender Grievance Executive Summary prepared on June 24, 2010, it was stated that the extra amount is being used to pay for the cable bill. The Senior Deputy Commissioner did not address why the \$0.80 deduction exceeds the range provided in the Commissioner's Directive. He does not explain or justify any special circumstances. I would think higher cable bills do not constitute "special circumstances" given that the text in the Commissioner's Directive specifies that the regular deduction range of \$0.10 to \$0.60 should include "the costs associated with provision of television and cable/satellite services."

[41] This issue arises only now in the judicial review. The Applicant expressly acknowledged being aware of the provisions of the Commissioner's Directive including paragraph 35 when he filed his first level grievance. He did not raise the issue of the financial limitations set out in that

paragraph earlier. Instead, he continued to claim he was due reimbursement either because he did not request television service or because he was double bunked and so should only pay one-half or not at all when he was in segregation. He is self-represented and only questioned the special circumstances in oral submission at the hearing.

[42] The Senior Deputy Commissioner, on the other hand, is well positioned to be knowledgeable about the Commissioner's Directive. I would expect he would be in the position to explain any special circumstances that justify deductions from inmate pay outside the range specified in the Directive. He has not done so.

[43] Was the Deputy Commissioner's decision reasonable in refusing the Applicant's grievance? The Commissioner's decision must be supported by reasons that are justifiable, transparent, and intelligible as required in *Dunsmuir* at para 47. It was not reasonable for the Deputy Commissioner to essentially claim that the deduction of 80 cents per day from the Applicant's inmate pay was justified by legislation and policy that allowed a deduction of up to 60 cents per day.

[44] Because the Deputy Commissioner's decision fails to provide an explanation why the deductions from the Applicant's inmate pay are beyond the range specified in the Commissioner's Directive, I find the decision on this question to be unreasonable. The Deputy Commissioner's reasons must support his decision when denying the Applicant's Third Level Offender: see, for example, *Crawshaw* at paras 41-45.

[45] Since this specific issue did not arise earlier, I consider this question should be referred back to for re-determination without necessitating it be made by a different decision maker.

Conclusion

[46] I grant that portion of the application concerning deduction from inmate pay and returning it for re-determination. I dismiss the portion of the application concerning the maintenance of a minimum balance in the inmate's savings account.

[47] The matter of deduction from inmate pay is to be referred back for redetermination.

[48] The Applicant was self-represented. He is currently serving a life sentence of imprisonment at Kingston penitentiary. In these circumstances, I make no order for costs.

JUDGMENT

THIS COURT ORDERS and adjudges that:

1. The application for judicial review is granted in part. I grant that portion of the application concerning deduction from inmate pay and returning it for re-determination.

2. I dismiss the portion of the application concerning the maintenance of a minimum balance in the inmate's savings account.

3. I make no order for costs.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1474-10

STYLE OF CAUSE: ALLEN TEHRANKARI and ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 8, 2011

REASONS FOR JUDGMENT: MANDAMIN J.

DATED: MAY 30, 2011

APPEARANCES:

Allen Tehrankari	FOR THE APPLICANT (ON HIS OWN BEHALF)
Peter Nostbakken	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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