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### Re Canada Post Corp and CUPW

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IN THE MATTER OF AN EXPEDITED ARBITRATION

BETWEEN:

CANADIAN UNION OF POSTAL WORKERS

(The Union)

AND:

CANADA POST CORPORATION

(The Employer)

Re: Don Morrison

C.U.P.W. Grievance No. A-57-H-93;  
C.P.C. Application No.

Before: Denis Christie, Arbitrator

At: Fredericton, New Brunswick

Hearing Date: January 27, 1987

Present:

Mr. J. J. Macdonald, Regional Education and  
Organization Officer, C.U.P.W. -  
Atlantic Region

For the Employer:

David Jamieson, Labour Relations Officer  
Canada Post C.U.P.W. Portfolio -  
Atlantic Division

Date of Decision: February 4, 1987

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Union grievance alleging that the Employer violated the Collective Agreement between the parties with respect to the Postal Operations Group (Non-Supervisory): Internal Mail Processing and Complementary Postal Services, which expires September 30, 1986, and in particular Article 15 in that the Employer by-passed the grievor in the administration of equal opportunity for overtime.

At the outset of the hearing the parties agreed that this matter be proceeded with in accordance with the expedited process set out in paragraphs 13-26 of Appendix "E" to the Collective Agreement. They agreed that I am properly seized of these matters and should remain seized after the issue of this award to deal with any issues arising in connection with its implementation, and that any time limits, either pre- or post-hearing, are waived.

A W A R D

The grievor was on shift as a mail handler from 12:30 to 8:30 p.m. on February 13, 1986. During his shift, Bob Ford, the Employer's Superintendent of Mail Processing in the Fredericton Post Office, decided that overtime would have to be called that night, because one of the mail handlers scheduled to work the midnight shift, from 11:30 to 7:30 a.m., had called

in sick. Mr. Ford decided to use R.D.O. overtime and the only employee on a day-off was Murray Patterson. Mr. Patterson was asked to work from 10:00 p.m. that night, and did so.

On behalf of the grievor, the Union claims that he should have been offered continuation overtime for at least two hours and, if that had not been thought to be sufficient to fulfill the Employer's needs, he could have been offered further overtime or the mail handler due to report for the midnight shift could have been offered two hours of before-shift overtime. For the Union, Mr. Mundle pointed out that two hours of continuation or before-shift overtime would have been paid at time and a half, whereas Mr. Patterson, on R.D.O. overtime, was paid at double time.

The grievor in his testimony, and Mr. Mundle in his argument, suggested that management in the Fredericton Post Office was manipulating the calling of overtime to defeat the intent of "equal opportunity". The claim was that even if Article 15.08(a) could not entitle the grievor to call-back overtime (which was not admitted) the work in question could have been accomplished as well by having him continue on after his shift as by commencing overtime at 10:00 p.m. and that the reason it was not done that way was to favour Mr. Patterson over the grievor.

The grievor said that at 8:30 p.m., just as he went off shift, a truck arrived from Moncton with city mail. That truck was loaded and dispatched at 9:30 to Saint John and also at

9:30 there was another truck to go to Moncton. It was agreed that from 11:30 until 1:00 there would be three further trucks arriving and four being dispatched. At 8:30 Mr. Ford had moved a qualified postal clerk over to load and dispatch the Moncton and Saint John trucks and had then brought Mr. Patterson on shift at 10:00 p.m. During his four hours Mr. Patterson took care of the other arrivals and dispatches, and helped sort city mail while he was not doing that. Presumably that meant he worked for about an hour before any truck arrived and for about an hour after the last one left, sorting city mail.

Mr. Ford explained that his main concern had been to get the trucks that were to come and go between 11:00 and 1:00 looked after without disrupting the sorting work of the other mail handler. Because the Employer had placed a restriction on the use of overtime, Mr. Ford personally had to decide what sort of overtime would be used and when. He testified that, while the Collective Agreement allows for a minimum of three hours on R.D.O. overtime, the practice in the Fredericton Post Office is to offer a minimum of four, because the response to the calls is better and because, in his opinion, not much is accomplished if an employee only goes back to work for forty-five minutes after the mandatory fifteen minute break. Mr. Ford testified that call-back overtime is virtually never used in the Fredericton Post Office except for an outright emergency, because of the expenses involved in the provision

of meals and breaks. He acknowledged that accomplishment of the task of getting the trucks unloaded and dispatched and providing some assistance in the sortation of city mail might have been accomplished differently, using continuation and before-shift overtime, but stated that at the time it did not seem to him that that was the most efficient and effective way to do it.

The Issues:

(1) When a decision to call overtime is made, does Article 15.08 of the Collective Agreement require the Employer to call back an employee who is on shift instead of using R.D.O. overtime?

(2) Did the Employer breach the Collective Agreement here by manipulating the type of overtime called in order to defeat the principle of equal opportunity?

Decision:

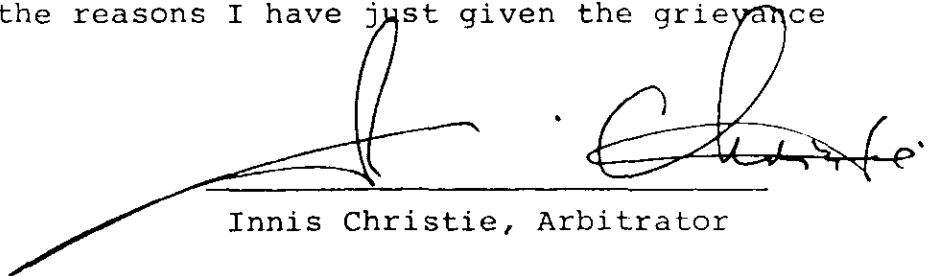
(1) I do not read Article 15.08(a) as requiring that, rather than using R.D.O. overtime, the Employer must call back an employee who happens to be on shift when the decision to call overtime is made or when the call is actually made. Nor do I read Article 15.08(a) as limiting the Employer's right to decide what sort of overtime to use. Rather, it makes clear that if overtime work is to be performed at the end of a shift the first opportunity must go to employees on duty

to support the suggestion that Mr. Ford was guilty of any such bad faith. At one point in the hearing there was a suggestion that the regular mail handler on the midnight shift had been offered two hours of before-shift overtime. Had that been so it might have lent some credence to the suggestion of

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manipulation but once it became clear that no such offer had been made I was left with only innuendo to support any suggestion of manipulation or bad faith. I note that the suggestion that there had been an offer of pre-shift overtime flowed from Mr. Ford's own mistaken comment, which he later corrected.

For all of the reasons I have just given the grievance is denied.



Innis Christie, Arbitrator