4-3-1987

Re Canada Post Corp and CUPW (Clarke and Steiner)

Innis Christie
Dalhousie University Schulich School of Law

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IN THE MATTER OF AN EXPEDITED ARBITRATION

BETWEEN:

CANADIAN UNION OF POSTAL WORKERS (The Union)

AND:

CANADA POST CORPORATION

Re: Clark and Steiner
Equal Opportunity - Bypassing
C.U.P.W. Grievance Nos. A-52-GG-360 and 361
C.P.C. Arbitration Nos. 84-1-3-6173 and 6174

Before: Innis Christie, Arbitrator

At: Campbellton, New Brunswick

Hearing Date: March 24, 1987

For the Union:

Wayne Mundle, Atlantic Region
Education and Organization Officer
C.U.P.W.

For the Employer:

J. Hugh Currie, Labour Relations Officer
Atlantic Postal Division

Date of Award: April 3, 1987

Employee grievances alleging that the Employer violated Article 15 of the Collective Agreement between the parties relating to the Postal Operations Group (Non-Supervisory): Internal Mail Processing and Complementary Postal Services, Code: 608/81, which expired December 31, 1982 but was extended by Bill C-124 to September 30, 1984, in that the Employer bypassed the grievors in the administration of equal opportunity for overtime. The Union requested that the grievors be paid amounts equal to the amounts they would have been paid had they not been bypassed on the occasions in question.

At the outset of the hearing the parties agreed that this matter should be proceeded with in accordance with the expedited procedure set out in Appendix "E", paragraphs 13-26 of the Collective Agreement between the parties which expired September 30, 1986 but which remains in effect by virtue of the provisions of the Canada Labour Code. The parties also 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 out of it raised by either party, and waived any time limits, either pre- or post-hearing.

A W A R D

Article 15.07 of the Collective Agreement provided that overtime assignments would be offered to persons on appropriate overtime lists in accordance with who had had the least number of overtime opportunities. Article 15.08 then provided:

15.08 Order of Priority

In the application of clause 15.07, overtime work will be offered as follows:

(a) to employees on duty who normally perform the work on which overtime is required in an office or on a particular shift within an office, or, where applicable, in a division or section of an office in descending order of the appropriate list;

(b) to employees scheduled to work their regular shift when the overtime is required immediately prior to that shift.

The grievors, Clark and Steiner, were at work on April 6, 1984. Steiner worked the 0600-1400 shift and Clark the 0830-1700 shift. The Employer required overtime and called in one person from the R.D.O. equal opportunity list from 1400-1900 hours and another from that same list from 1700-2200 hours. On behalf of the grievors, Mr. Mundle submitted that Article 15.08 required that the overtime from 1400-1900 hours be offered to the grievor Steiner, who was on duty prior to the required overtime, and that the overtime from 1700-2200 hours be offered to the grievor Clark, who was on duty immediately prior to the required overtime.

For the Employer, Mr. Currie submitted that it was not the Employer's policy to grant more than two hours of after-shift overtime and, since what the Employer required was two overtime shifts of five hours each, it had not breached the requirements of Article 15.08 by going to the R.D.O. equal opportunities list rather than the "before and after" equal

opportunities list. The Employer's replies at the first and second stages are identical in respect of both grievances. They state, at the first stage:

> In this case, overtime was offered so that the Employer could meet specific objectives.
>
> For this reason, your grievance is denied.

At the second stage in each case, the reply was:

> Following a review of the facts surrounding this grievance it has been determined that overtime was properly administered on the date in question. No evidence has been advanced which would support the entitlement being claimed in the corrective action of this grievance.
>
> Accordingly, the grievance is denied.

For the Union, Mr. Mundle took the position that, since these replies made no mention of reasonable limits on the amount of after-shift overtime, the Employer could not now rely on that as a reason for denying the grievors their respective five hour overtime opportunities. Alternatively, Mr. Mundle submitted that the Employer should have offered each of the grievors two hours of overtime and then gone to the R.D.O. equal opportunities list to get people to complete the remaining three hours in each case. He pointed out that this would not have involved requiring the Employer to make more than the calls that it had had to make anyway to get two people off the R.D.O. equal opportunities list; that it would have been cheaper to use people on after-shift overtime for part of the time than to use people on R.D.O. overtime; and that the requirement of three hours minimum overtime for those on the R.D.O. equal opportunities list would not have presented a problem.

Decision: I do not read Article 15.08(a) as limiting the Employer's right to decide what sort of overtime to use. 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 who normally perform that work, but that obligation must be read subject to the condition that those employees must be available to perform overtime structured as the Employer has chosen to structure it. In Keefe (unreported - September 27, 1983) CUPW No. A-24-GG-832-838; CPC No. 82-1-3-2476-2482 I have concluded at p. 14;

> ...I find nothing in the Collective Agreement to prevent the Employer from exercising its management right to structure overtime as best suits the demands of the work. If the work to be done requires eight hours of overtime from one employee the Employer must respect Article 15.08 in making the assignment of that overtime, but the Employer need not divide up that period of overtime in order to give employees covered by Article 15.08(b) priority over those on the R.D.O. opportunities list. If the Employer wants one person on the job for all eight overtime hours that is its right.
>
> The Collective Agreement nowhere states that the Employer must structure overtime offerings as the Union would have me direct nor, in my opinion, is it reasonable to conclude that the parties had any such requirement in contemplation when they made the Collective Agreement...

Obviously the same holds true for Article 15.08(a). On this ground I reject Mr. Mundle's alternative submission that the Employer should have given the grievors two hours of after-shift overtime and then called people off the R.D.O. equal opportunities list for the remaining three hours for each of the assigned overtime shifts.

The primary submission, however, was that the Employer should have given the grievors each five hours of overtime, and could have done so without changing the way it had structured the overtime at all. Mr. Currie asserted that the Employer had a long-standing policy of not giving more than two hours of before and after overtime and Mr. Mundle did not deny it.

In the grievance between these same parties, Nova Local (Randy Mapp et al.) and MacIsaac, Ellis, Gordon and Saulnier (unreported - December 8, 1986), CUPW Nos. A-24-H-300 and A-24-GG-1451-1453; CPC Nos. 84-1-3-3255-3257, I dealt in great detail with the Employer's policy of limiting before and after-shift overtime to two hours in the context of a claim that the Collective Agreement did not allow the Employer to thus limit overtime before using casual employees in the Christmas period or in a high mail volume situation. In that award I reviewed the arbitral jurisprudence which allows the Employer to impose reasonable limits on before and after-shift overtime in determining whether the use of casuals was legitimate. At p.33 I found that a two hour limit on overtime hours was reasonable because at that point

> ...overtime hours become much more expensive, because the premium increases because paid meal breaks and the like come into play or because meal allowances must be paid.

As Mr. Mundle pointed out, those reasons for treating two hours as a "reasonable limitation" on after-shift overtime do not appear to apply here. Where the question is not whether casuals should

be called in but, rather, whether R.D.O. overtime was properly used instead of after-shift overtime. Not only is the R.D.O. rate higher (double time instead of time and a half for the first two hours), an employee on R.D.O. overtime is entitled to the same half hour meal break after four hours that the after-shift overtime worker is entitled to after three.

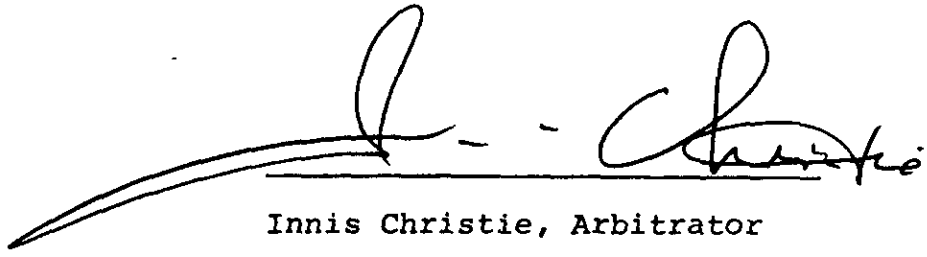
Of course, here the Employer did not have to establish that two hours was a "reasonable limitation" on after-shift overtime; merely that five hours was beyond a "reasonable limitation". Mr. Currie did not get into this, but contented himself with explaining that the Employer's policy of a two hour limitation had been in place for years. Mr. Mundle did not dispute that statement. He simply pointed out that no mention of it was made on the grievance replies.

Mr. Mundle also suggested that if the Employer were free to do what it did here it could manipulate the equal opportunities lists when structuring overtime so that the overtime could be given to some employees and denied to others for the wrong reasons. No evidence was called to show there had, in fact, been any such bad faith manipulation.

Because the Employer's policy of limiting after-shift overtime to two hours it was, apparently, well entrenched at the time of this grievance, and because the five hour overtime shifts involved here would, on the face of them, appear to have exceeded any "reasonable limit" on overtime following upon an

eight hour shift, I have concluded that the Employer did not breach Article 15.08(a) by denying five hours of overtime to each of the grievors on April 6, 1984.

Conclusion and Order: These grievances are denied.



Innis Christie, Arbitrator