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Re Canada Post Corp and CUPW (129-92-00006)

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IN THE MATTER OF A REGULAR ARBITRATION:

BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS

(The Union)

and

CANADA POST CORPORATION

(The Employer)

RE: Summerside Local

CUPW No. 129-92-00006

BEFORE: Innis Christie, Arbitrator

HEARING DATE: April 20, 1993

AT: Charlottetown, P.E.I.

FOR THE UNION: Jeff Woods, Regional Grievance Officer
Eldon Kilbride, President, CUPW Summerside
David Kirkpatrick, Vice-President, CUPW Summerside

FOR THE EMPLOYER: Jo Anne Harrington, Labour Relations Officer
Peter Collier, Superintendent of Operations,
Charlottetown
James Chandler, Letter Carrier Supervisor,
Charlottetown
John Carroll, Superintendent of Operations,
Summerside

DATE OF WRITTEN CONFIRMATION OF DECISION: June 8, 1993

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Union grievance on behalf of all regular employees in group 1 working at the Summerside Post Office, alleging breach of the Collective Agreement between the parties bearing the date July 31, 1992, and in particular of Articles 14, 15, 17 and 39 in that on December 6 and 13, 1992 they were bypassed for overtime on their day of rest while two casual employees worked during a high mail volume situation.

The Union requested that the affected regular employees be granted full redress in the way of all lost rights, earnings and benefits; specifically an amount equal to what they would have earned if they had worked overtime on December 6 and 13, 1992.

At the outset of the hearing in this matter the representatives of the parties agreed that I am properly seized of it, that I should remain seized after the issue of this award to deal with any matters arising from its application, and that all time limits, either pre- or post-hearing are waived.

CONFIRMATION OF DECISION

There was a shift change in the Summerside Post Office following November 29, 1992 because of a management decision to discontinue the arrival of mail trucks on Sundays. However, for the following two weeks this change was overtaken by processing changes in Moncton. Due to the Christmas rush the Moncton Mail Processing Plant was over-burdened with mail and the decision was taken to get rid of it downstream. Both weeks, John Carroll, the Superintendent of Operations in Summerside was called on the Sunday, that is December 6 and 13, and told that special tractor-trailers would be arriving. In each case he used casuals to deal with the trucks.

David Kirkpatrick, Vice-President, CUPW Summerside, testified that on December 6 he was called by Mr. Carroll and told to stand by to work overtime once the truck arrived. Two hours later he was called and told that casuals would be used. He in fact worked some overtime at the end of his shift the following day. He also testified that he was called on the 13th, but not to work overtime on that day but rather to work overtime before his shift the following morning. Again casuals worked on the 13th.

I was satisfied that Mr. Carroll did not know that the special trucks would be arriving until the days in question, when there were no regular employees on site. Therefore there was no breach of Article 39.07 which provides:

39.07 High Mail Volume Situation in Group 1-PO Internal

When high mail volumes necessitate the working of extra hours, the Corporation agrees that such work will be offered first to regular part-time employees who are present at work in the postal installation in which the additional hours are required, subject to their willingness to accept additional hours of work. In instances where the action mentioned above is not sufficient to meet service requirements, overtime will be offered to regular full-time employees who are present at work in the postal installation in which the additional hours are required and who will be free to accept or reject the offer. In instances where the actions mentioned above are not sufficient to meet service requirements, casual employees will be used to complement the regular staff.

The wording of this provision is unchanged from that in Article 39.06 of the predecessor Collective Agreement. That wording was inserted in the Collective Agreement by the Cossette Award, and represented a change from the preceding wording, which was:

39.06 High Mail Volume Situation

When high mail volumes necessitate the working of extra hours, the Corporation agrees that such work will be offered first to regular employees available to perform additional hours and/or overtime. In instances where the action mentioned above is not sufficient to meet service requirements, casual employees

will be used to complement the regular staff.

There was no evidence or argument with respect to the reasons for the Cossette changes, which on their face limit the benefit of Article 39.07 to regular employees "present at work"... "When high mail volumes necessitate the working of extra hours".

Before the Cossette amendments to the Collective Agreement the Employer was obliged to canvass regular employees to offer them overtime, and the only question was how far it had to go in chasing them down when they were not at work. In Henning-Use of Casuals on High volume Mail Days (unreported, Sept. 25, 1984, CUPW Gr. Nos. W-363-GG-39-65, 67-81 and 88-93; CPC Arb. Nos. 82-1-3-301-327, 628-642 and 643-648) Arbitrator T.A.B. Jolliffe considered arbitral and judicial rulings touching on the issue and concluded, at pp. 12 and 13;

I am of the opinion that plain and simply Article 39.06 in the context of Article 15 and 17 gives precedence to the grievors, over casuals, even if they have already started their rotational days off. In my view the Corporation is simply obliged to make reasonable efforts to offer the extra hours to those regular employees before bringing in casuals. As to what constitutes reasonable efforts, I would suggest is not a difficulty for the grievors in the present instance as there is no evidence that the Employer made any effort whatsoever to offer the extra hours to them or for that matter to any other available regular employees, before resorting to casuals.

The plain meaning, and apparent intent, of the Cossette changes to what is now Article 39.07 is that they make it clear that, in chasing down regular employees entitled to overtime, the Employer need go no farther than those on the work floor when high mail volumes are declared.

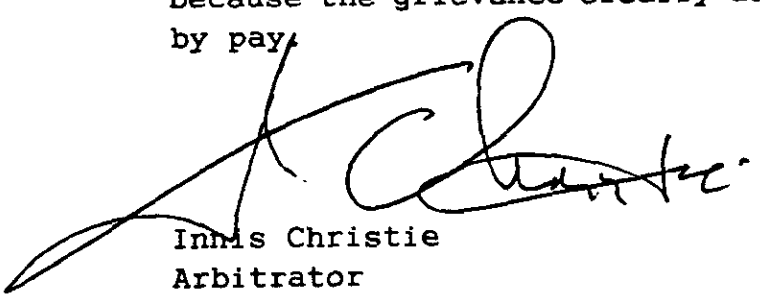
The difficulty faced by the Union is that, as I held in my

unreported award between these parties in Strople (Feb.24, 1984; CUPW Nos. A-24-GG-738 etc.; CPC Nos. 82-1-3-1055-62 etc.), and as has been accepted by numerous arbitrators since, the Employer has control over the creation of a high mail volume situation. As I said at p.24;

Article 39.06 [now 39.07] applies where there is a high mail volume, in the sense that the Employer has decided, for whatever reason, [emphasis added] to move a volume of mail which necessitates extra hours beyond those worked by regular employees and casuals legitimately replacing regular employees in accordance with article 39.02 and 39.03.

I reached that decision then because that was what, in effect, had been decided by a long line of earlier awards. Since then the parties have renegotiated Article 39.07; this last time with the changes made earlier by the Cossette Award. I cannot disallow a proper exercise of what was well understood to be the Employer's power in this regard when Article 39.07 was agreed upon.

In so far as Mr. Kirkpatrick is aggrieved because he was told to stand by on the 6th of December and then told he would not be needed there was nothing that I could do for him in this matter, because the grievance clearly does not address failure to pay stand by pay.



Innes Christie
Arbitrator