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Re Canada Post Corp and CUPW (129-92-00007)

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93 180 026 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. 129-92-00007

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 AWARD: June 8, 1993

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Union grievance on behalf of all regular employees in group 2 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 Article 19 in that on December 19, 1992 the Employer introduced the 1993/4 annual leave schedule blocking off certain weeks from the selection/bidding process. Alternatively, the Union alleges breach of the equivalent provisions in predecessor Collective Agreement.

The Union requested that the affected regular employees be granted full redress in the way of all lost rights, earnings and benefits; and that the Employer rescind the changes and restore the pre-existing situation.

At the outset of the hearing in this matter the representatives of the parties agreed that I am properly seized of it and that I should remain seized after the issue of this award to deal with any matters arising from its application. The representative of the Employer raised a question as to whether this grievance was untimely.

AWARD

With respect to the question of whether this grievance was untimely, I held at the hearing that it was a continuing grievance. This same process had been grieved before but not ruled upon. I advised the parties that the fact that there was a similar earlier grievance in the system did not preclude me from dealing with and ruling upon this one. That fact was relevant to preclude any estoppel argument.

In connection with the subject matter of this grievance there is an obvious printing problem in the temporary version of the current Collective Agreement with which the parties as well as arbitrators are still working. Clauses 19.14(a) and (b) should follow the headings for 19.15 and 19.16 respectively. The operative provision here is 19.14(b), which governs the subject matter of 19.16 "Number of Employees on Vacation Leave in Group 2 PO EXT":

The vacation leave schedule for full-time employees will be spread over fifty-two (52)

weeks starting with the last Monday in March or the first Monday in April and continuing in thirteen (13) consecutive (4) week blocks.

Any possible doubt about this is laid at rest when one considers: (i) the fact that Article 19.14(a) should also obviously follow the heading for 19.15 rather than preceding it, since it relates to the very groups specified there, and (ii) the predecessor Collective Agreement for Group 2, in which wording identical to that just quoted appears as the introduction to Article 21.14, which in all other respects tracks Article 19.16 of the current Collective Agreement.

For at least one year, 1988-89, annual vacation bids for letter carriers in the Summerside Post Office were on the basis that no period was blocked off. In other words, employees bid in order of seniority on all 13 blocks, and, provided that all 13 were filled "in the first column", they could bid on any of the thirteen blocks "in the second column". That is, because there was more than thirteen weeks of vacation entitlement among them, there were several blocks in which two letter carriers were off at a time; and the Employer exerted no control over which blocks those were.

The fact that this happened is important because the Collective agreement provided then, and provides now, in respect of letter carriers (Group 2 employees);

19.16 The present practice for full-time employees will continue with respect to;

19.16(a) The determination of the number of employees who may be on vacation leave in each block.

This is in striking contrast to the provision for Group 1 and other employees, in Article 19.15, which provides;

19.15(a) Providing staffing levels or mail volumes have not changed from the previous year, the present practice will continue...

The minutes for a Union-Management meeting on December 13, 1989, note as follows;

Annual leave selection 1990-91 ...

It was also noted that there are 5 additional weeks of annual leave to be selected by letter carriers above and beyond the 13 x 4 week blocks. It was agreed that the employees will select by seniority in both columns until the 5 weeks are used in column #2. Blocks 9, 10 and 11 will not be available to second employee, due to expected high volumes of mail. The Union objected to the limitations placed on blocks 9, 10 and 11.

The Union grieved that arrangement, and has maintained its objection ever since, but no grievance on the matter has reached arbitration until this one.

On the evidence before me, "the present practice" prior to the change evidenced by the minutes of the meeting just quoted was that the Employer did not block off any part of the second column. It is not clear whether that had been the practice for more than a year, but it certainly was the practice at the time of the change, which the Union grieved. When that change was maintained in subsequent years the Union had a continuing cause of grievance.

The starting notion for Group 2 is that the vacation leave schedule "will be spread over fifty-two (52) weeks". It is more consistent with this that the Employer not be allowed to block off any part of the second column than that the Employer be allowed to do so.

The grievance is therefore allowed. The appropriate remedy is for the Employer to unblock the blocked portion of the second column, which is the Christmas period, and allow the employees who have not already taken all vacation to which they are entitled to bid on it in the usual way.


Innis Christie
Arbitrator