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Re Canada Post Corp and CUPW (078-95-00677)

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IN THE MATTER OF A REGULAR ARBITRATION:

6-019-00
BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS

(The Union)

and

CANADA POST CORPORATION

(The Employer)

RE: *Moncton Local*

CUPW No. 078-95-00677

BEFORE: Innis Christie, Arbitrator

HEARING DATE: November 22, 1999

AT: Moncton, N.B.

FOR THE UNION: Ron Paschal, Shop Steward, Moncton Local

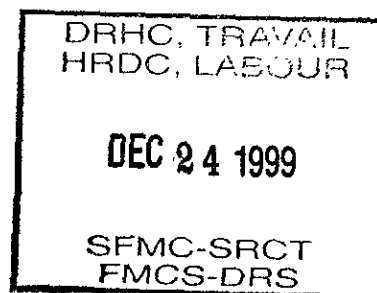
Claude J. LeBlanc, Grievance Officer

Edward "Ted" Wilson, Chief Shop Steward, Moncton Local

FOR THE EMPLOYER: Laurie Stewart, Labour Relations Officer

Scott Ferguson, Relief Supervisor, Moncton

DATE OF WRITTEN CONFIRMATION OF AWARD: December 17, 1999



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Union grievance alleging breach of the Collective Agreement between the parties bearing the date January 31, 1995, which continues in effect and which the parties agreed applies to this matter, and in particular of Articles 11, 15, 17 and 52, in that, on July 12 and 26, 1999 two relief letter carriers were assigned from LCD#2 to LCD#1 without following the seniority and staffing provisions of the Collective Agreement. The Union requested that the appropriate employees be compensated for any lost rights, earnings and benefits, with interest at the Bank of Canada rate.

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.

WRITTEN CONFIRMATION OF AWARD

At the conclusion of the hearing on this matter I allowed this Grievance.

The Union's complaint here is that on each day, July 12 and 26, 1999, two relief letter carriers from LCD#2 in Moncton were sent to LCD#1 to do work that should, in part, have been covered by overtime under Article 17.04. I say "in part" because the Union's position was that on each of those days one relief letter carrier could properly have been sent from LCD#2 to LCD#1. Article 17.04 provides;

17.04 Coverage of Uncovered Letter Carrier Routes or Mail Service Courier Assignments

When the absences exceed the number of unassigned letter carriers and the available relief letter carriers or unassigned mail service couriers or available mail service couriers (relief) as applicable, and barring exceptional circumstances such as an insignificant volume of mail available for delivery, climatic conditions or darkness which could adversely affect the employee concerned or the proper delivery of mail, the resulting uncovered routes shall be covered by the Corporation according to the following procedure:

(a) With regard to the letter carrier category:

- (i)** volunteer part-time letter carrier by seniority at straight time up to a maximum of eight (8) hours a day who are either on duty or who are not on duty, and are called back to work.

Under this clause, part-time employees will be called back at the discretion of local post office management. If there is less than three (3) hours of scheduled work to be performed, management may decide to cover the work through an overtime basis instead of calling a part-time employee back to work

However, part-time employees called back shall be guaranteed a minimum of three (3) hours work or pay at the applicable rate.

- (ii)** overtime by volunteer full-time letter carriers;
- (iii)** overtime by available volunteer part-time letter carriers;
- (iv)** where upon completion of the preceding steps, under paragraph 17.04(a), sufficient volunteers are not available, additional lists of part time and full-time letter carrier volunteers from other installations within the same post office jurisdiction are to be established and applied in accordance with the sequence outlined in sub-paragraphs 17.04(a)(i), (ii) and (iii);
- (v)** by any other means.

(b) With regard to the mail service courier category

- (c) Overtime as outlined in the clause will be governed by the principles of equal opportunity to the extent provided by article 15 as it can be made applicable to 17.04.
- (d) In application of 17.04(a)(ii) and (iii) and 17.04(b)(ii) and (iii) in order for any employee to be considered available, the employee must be present on the job site at the time of the absence and in the case of mail service courier duties, be available to perform the work within the established schedule. In the application of 17.04(a)(iv) and 17.04(b)(iv) in order for any employee to be considered available, he or she must submit his or her name on the appropriate equal opportunity list and in the case of mail service courier duties be available to perform the work within the established schedule.
- (e) Allocations of overtime to all employees are subject to the provisions of article 11. Unless a part-time employee has more seniority than other employees, where his or her hours are extended, he or she must wait until more senior employees pick the portion of the route they wish to cover. As much as practicable, extensions of part-time hours should not result in part-time employees working more than eight (8) hours in a day.
- (f) Notwithstanding the preceding clauses, where leave without pay in accordance with clauses 26.02, 26.03 or 26.04 or leave with pay in accordance with clauses 47.03 has been approved and subsequently relief staff is not available, then the method of covering absences caused by the granting of such leave shall be a matter for local meaningful consultation.

The parties agreed that there is a local agreement in Moncton under which unassigned letter carriers may be assigned from LCD#2 to LCD#1 and *vice versa*, before the Employer is required to utilize overtime. According to the Union this only applies where there is no work, including no overtime, for them at their home depot. According to the Union, on each of the days in issue one of the relief letter carriers who was assigned to LCD#1 should have been used to cover walk 80 at LCD#2, because it is a business walk and therefore a priority assignment. The Union claims it was improperly covered by letter carriers on overtime. The result was that letter

carriers at LCD#2 received 5 hours overtime on each day of the days in issue but letter carriers at LCD#1 lost 8 hours of overtime. The governing provision of the Collective Agreement with respect to the assignment of relief letter carriers to priority routes is Article 52, particularly 52.01(f):

ARTICLE 52

SELECTION OF ASSIGNMENTS BY RELIEF LETTER CARRIERS

52.01 Selection of Assignments

Except as otherwise provided in the collective agreement, relief letter carriers covered by this article will be given preference to perform the following relief assignments.

- (a) vacation relief;
- (b) relief for other absences.
- (c) Upon local agreement, vacation relief assignments under paragraph 52.01(a) and relief for other absences assignments under paragraph 52.01(b) are to be combined for the purpose of bidding. Where this option is exercised all other provisions of article 52 still apply.

In the application of paragraphs 52.01(b) and (c) above, and except as provided in paragraph 52.01(e) below, where a relief letter carrier has exercised his or her seniority on an assignment, he or she will be required to remain on the assignment for the duration of the absence of the employee being replaced.

- (d) Under the circumstances where a relief letter carrier has not been given a choice of relief assignments, he or she can bid onto another relief assignment on the first occasion where a choice of assignments is made available providing that the change in assignments has no adverse service impact - e.g. unduly delay delivery of mail. (Undue delay of delivery of mail on residential assignments is defined as one-half (1/2) hour or more work delay between assignments).
- (e) When a need arises necessitating the removal of a relief letter carrier covered by this article from an absence relief assignment to perform other

duties in the relief letter carrier function, the Corporation will assign such work to the senior volunteer. In the absence of such a volunteer, the most junior relief letter carrier covered by this article who is covering absence relief in the area concerned will be assigned to the required work.

- (f) In order to give proper meaning and application to paragraph 52.01(e) a relief letter carrier may be moved from the absence assignment he or she had chosen to be placed on a priority assignment in the letter carrier function.

For the purpose of this clause, priority assignment is considered as an assignment on:

Business walks that have two or three deliveries per day and residential business walks that are clearly defined on the route measurement 075 sheet, motorized letter carrier routes, labeling unit, and the priority duties of the assistant to the letter carrier supervisor including distribution of mail to letter carrier cases, redirection duties under the new label redirection program, distribution of householder mail and any other assignments as duties determined through local consultation to be essential to service requirements.

It is recognized that the local parties may mutually agree to define other assignments as priorities in order to maintain the quality of service at a satisfactory level, minimize the number of complaints about late delivery to business calls and that the seniority rights of employees must be protected.

52.02 Determination of Assignments

Assignments shall be determined in the following manner:

- (a) Assignments shall be given to relief letter carriers on the basis of seniority.
- (b) Vacancies among assignments shall be posted for bidding at least monthly and will be advertised on a post office-wide basis for seven (7) working days or for such period as may be determined and agreed upon by the parties through local consultation. Such notices shall indicate a description of the position, including the established job description, and where applicable, the geographic area to be covered.
- (c) An employee who indicates before going on leave his or her desire to be made aware of positions coming open for bid under this article and who

leaves an address to be notified, will be so notified by registered mail.

- (d) In the event of a major reorganization of letter carrier routes in a unit, all such relief letter carrier assignments covered by this article shall be open for bidding by the relief letter carriers in that unit.
- (e) In the event of a minor reorganization of letter carrier routes in a unit, all such relief letter carrier assignments covered by this article shall be opened for bidding by the relief letter carriers in that unit who are effected by the reorganization.
- (f) Notwithstanding this section, where amalgamation of post offices has or does take place, the local Union affected may retain for its relief letter carriers covered by this article, preference for such assignments before such assignments are opened for bidding on a post office-wide basis.

52.03 Where No Work is Available

Notwithstanding clause 52.02 where work is not available in the selected relief letter carrier assignment the relief letter carrier will be required to perform other available duties in the relief letter carrier duties.

The Union's position is that overtime should have been assigned at LCD#1 in accordance with Article 15. The equal opportunity lists at LCD#1 and LCD#2 are separate.

The Employer's position is that it made a business decision to move a relief letter carrier from LCD#2 to LCD#1 on each of the days in question, rather than using him or her on walk 80. The route to be covered at LCD#1 was a very high priority mobile route, and the result was, as the Union pointed out, a less amount of overtime and therefore a cost saving. The Employer also invoked Article 52.01(f), which uses the words "relief letter carriers *may* be moved" [emphasis added].

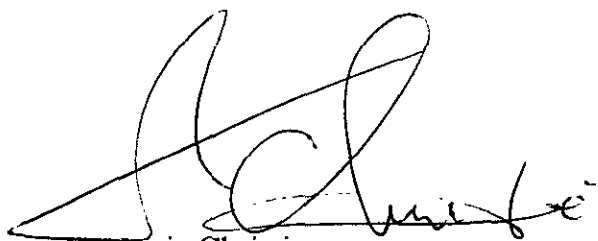
It is the Employer's regular practice in Moncton, in accordance with the local agreement referred to above, after all relief letter carriers at one of the Letter Carrier Depots are assigned, to go to the other LCD for unassigned relief letter carriers. The Employer could not show me any evidence of the precise reach of the local agreement with respect to these temporary transfers of letter carriers, including relief letter carriers, between the two LCD's, nor did it satisfy me that there has been a practice of assigning relief letter carriers from one LCD to the other where the result is overtime on a priority route at the LCD from which a relief letter carrier is assigned, as it was in these cases.

For the Union, Mr. Paschal pointed out that the Employer had the power under Article 52.01(e) and (f) to have moved one of the relief letter carriers at LCD#1 to cover the high priority routes it said it needed the LCD#2 relief letter carriers for, and to have then covered the lower priority routes they were moved from by using overtime.

The Employer clearly did not follow the order established by Article 17.04 in filling work assignments at either LCD on the occasions in question. There is nothing in the Collective Agreement to allow the Employer to, in effect, merge the separate equal opportunity lists at LCD#1 and LCD #2. The Employer, therefore, had the burden of satisfying me that this departure from the terms of the Collective Agreement was justified by local agreement, and it has not discharged its burden in this context, that is where temporarily transferring a relief letter carrier involves having work done on overtime at the home depot of the relief letter carrier who is being temporarily assigned to the other depot.

I understand the desirability of getting the work done at the lowest cost, but of course that must be the lowest cost consistent with the Collective Agreement.

Conclusion and Order. For these reasons the Grievance was allowed and compensation directed to be paid as requested in the Grievance. I remain seized of this matter and will reconvene at the request of either party to determine the quantum of any damages if they are unable to agree.

A handwritten signature in black ink, appearing to read 'Innis Christie', written over a horizontal line.

Innis Christie

Arbitrator