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Re Canada Post Corp and CUPW (Smith)

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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: *Smith G. et al*
01902

CUPW No. 096-95-

BEFORE: Innis Christie, Arbitrator

HEARING DATE: August 15, 2000

AT: Halifax, N.S.

FOR THE UNION: Kevin Buckland, Chief Shop Steward, Nova Local CUPW
Ed Johnson, Labour Relations Representative, CUPW

FOR THE EMPLOYER: Joe Doucette, Labour Relations Officer
Francis Thimot, Superintendent, Dartmouth Delivery
Centre

DATE OF AWARD: November 12, 2000

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Union grievances on behalf of the Grievors alleging breach of the Collective Agreement between the parties bearing the expiry date July 31, 1997, which continued in effect at the date of the Grievance and which the parties agreed applies to this matter. In particular the Grievance alleges breach of Article 17 in that, on October 27, 1999, the Grievors were bypassed in administration of overtime. I note that the parties put before me a copy of the Collective Agreement signed February 28, 2000, but neither alleged that it was the applicable Collective Agreement. The Union requested that the appropriate Grievor be compensated for earning lost on that day, 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.

AWARD

The facts are undisputed. On October 27, 1990, Lisa Blanchard was a temporary letter carrier properly placed in the system in accordance with Article 17.06 of the Collective Agreement to fill the long term absence of Randy Mapp, route holder of part-time walk #804. She called in sick and the Employer called in another temporary letter carrier, Rajeer Kokhar, to cover walk #804 for one day. In other words the Employer went directly "temp to temp" under Article 17.06. The Union claims that the Employer must first follow the procedure under Article 17.04, and requests that the letter carrier who should have been offered extended hours or overtime be fully compensated. The Employer's position is that the relevant

absence here was Mr. Mapp's, so that the applicable provision was Article 17.06(f).

In the course of argument Mr. Doucette, for the Employer, agreed with the assertion by Mr. Buckland, for the Union, that in fact the Employer had exhausted the availability of relief letter carriers in accordance with Article 17.04 and had offered some overtime, but had not completed the process under Article 17.04(a).

The relevant provisions of the Collective Agreement are:

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 function:
 - (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: ...[similar provisions]
- (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.

17.05 Coverage of Uncovered Letter Carrier Routes

In the application of clause 17.04 for an uncovered letter carrier route, the following principles shall apply:

- (a) The number of volunteers available will determine the number of hours that will be assigned.

When there are four (4), three (3), or two (2) full-time volunteers to cover a full-time assignment, the assignment shall be split into four (4) two (2) hour portions, three (3) two (2) hour and forty (40) minute portions or, two (2) four (4) hour portions respectively, and each volunteer shall be guaranteed the time mentioned above at the rate of time and one-half (1 1/2). The same principle will apply for coverage of a part-time route or portion of a full-time assignment.

- (b) Where there is only one (1) volunteer to cover the full-time assignment, the volunteer shall select either two (2) or four (4) hours of work and be guaranteed the number of hours he or she selects at the rate of time and one-half (1 1/2).

- (c) In circumstances which could adversely affect the employee concerned or the delivery of mail where deviation from these procedures is required, local consultation will be held.

- (d) (i) Under normal circumstances employees performing the sortation and preparation of an uncovered letter carrier route(s) must have these duties completed prior to the scheduled lunch period in that installation.

- (ii) Where portions of routes require priority delivery such as business areas, shopping malls or in the case of large numbers of socio-economic cheques, the Corporation will determine when the uncovered walk will be sorted and prepared and when the portion containing any of the above will be delivered on a priority basis over other portions.

- (iii) Notwithstanding sub-paragraph 17.05(d)(i), prior to the employee(s) selecting the portion of the uncovered letter

carrier route, the Corporation will determine and advise the employees how much earlier in the day the selected portion or portions of each individual uncovered letter carrier route in sub-paragraph 17.05(d)(ii) are to be sorted, prepared and delivered.

- (iv) In each location or installation, the supervisor(s) and union representative(s) will meet and consult on the way in which sub-paragraph 17.05(d)(ii) above will be applied in that installation.
 - (e) After all requirements in sub-paragraphs 17.04(a)(i), (ii), (iii), and 17.04(b)(i), (ii), (iii), have taken place and sufficient volunteers are not available in the installation, volunteers from other installations under the same post office will be offered the assignment from a predetermined list to cover the uncovered route.
- In cases where an employee wishes to be included on an equal opportunity list at another installation, the employee shall ensure that his or her name is included on that list.
- (f) All available mail, including householders scheduled for delivery that day must be delivered in the coverage of an uncovered walk.

...

17.06 Coverage of Known Periods of Absence

If a full-time employee in the classifications of letter carrier, mail service courier or mail service courier (heavy vehicle) is off on a known absence of five (5) working days or more, the absence may be covered from the first day in the following manner:

- (a) Relief employees in the same classification as the absence will bid by seniority to cover the absence.
- (b) An employee, excluding relief employees, in the same classification as the absence will bid, by seniority, to cover the relief absence, on an acting basis.
- (c) By seniority, a part-time employee in the component in the same category will be promoted on an acting basis to cover the full-time absence in the

letter carrier or mail service category. If no part-time employee in the respective category wishes to be promoted to cover the full-time absence, part-time employees by seniority from the other category will be offered the acting promotion.

- (d) A temporary employee will cover the resultant vacancy.

Should no relief employee in the same classification as the absence wish to cover the absence it will be covered in the following manner:

- (e) By seniority, a part-time employee in the component will be promoted on an acting basis and placed directly on the assignment where the absence occurred.

If no part-time employee in the function wishes to be promoted to cover the full-time absence, part-time employees by seniority from the other category will be offered the acting promotion.

- (f) A term employee will be hired to cover the resultant vacancy.

Should no part-time employee in the letter carrier or mail service courier category wish to cover the absence, a temporary employee will be placed directly on the route where the absence occurred.

Part-time absences for a known period of five (5) working days or more may be covered by a temporary employee from the first day of the absence.

- (g) Furlough leave will be covered under paragraph 17.06(a).
- (h) In small post offices where there is only one relief employee, his or her primary function will be to cover vacation leave.
- (i) Absences up to five (5) working days will be covered in accordance with clause 17.04.
- (j) After completion of an acting assignment in accordance with paragraphs 17.06(c) and (e), a part-time employee will have the right to displace the most junior temporary employee in the component who is covering a full-time assignment.

This provision is notoriously badly worded, and I note that Article 17.06 in the 2000 Collective Agreement is differently worded. Whether any change in effect was intended is not an issue I can address here because I have not relevant agreement between the parties or external evidence. I have always found the format of Article 17.06 and its predecessors confusing. In my opinion it can only make sense, and be given the meaning apparently intended by the parties, if it is giving prominence to the unlettered part of the text, although the parties have chosen a format which does not do that. I read Article 17.06 as if it were formatted as follows:

17.06

Coverage of Known Periods of Absence

[1] If a full-time employee in the classifications of letter carrier, mail service courier or mail service courier (heavy vehicle) is off on a known absence of five (5) working days or more, the absence may be covered from the first day in the following manner:

- [A.] (a) Relief employees in the same classification as the absence will bid by seniority to cover the absence.
- (b) An employee, excluding relief employees, in the same classification as the absence will bid, by seniority, to cover the relief absence, on an acting basis.
- (c) By seniority, a part-time employee in the component in the same category will be promoted on an acting basis to cover the full-time absence in the letter carrier or mail service category. If no part-time employee in the respective category wishes to be promoted to cover the full-time absence, part-time employees by seniority from the other category will be offered the acting promotion.
- (d) A temporary employee will cover the resultant vacancy.

[B] Should no relief employee in the same classification as the absence wish to cover the absence it will be covered in the following manner: ~~{e}~~By seniority, a part-time employee in the component in the same category will be promoted on an acting basis and placed directly on the assignment where the absence occurred.

[C] If no part-time employee in the same category as the absence wishes to be promoted to cover the full-time absence, part-time employees, by seniority, from the other category will be offered the acting promotion. ~~{f}~~A temporary employee will cover the resultant vacancy.

[D] Should no part-time employee in the letter carrier or mail service courier category wish to cover the absence, a temporary employee will be placed directly on the route where the absence occurred.

[2] Part-time absences for a known period of five (5) working days or more may be covered by a temporary employee from the first day of the absence.

[3]~~(g)~~ Furlough leave will be covered under paragraph 17.06(a).

[4]~~(h)~~ In small post offices where there is only one relief employee, his or her primary function will be to cover vacation leave.

[5]~~(i)~~ Absences up to five (5) working days will be covered in accordance with clause 17.04.

[6]~~(j)~~ After completion of an acting assignment in accordance with paragraphs 17.06(c) and (e), a part-time employee will have the right to displace the most junior temporary employee in the component who is covering a full-time assignment.

Article 17.04 appears to apply generally to “Uncovered Letter Carrier Routes”, but, as Article 17.06 (i) ([5] in my notional reformatting) makes clear, it is subject to Article 17.06, which applies specifically to any “known absence of five (5) working days or more” of “a full-time ... letter carrier”, “from the first day”,

except the clause that I have numbered “[2]” in my notional re-formatting of Article 17.06, which clearly applies to part-timers. It is the key clause here.

Mr. Buckland, for the Union, noted that the only provisions of the Collective Agreement other than Articles 17.04 and 17.06 in which there is an mention of Group 2 temporary employees are Articles 13.26, 9.16 and 18.02. He mentioned those because, in his submission, the parties had turned their minds very specifically to the instances in which temporary employees could be used.

The Issue. Here, Mr. Buckland submitted, Lisa Blanchard’s one day absence was not in the category of “Part-time absences for a known period of five (5) working days or more” so the Employer had to cover it under Article 17.04. The temporary employee, he submitted, assumes the identity of the part-timer for purposes of the applicability of Article 17.04. The principle, he submitted, is that same as that articulated in the award of Arbitrator Swan between these parties in *National Policy Grievance No. CPC-95-000*, (Unreported, Jan.8, 1997). With the agreement of the Employer I was provided with a copy of this award subsequent to the hearing in this matter.

For the Employer, Mr. Doucette submitted, in effect, that for purposes of the clause which I have numbered “[2]” in my notional re-formatting of Article 17.06, the “Part-time absence... for a known period of five (5) working days or more” was the absence of Mr. Mapp, not of Ms. Blanchard. The effect, he said, was that as long as Mapp was absent the Employer had the option of filling his absence by using any temporary employee or employees it wished, presumably, I would add, provided it respected their rights under Article 44.

Decision. I agree with the submissions on behalf of the Union. I do see any apparent intent in the quoted provisions of the Collective Agreement to allow the Employer to by-pass the rights of employees to extended hours and overtime in accordance with Article 17.04 wherever a temporary employee happens to be ensconced.

In *National Policy Grievance No. CPC-95-000* Arbitrator Swan considered whether “temporary employees covering part-time and full-time letter carrier absences will also have the opportunity to have additional hours or overtime hours allocated to them in accordance with the procedure set out in clause 17.04”. He concluded that they do, mainly because Article 17.05 is explicitly made applicable to them by Article 44.18, and Article 17.05 has no role other than to govern the application of Article 17.04.

Although Arbitrator Swan did not accept, or reject, the particular arguments of the parties in reaching this conclusion, I note that he states, at p.19;

In general, such temporary employees will be filling a part-time position, but may also fill a full-time position. When that occurs, the Corporation argues that for whatever period of time the temporary employee is properly in the workplace under clause 17.06, he or she is an acting part-time or full-time employee.

As a result of the *National Policy Grievance Award* temporary employees have rights to extended hours and overtime because they are replacing regular full or part-time employees. That is not the same issue as is before me, which is whether the Employer had to treat the absence here as Ms.

Blanchard's rather than Mr. Mapp's, but I agree with Mr. Buckland that the logic of the award, and even more clearly the logic of the Employer's position just quoted, favours the Union. While she is in Mr. Mapp's position the Employer must treat the position as being filled by Ms. Blanchard, not as simply as Mr. Mapp's absence.

Conclusion and Order. For these reasons the Grievance is allowed. As agreed at the outset I will remain seized of this matter and will reconvene at the request of either party should they be unable to agree on the quantum of compensation for whomever should have been offered extended hours or overtime on October 27, 1999 as a result of Lisa Blanchard having called in sick.

Innis Christie
Arbitrator

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