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Re Canada Post Corp and CUPW (105-95-00491)

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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: *Fundy Local*

CUPW No. 105-95-00491

BEFORE: Innis Christie, Arbitrator

HEARING DATE: March 22, 2001

AT: Saint John, N.B.

FOR THE UNION: Carole Woodhall, CUPW Representative

Kevin Suttie, Chief Shop Steward, Fundy Local

Cyril Galbraith, Union Observer, Shop Steward

Kevin Murphy, Union Observer, Shop Steward

Pat Rowley, Shop Steward, Midnight shift #1



FOR THE EMPLOYER: Joseph P. Doucette, Labour Relations Officer

Peter Lystiuk, Superintendent of Route Measurement

DATE OF AWARD: 1 June 2001

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Union grievance dated May 5, 1999 alleging breach of the Collective Agreement between the parties bearing the expiry date January 31, 2000 in that the Employer violated Articles 47 and 48 and Appendix V of the Collective Agreement and the requirements of the Letter Carrier Route Measurement System in that the forms 098 were not properly completed to reflect waiting times for two motorized routes.

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

A restructure of letter carrier and motorized letter carrier routes was implemented in Saint John on May 17, 1999. This Grievance was filed July 7, 1999. It states:

The Union grieves on behalf of employees in group 2 that the employer has violated articles 47, 48, Appendix V and all other related provisions of the collective agreement in that the forms O98 have not been properly completed to reflect waiting times for routes 45 and 49. Further, the employer has not paid the incumbents of those routes any over-assessment pay retroactive to May 17, 1999.

Corrective Action Requested That the employer recognize that it has violated the collective agreement with respect to this matter and immediately complete the forms O98 to reflect waiting times, and pay the incumbents of routes 45 and 49 any over-assessment pay retroactive to May 17, 1999. Further, the employer pay interest at the Bank of Canada rate. The Union reserves the right to request further corrective action.

The reply to the Grievance, signed by B.L. McIntyre, Superintendent MMC, on October 24, 1999, was:

Your grievance was heard with your representatives on August 23/99.

At that time they advised that there is no waiting time or equalization time for walks 45 and 49 to do bundles on other routes.

A check with the RMO's has revealed that time is allotted for these duties and therefore this grievance is denied.

A "Statement of Facts", dated June 25, 1999, prepared by Cyril Galbraith, Union Observer on the restructure, includes the following elaboration with respect to walk 49:

On May 17, 1999 we in Saint John started our new walks as a result of a restructure.

As an observer in the restructure I pointed out to the RMO's that some of the walks were not being equalized as form 98 does if it is filled out properly. The RMO's said they would correct this problem by changing the starting times of some walks. This has not been done.

When I examined on the above date walk 49 which is a motorized walk and is required to WAIT for the relays of walk 40 [foot] and walk 43 [foot] there is no waiting time on either of the 098's for any of these walks. The starting times for all these walks are the same.

Therefore the 098's are improperly filled out.

CPC position is if you have to wait for your buddie they will give you proper waiting time. If you have to wait for your buddie's relays they give no waiting time.

Kevin Murphy, who was also a Union Observer on the 1998 restructure in Saint John which was implemented on May 17, 1999, was the principal witness for the Union. He focussed his attention on Walk 45, but the issues are the same with

respect to both Walks 45 and 49. Both are stand alone motorized mail carrier routes, to which are assigned the regular task of delivering mail to relay boxes for other routes. They are "stand alone" because it is not part of the duties of those routes to transport any letter carrier on a foot walk to or from his or her route. Mr. Galbraith's written statement is slightly misleading, insofar as it suggests that what is at issue is waiting time for delivering "your buddie's relays". What is at issue is waiting time for delivering relays, but the letter carriers whose relays the MMC's on routes 45 and 49 deliver are not their "buddies". That term normally means people whom the MMC's take to and from their walks.

Route 45, as restructured, includes delivering relays for routes 40, 41, 42 and 47. The same is true of Route 49, but, as the parties did at the hearing, I will use route 45 as the example. Often, in fact according to the Union virtually always, this results in the MMC on route 45 having to wait in the morning until those relays are ready to go. Basically the Union's position is if that wait is structured into route 45 there should be waiting time allowed, as there would be if the wait was for a "buddy".

Before proceeding further with the issues raised by the Grievance I should note that in observing the restructure, filing this Grievance and in the hearing before me the Union relied on the 1997 version of the Letter Carrier Route Measurement System Manual. Before me the Union acknowledged that the Employer's route Measurement Officers had in fact relied, appropriately, on the 1998 version, but Ms. Woodhall elicited evidence that Employer had not provided the Union with the 1998 version as, she submitted, it was required to do. I have not found it necessary to explore this by-way because I can see no differences between the two versions

relevant to this Grievance. I will be specific about this where it might be suggested otherwise.

On page 8 of Chapter 7 of the 1998 version the following appears;

Workload Equalization & Transportation Form 33-082-098 (Page 15) [This is the form 098 referred to above]

Purpose This form is used to calculate the time allowance when the mode of transportation is special. It is also designed to simplify calculation of the waiting time when more than one route is conveyed by the same vehicle.

The wording of item 2) on the top of page 3 of Chapter 7 in the 1997 version is exactly the same except for the marginal heading "Purpose".

The Union relied, in effect, on the following passages on p.9 of Chapter 7 of the 1998 version, under the heading "**Section 3, Foot Route Special Transportation**";

- **Inside/Outside Waiting Time:**
Legitimate waiting time must be included in the daily transportation allowance and applies to routes whose departure from and/or return to the emanating office is dependent on other routes assigned to the same vehicle. Any calculated waiting time, as well as all other transportation allowances, is to be indicated in the "L/C Workload Equalization and Transportation" form 33-082-098. Only the totals are to be transferred to form 33-082-079 where applicable.
- **Calculation of Waiting Time:**
Waiting time is the difference between the inside and daily workload of individual routes grouped together for conveyance purposes. Any calculated waiting time is added to the daily workload to obtain equalized workloads. Instructions are shown on back of form 33-082-098. [the "098"]

...

Note: In instances where the transportation of more than one route is provided by the same vehicle, care must be exercised to ensure that both the inside and daily workloads of the routes are as nearly equal as possible to minimize any waiting time. After the routes have been in operation for a short time, actual finishing times should be reviewed and the morning portions adjusted, if necessary to group both the AM and PM, CUNB OR INCOMP finishing times as close together as possible.

As Ms. Woodhall put it on behalf of the Union, the system is concerned with routes, not people, so the fact that the MMC on route 45 carries relays for routes 40, 41, 43 and 47 rather than the letter carriers who walk those routes does not mean that that route 45 should not get waiting time if in fact waits for the relays are structured into the system. This is a sensible approach to the Letter Carrier Route Measurement System Manual, but does not allow me to disregard clear words that lead to a different conclusion than that sought by the Union.

As the heading to Section 3 indicates these passages all relate explicitly to "Foot Route Special Transportation", i.e. to of the measurement of a foot route where the letter carrier travels with someone else. The Employer, however, relied on the following more specific and directly applicable provision of the Letter Carrier Route Measurement System Manual. Under the heading "**Section 4 Mailmobile Route**" it appears clear that waiting time is not to be given to an MMC unless he or she is conveying another letter carrier;

- Inside/Outside Waiting Time:

Waiting time is applicable only to those motorized routes that are required to convey other letter carriers using foot routes to and/or from their delivery areas and is determined in the top section of form 33-082-098. [emphasis added]

Precisely the same wording appears at the top of page 9 of Chapter 7 in the 1997 version of the Letter Carrier Route Measurement System Manual. Next, in both the 1998 and 1997 versions are the words;

Note: The allowance for obtaining and loading the vehicle is included as inside time. The delivery of parcels and relays on other routes and the clearance of street mail boxes is part of the delivery time for the mailmobile route. ...

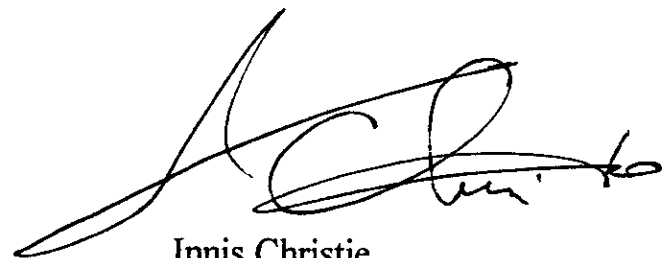
In the 1997 version these words are in block capital letters.

While it is true that MMC's who are regularly required to wait for relays will get overtime if that is the result of the wait, I agree with the Union that the logic of the system would suggest that such time should be structured into their routes if it is to be the norm. Nevertheless, that is clearly not what is provided for by the Letter Carrier Route Measurement System Manual. As Peter Lystiuk, Superintendent of Route Measurement, testified on behalf of the Employer "There is no waiting time on relays". I agree with him, that there is no other way to read the Letter Carrier Route Measurement System Manual and there is nothing in the Collective Agreement that calls for me to over ride the clear words of the Manual, That being so, I must deny this Grievance.

The Union emphasized the reply to this Grievance, particularly the statement that "A check with the RMO's has revealed that time is allotted for these duties and therefore this grievance is denied." Where, asked the Union, quite appropriately, is

this time allotted? The answer it seems to me is "no where", because, very explicitly, no such allotment is called for by the Letter Carrier Route Measurement System Manual. The answer to the Grievance is therefore in error, but that does not create any entitlement on the part of the member of Group 2 on whose behalf the Union filed this Grievance because there is no such entitlement in either the Collective Agreement or the Letter Carrier Route Measurement System Manual.

Conclusion and Order. This Grievance is denied.

A handwritten signature in black ink, appearing to read 'Innis Christie', with a stylized flourish at the end.

Innis Christie
Arbitrator

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