7-22-2001

Re Canada Post Corp and CUPW

Innis Christie

IN THE MATTER OF A REGULAR ARBITRATION:

BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS

(The Union)

and

CANADA POST CORPORATION

(The Employer)

RE: *Nova Local* CUPW No. 096-00-00269

BEFORE: Innis Christie, Arbitrator

HEARING DATE: May 24, 2001

AT: Halifax, N.S.

FOR THE UNION: Kevin Buckland, Grievance Officer, Nova Local
Ed Johnston, Regional Representative, Atlantic
Brian Supple, Shop Steward, Dartmouth Delivery Centre
Wendy Watson-Smith, Shop Steward, Letter Carrier Depot #1, Halifax

FOR THE EMPLOYER: Jo Anne Harrington, Labour Relations Officer
Francis Thimot, Superintendent Dartmouth Delivery Centre

DATE OF AWARD: 22 July, 2001

Union grievance (amended) dated December 04, 2000 on behalf of all affected employees alleging breach of the Collective Agreement between the parties bearing the expiry date January 31, 2000, in that the Employer violated Articles 13, 14 and 18 in that it moved rest days scheduled for November 11, 2000 and changed the schedules of work for the week of November 5, 2000 in a manner contrary to the Collective Agreement. The Union seeks a declaration sustaining the Grievance and an order that the Employer pay all affected employees at double their normal rate for the time they worked on what would have been their scheduled day off. In the alternative the Union requested that, if the Grievance were to be allowed but the remedy requested denied, I remain seized of this matter to hear evidence and argument with respect to the loss suffered by specific employees covered by this Grievance.

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

This Grievance involves what Mr. Buckland for the Union described as "a long standing contentious issue". The Saturday of the week of November 5, 2000 was November 11, which is designated as a holiday in Clause 18.0(h) of the Collective Agreement. For the employees who are the subjects of this Grievance that Saturday was a rest day off (RDO). In the Union's submission, therefore, Article 18.05 applied;

18.05 Rest Day Moved

When a day designated as a holiday under clause 18.01 coincides with an employee's rest day, the rest day shall be moved to the first day following the holiday on which the employee is entitled to pay or is scheduled to work.

...

18.08 Guarantee

The principles of clause 17.01 will apply for an employee required to work on a rest day moved or on a designated paid holiday.

Article 17.01 provides;

17.01 Work on a Day of Rest

(a) **(i)** *"Day of rest"* in relation to an employee means a day other than a holiday on which that employee is not ordinarily required to perform the duties of his or her position other than by reason of his or her being on leave of absence.

(ii) An employee shall be paid at the rate of double (2) time for all hours worked on a day of rest.

(iii) An employee called in to work on his or her day of rest will receive a minimum of three (3) hours of work or pay in lieu of work at double (2) time, subject to his or her willingness to perform any work available in his or her own classification.

(iv) Where employees are required to work on a day of rest, the principles contained in article 15 [governing overtime] will apply. ...

However, on October 25 the Employer purported to change the schedule so that those employees' RDO's did not fall on November 11 but in the preceding week,

mostly and in the case of employees on Shift #1, on November 10. Effectively, those employees got Friday, November 10, or a day earlier in that week, off, rather than Monday, November 13. One issue is whether this was done in accordance with Article 14.09(c):

> **14.09 Schedules of Work for Group 1**
>
> **(a)** Schedules of work shall be established for an undetermined period and posted in an appropriate place. A copy of the schedules shall be forwarded to the local of the Union immediately after the posting.
>
> **(b)** Schedules of work shall indicate the days of work, the days of rest, the time of the beginning and end of the shift and the time off for a meal.
>
> **(c)** The Corporation may change the schedules provided it has had, within a reasonable time before the change, meaningful consultations with the representatives of the Union.
>
> ...

The Union's submission is that there were no meaningful consultations so the change in the schedule was not made in accordance with the Collective Agreement. In any case, the Union's submission is that the positions affected had to be filled in accordance with Article 13. Article 13.04(a)(vi) and (b) provide;

> **13.04 Position in Groups 1, 3, 4 and 5**
>
> **(a)** A position is identified by the following constituent elements:
>
> **(i)** the class of employment;
>
> **(ii)** the office where the work is performed;
>
> **(iii)** the section where the work is performed;

> **(iv)** the work schedule for those holding fixed positions or the cycle of shifts for those holding rotating positions.
>
> **(b)** If one of the constituent elements is changed, the position is filled in accordance with this article. ...

Article 13 goes on to provide for an elaborate system of filling vacancies by seniority and for an annual bid system.

Because, according to the Union, the Employer had changed schedules and filled positions not in accordance with the Collective Agreement, Mr. Buckland submitted that employees who, before the change, had been scheduled for an RDO but had worked on November 11, 2000 were entitled to double time pay in accordance with Article 17.01(a)(ii).

For the Employer Ms. Harrington submitted, first, that in changing work schedules so that the November 11 holiday did not coincide with RDO's the Employer had given more than 48 hours of notice, 10 days in fact, and had therefore acted within its rights under Article 14.12;

> **14.12 Alteration of Shift of an Employee in Group 1-PO and Group 2-PO**
>
> In the event the shift hours and/or days of work of a full-time employee are changed by the Corporation and less than forty-eight (48) hours' advance notice is given, all hours worked by the employee on the first scheduled shift following the change will be paid for at the rate of time and one-half (1 1/2) the employee's regular rate. Any return to the employee's previous hours and/or days of work will not be considered a change subject to premium pay under this clause, unless the return is delayed beyond ten (10) working days and in such circumstances at least forty-eight (48) hours' advance notice is not given. The above shall not apply to any change which:

(a) is consistent with an employee's request,

(b) is occasioned by the application of another provision of this collective agreement,

(c) involves an employee acting as a replacement where such replacement function is an integral part of that employee's duties.

The offer made to a part-time employee to extend his or her hours of work before or after the employee's scheduled hours of work is not an alteration of shift within the meaning of this clause.

In addition, Ms. Harrington submitted, the Employer had attempted to conduct meaningful consultations in accordance with Article 14.09(c), but the Union had unreasonably refused to participate. It was not the Employer's understanding that, as the Union now contends, a change in schedules of work even following meaningful consultations in accordance with Article 14.09(c) triggered the bid procedure by virtue of Article 13.04(a)(iv) and (b).

With respect to the remedy requested, in the further alternative Ms. Harrington submitted for the Employer that even if I were to find in favour of the Union, never the less all employees entitled previous to the change to an RDO on the November 11holiday, and therefore to have the RDO moved to Monday November 13, had in fact been given an RDO on Friday November 10 or on a day earlier in the week in substitution, so they had not suffered financially.

The Facts. The Union put before me the shift schedules for each of the sections for Group 1 employees at the HMPP for the weeks commencing October 29, November 5 and November 12. These were posted October 25. They show

clearly which employees were scheduled for RDO's on Saturday in the weeks preceding and following the week commencing November 5, and the fact that they were re-scheduled to an earlier day for the week of November 5. None of that is in dispute and I will not detail it here.

Also in evidence is the correspondence between the Employer and the Union, from August 1, 2000 on, relevant to the aborted consultation with respect to the re-scheduling of the November 11 RDO's. The correspondence mingles proposals for this consultation with proposals for more substantial consultation, relating to annual bidding under Article 13.37 and staffing changes. Arrangements for these consultations, in terms of how many of those participating would be paid by the Employer etc., became very contentious between the parties. The subject matter of those more substantial consultations is not an issue before me and I do not intend to deal with it. The Union's position is that the dispute over the arrangements for consultation is relevant insofar as the Employer is alleging that it stood ready to consult in accordance with Article 14.09(c) and that the Union unreasonably refused to participate.

The correspondence in evidence begins with a two and one-half page letter of August 1, 2000 from Dale Walker, then Manager Production Control and Reporting for the HMMP, to Wayne Mundle, the Union's National Director for the Atlantic Region, about projected staffing changes at HMMP. Near the bottom of the second page Ms. Walker states;

> I have included a copy of the proposed schedule for November 5, 2000 that contains the November 11 Remembrance Day holiday. The November 11 holiday

> falls on a Saturday, by moving the Saturday rest day back into the week we will be able to meet our commitments on Sunday and Monday of the following week.

She goes on to request that the Union forward its recommendations to her by August 11 and suggests several days in late August for consultations. This letter is copied to Randy Mapp, President of the Nova Local.

Under date of September 11, 2000 Ms. Walker again wrote to Mr. Mundle with an "amended proposal for the new staffing alignment". Near the bottom of the first page she switches abruptly to the subject of the November 11 holiday, reiterating the passage quoted above from her August 1 letter, having changed it only in that she refers to "enclosed an amended copy of the proposed schedule";

> I have enclosed an amended copy of the proposed schedule for November 5, 2000 that contains the November 11 Remembrance Day holiday. The November 11 holiday falls on a Saturday, by moving the Saturday rest day back into the week we will be able to meet our commitments on Sunday and Monday of the following week.

Ms. Walker suggests that the parties consult on Friday September 22 or Wednesday September 27. This letter also is copied to Randy Mapp, President of the Nova Local.

Under date of October 12 Ms. Walker wrote to Mr. Mundle a third time, again copied to Mr. Mapp. After considerable detail on the other topics for consultation, two thirds of the way down the second page she again abruptly switches to the subject of the November 11 holiday;

> A copy of the November 5, 2000 current schedule has been enclosed. Remembrance Day November 11 falls on a Saturday, rest days have been rescheduled to earlier in the week so that we will be able to meet our commitments on Sunday and Monday of the following week.

This time Ms. Walker suggests that the parties consult on October 24 or 25.

On October 13 Mr. Mundle wrote back "in response to your October 12 proposed schedule changes for Halifax M.P.P.", advising that the Nova Local was "currently reviewing this proposal" and would contact Ms. Walker with regard to the participants in the required consultation and suggesting the parties meet on November 1 or 2.

Then, on October 17, Denise Allen, 2nd Vice President of the Nova Local, wrote to Steve Matijanec, Director of Mail Operations and the Halifax M.P.P., suggesting that because there were so many topics for consultation a pre-consultation leave should be allowed. In her list of the items within the scope of consultation she did not list the moving of the November 11 holiday. Her request was responded to on October 20.

However, most importantly, on October 19, Dale Walker again wrote to Wayne Mundle, with a copy to Randy Mapp, addressing the new staffing alignment in two paragraphs but concluding with the following third paragraph;

> In the proposal of October 12, 2000, I include an adjusted schedule for the week of November 5, 2000. The Remembrance Day holiday falls on the Saturday. Rest days have been rescheduled to earlier in the week so that we may be able to meet our commencements [sic]on Sunday and Monday of the following week. This schedule needs to be posted on Wednesday, October 25, 2000. If there are any

> concerns with this schedule please let me know immediately so they may be addressed prior to Wednesday.

Mr. Mundle must have received that letter the same day because he responded by fax of the 19th specifically with respect to "changes during the week of November 5 as a result of the holiday weekend". He states "I have asked the Nova Local Executive to review your proposals and communicate any concerns as soon as possible." In fact the Local did have concerns about the November 11 holiday, as evidenced by an internal Union memorandum from Denise Allen addressed to "Sisters and Brothers", dated October 16. It is concerned almost entirely with consultations on the Christmas schedule and staff realignment but the fourth paragraph states;

> Despite the rationale given by CPC regarding the November 5, 2000 moved rest day within the Holiday week, the Union's position is this is a clear violation of our collective agreement and will be adamantly opposed during consultations, Look out for these practices in the Christmas schedules as well!!

Nevertheless, there were no objections sent to the Employer nor was there evidence of any attempt by the Union, in the midst of the great concern over the conduct of the major consultations, to consult on this narrow issue. The schedule proposed by the Employer for the week of November 5 was, in fact posted on October 25.

Under date of October 27 Mr. Buckland, as Chief Shop Steward of the Nova Local, wrote to Ms, Walker, protesting the move of the November 11 rest days to the week of November 5 on the basis put forward in this Grievance, that by

virtue of Article 18.05 those rest days could be moved only forward. In ensuing conversations and letters between Mr. Buckland and Ms. Walker, and a letter of November 3 to Mr. Buckland from Mr. Matijanec, Director of Mail Operations, the parties developed, essentially, the positions put forward here, as set out above. This Grievance was filed on December 4.

The Issues. I will deal with the issue raised by the parties in the following order:

1. By changing the RDO's of employees from Saturday, November 11 to days earlier in the week of November 5 rather than to "the first day following the holiday on which the employee is entitled to pay or is scheduled to work" did the Employer breach Article 18.05?

2. In changing work schedules so that the November 11 holiday did not coincide with RDO's did the Employer act within its rights under Article 14.12?

3. Did the Employer attempt to conduct meaningful consultations in accordance with Article 14.09(c) such that the Union cannot rely on the fact that there had been no consultations prior to the implementation of the changed schedule for the week of November 5?

4. Whether or not there had been meaningful consultations did the Employer have to conduct a bid on positions that were changed for the week of November 5?

Decision.

1. By changing the RDO's of employees from Saturday, November 11 to days earlier in the week of November 5 rather than to "the first day following the holiday on which the employee is entitled to pay or is scheduled to work" did the Employer breach Article 18.05?

In my opinion the answer is "no", if the rest days in issue were changed before Article 18.05 became operative. It is obviously beyond dispute that language of Article 18.05 is, on its face, imperative; "When a day designated as a holiday under clause 18.01 coincides with an employee's rest day, the rest day *shall* be moved to the first day following the holiday"[emphasis added]. But Article 18.05 must be read with the fact the Collective Agreement clearly allows work schedules, including RDO's, to be changed, provided the specified conditions are met. Where RDO's have been changed, in compliance with the Collective Agreement, such that the designated holiday no longer coincides with the employee's rest day Article 18.05 simply does not apply.

This, I think is what Arbitrator George Adams meant when he said at p. 22 of his 1983 award in a national policy grievance between these parties, *Schedules of Work*, CUPW No. 1000-GG- 30 (unreported),

> Article 18.05 deals with the overlap between days of rest and holidays but does not require the overlap …

Immediately preceding that, on the same page, Arbitrator Adams said;

> …management's right to schedule work must be constrained by express language, the only language that approaches this requirement is found in Article 14.02(a)

> [now 14.09(a), which requires that schedules of work shall be established for an undetermined period]. Article 17 17.01(a) defines a day of rest but does not provide that it is fixed once a schedule is posted.

Turning to Article 18.05, in an Award between these parties in 1994, CPC No. 423578M; CUPW No. 350-92-00383 (unreported), Arbitrator Claude Lauzon characterized as "rather simplistic" the Employer's argument that I have accepted here, which he stated as "once the change is made, the rotation day (leave) no longer coincides with the legal holiday", and allowed the Union's grievance. However, upon application for a writ of evocation the Quebec Superior Court quashed that award, seemingly relying on Arbitrator Adams' brief statement quoted above.

Contrary to the Union's submission, therefore, Article 18.05 does not provide the answer here. The serious questions are the next two; whether the RDO's of the employees on whose behalf this Grievance was filed were properly and effectively changed in accordance with either Article 14.12 or Article 14.09(c). If they were, those RDO's and the November 11 holiday did not coincide and Article 18.05 was not triggered. If the were not effectively changed then those RDO's and the November 11 holiday must be treated as if they had coincided and the effect of Article 18.05 must be deemed to have been that the RDO's were moved to Monday, November 13. As stated below, I find that those RDO's were properly and effectively changed in accordance with Article 14.09(c), so Article 18.05 was not triggered.

2. In changing work schedules so that the November 11 holiday did not coincide with RDO's did the Employer act within its rights under Article 14.12?

Here again, in my opinion the answer is "no". There is a good deal of arbitral jurisprudence between these parties on the proper interpretation and application of Article 14.12. In a nutshell, like the other arbitrators who have rendered formal binding decisions on this provision, I do not interpret Article 14.12, in the context of the rest of the Collective Agreement, as enabling the Employer to make wholesale schedule changes simply by giving 48 hours notice. The parties simply cannot be taken to have intended that, considering how they hemmed schedule changes in with process requirements in Article 14.09.

In his 1983 award in a national policy grievance between these parties, *Schedules of Work*, CPC No. 82-2-3-30; CUPW No. 1000-GG- 30 (Unreported), to which I have already referred, Arbitrator George Adams ruled on the Employer's right to change schedules of work, including RDO's, in the context of change for the Christmas period. Articles 14.09 and 14.12 were then 14.02 and 14.03. He ruled, at pp.25;

> Article 14.02(c) does not preclude the type of temporary changes or amendment to the posted schedules which is in issue here. ... After consulting with the union, the employer amended the work schedules for only the two weeks in question and, in all other respects, the schedules continued to be in effect for an undetermined period. ... This provision, in my view clearly supports the employer's actions. Thus, the only remaining question is whether the consultation was adequate in the circumstances.

Fundamental to the issue I am now addressing, Arbitrator Adams continued with respect to Article 14.03, now 14.12, at pp. 25-6;

> However, before concluding I might point out that while I arrived at this conclusion without reference to Article 14.03, I find it difficult to accept the employer's submission that this clause supports such widespread change to the posted work schedules without consultation. That interpretation would rob 14.02 of any real effect.

In *St. Pierre, G and Larose, L.*, (1984), CPC No. 83-1-3-2589; CUPW No. 100-GG-9840 (unreported) between these parties, after considering the Adams award and earlier awards , including one of mine, Arbitrator Pierre Jasmin went further, holding;

> When the modification introduced by the employer is of a permanent nature for and indeterminate period and affects the general schedules of work of one employee or more, paragraph (c) of clause 14.02 must apply and the employer must therefore have meaningful consultations with the union's representatives before implementing such changes.
>
> Clause 14.03 enable the Employer to modify the shift hours or days of work of an employee, without consultation with the union's representatives, if it concerns changes that apply to employees individually. These modifications must be temporary and for a definite period. ... I also think the modifications must also be for a relatively short period of time, of the employer could, through clause 14.03, deprive paragraph c) of clause 14.02 of any meaning

Like Arbitrator Ken Norman in his award between these parties in *Bob Orr and others*, Jan. 3, 1989, CUPW No. W-471-H-230 (unreported), at p. 5, I continue to prefer the way I stated the relationship between what are now Articles 14.09

and 14.12 in *Fundy Local*, July 18, 1983, CPC No. 82-1-3-274; CUPW No. A-62-GG-12, (unreported), at pp. 9 and 15;

> ...Article 14.02(c) is not, on the face of it, concerned with individual employee interests (as discussed below that is the concern of Article 14.03) but rather with Union interests in protecting the rights of all of its members ...
>
> Article 14.03...addresses quite different interests and concerns than does Article 14.02(c). Its concern is for individual employee whose "shift hours and/or days of work" are changed with less than forty-eight hours' notice. The concern here is not the Union's oversight of the seniority or other rights of employees in the bargaining unit in general but with the individual employee whose short term plans with respect to time off and working time are interfered with by an employer change. The Employer can change but he must pay the employee an premium for the inconvenience suffered.
>
> ... there is no basis for suggesting that article 14.02 applies to one set of circumstances and 14.03 to another. Depending on the nature of the change, who has been affected, whether there have been consultations with the Union, whether employees affected have been given notice and whether any of the three exceptions to Article 14.03 apply, both, either or neither of these provisions may apply.

In my opinion the facts before me in this Grievance were not a matter of changing "the shift hours and/or days of work of a full-time employee" as apparently contemplated by the parties in agreeing to Article 14.12. To so characterize these facts would, as Arbitrator Adams said, "rob 14.0[9] of any real effect." This was the sort of change which, if it were to be made, had to be made in accordance with the process requirements of Article 14.09, including consultation in accordance with paragraph (c).

In his letter of November 3, 2000 to Kevin Buckland, Chief Shop Steward, Steve Matjanic, Director Mail Operations Halifax Metro, stated in the second to the last

paragraph, referring to discussions of November 2 with respect to the Remembrance Day schedule,

> I advised you that the Corporation was applying Article 14.12 (48 hour notice of shift change). The schedule has been posted since October 25 and all affected staff will be required to work as indicated. You indicated that you did not agree with this interpretation of the Collective Agreement and that there was jurisprudence to support you. I advised that the Corporation believed that its position was supportable and that another arbitrator may have to determine the final answer.

As I have already said, I do not think this was a proper application of Article 14.12, but before me the parties did not confine their argument Article 14.12. The Union also sought the Grievance on the basis of an alleged breach of Article 18.05 and the Employer also invoked Article 14.09, claiming compliance with paragraph (c). The fact that I have found in the Union's favour in respect of Article 14.12 does not, therefore, conclude the matter.

3. Did the Employer attempt to conduct meaningful consultations in accordance with Article 14.09(c) such that the Union cannot rely on the fact that there had been no consultations prior to the implementation of the changed schedule for the week of November 5?

In terms of the interpretation and application of the Collective Agreement, the context for this issue captured by the following quotes from my award in *Atlantic Region - Meaningful consultations in accordance with Article 14.02(c) prior to Christmas 1983*, May 25, 1984, CPC No. 83-2-3-45; CUPW No. R-1400-GG-19 (unreported). It is to be borne in mind that the wording of Article 14.09(c) is, in all relevant respects, precisely the same as the wording of Article 14.02(c) was

then. At p. 2 I summarize the holding of the Adams national policy award, cited and quoted above, as follows:

> In that award arbitrator Adams concluded that the Employer had authority under the Collective Agreement to reschedule days of rest to alleviate doubling up and to increase the capacity of the system at the peak load period. In denying the Union's grievance arbitrator Adams concluded that Article 14.029(c) of the Collective Agreement, which provides in part that "Schedules of work shall be established for an undetermined period...", did not preclude the Employer from establishing special schedules of work for the fixed period of December 19, 1982 to January 8, 1983.
>
> Apparently there had been discussion in the context of that grievance of Article 14.02(c) which provides:
>
> > **(c)** The Employer may change the schedules provided it has had, within a reasonable time before the change, meaningful consultations with the representatives of the Union.
>
> However, arbitrator Adams states at the outset of his award that
>
> > The parties agreed that the issue of whether the Employer had engaged in meaningful consultations with the representatives of the Union ... would not be dealt with at the hearing.
>
> and at the end of his award arbitrator Adams states:
>
> > This provision [Article 14.02(c)], in my view, clearly supports the Employer's actions. Thus the only remaining issue is whether the consultation was adequate in the circumstances. ...

Here, as there, if there was adequate consultation Article 14.09(c) supported the Employer's actions. That has been beyond dispute since the Adams national policy award. To the extent that that is what Arbitrator Lauzon held in his Award between these parties in 1994, CPC No. 423582M; CUPW No. 350-92-00381 (unreported), I agree with him. To the extent that he is holding that Article 14.12

was properly invoked by the Employer there I do not agree with him, for the reasons set out above in my consideration of the second issue. The Lauzon award to which I am now referring was rendered together with CPC No. 423578M; CUPW No. 350-92-00381, referred to above in connection with the first issue before me, The award to which I now refer was not the subject of the writ of evocation which set aside the latter award.

In fact, of course, the parties never consulted, meaningfully or otherwise, on the Remembrance Day Holiday in issue here. Here, as in the circumstance that were the subject of my award in *Atlantic Region - Meaningful consultations in accordance with Article 14.02(c) prior to Christmas 1983*, cited above, the Union's position is that therefore the Employer could not change the schedule. I said there;

> The difficulty with the Union's clear and simple proposition is that it takes two to consult, two to really do the thing required by Article 14.02(c); and the parties must be taken to have realized that in agreeing to the requirement of "meaningful consultations" as a pre-condition to work schedule changes. They must, therefore, be taken to have contemplated that where the Employer had done every thing it reasonably could to achieve meaningful consultations the pre-condition set out in Article 14.02(c) would be satisfied. In other words, where "consultation" is required all that can reasonably be expected of either party is that it stand ready, willing and able to consult. There is no reason to think that in agreeing to Article 14.02(c) the Employer agreed to give the Union a veto power over changes in work schedules. But to allow the Union to stymie "meaningful consultations" and then claim that because such consultations have not taken place the Employer is in breach of the Collective Agreement is, effectively, to give it that veto. To do so would be contrary to the evident intent behind Article 14.02(c).

I will not reiterate the facts that I have set out above, consisting largely of correspondence between the parties from August 1 to the end of October, nor will I attempt to untangle the knots that bound consultation over the Remembrance Day holiday schedule change to the broader schedule and work organization changes the parties were dealing with. Whatever false starts or new departures there may have been, the key for me is Dale Walker's October 19 letter to Wayne Mundle, with a copy to Randy Mapp, addressing the new staffing alignment in two paragraphs but concluding with the following third paragraph;

> In the proposal of October 12, 2000, I include and adjusted schedule for the week of November 5, 2000. The Remembrance Day holiday falls on the Saturday. Rest days have been rescheduled to earlier in the week so that we may be able to meet our commencements [sic]on Sunday and Monday of the following week. This schedule needs to be posted on Wednesday, October 25, 2000. If there are any concerns with this schedule please let me know immediately so they may be addressed prior to Wednesday.

Mr. Mundle replied on that same day by fax, "I have asked the Nova Local Executive to review your proposals and communicate any concerns as soon as possible." but there were no objections sent to the Employer nor was there evidence of any attempt by the Union to consult on this narrow issue. The schedule proposed by the Employer for the week of November 5 was, in fact posted on October 25, and it was only after the fact that Mr. Buckland addressed it, not to consult but to block the changes.

Here, I find, the Employer has discharged the onus, which, under Article 14.09(c) and on the facts before me, shifted to it, of establishing that at the relevant times

it had done its part to bring about "meaningful" consultations and that it was the Union's fault that the consultations did not take place.

4. Whether or not there had been meaningful consultations did the Employer have to conduct a bid on positions that were changed for the week of November 5?

Having found that the Employer was, effectively, in the position of having engaged in meaningful consultations I do not need to decide, and do not here address, the consequences if the Employer had changed schedules without meaningful consultation. Mr. Buckland's submission for the Union was that by virtue of Article 13.04(a)(iv) such a change would have triggered Article 13.04(b), and the Employer would have been required to conduct a bid on all the changed positions.

In fact, I understand Mr. Buckland's submission to be that even if there had been meaningful consultations, or if, as I have concluded, the Employer is to be treated as having engaged in meaningful consultations, still there was a change in positions which required them to be bid. For convenience I repeat the relevant parts of Article 13;

13.04 Position in Groups 1, 3, 4 and 5

(a) A position is identified by the following constituent elements:

(i) the class of employment;

(ii) the office where the work is performed;

(iii) the section where the work is performed;

> **(iv)** the work schedule for those holding fixed positions or the cycle of shifts for those holding rotating positions.
>
> **(b)** If one of the constituent elements is changed, the position is filled in accordance with this article. …

Without going to a level of explanation unwarranted in this "regular" arbitration process, I reject this submission, although on the bare face of it Article 13.04(a)(iv) and (b) supports it. I do so because when this provision is read together with Article 14.12 and 14.09(c), it is apparent that it was not the intent of the parties that every change in accordance with those provisions would trigger a bid.

Article 14.12 clearly applies to work schedule changes that are not changes in positions of the sort that would relate to the seniority interests at stake in Article 13. The effect of the Adams award cited and quoted above is that Article 14.09(c) also applies to changes that are not changes in positions of the sort that would relate to the seniority interests at stake in Article 13.

I need not decide here how long-term a change in a work schedule would have to be to trigger a bid requirement under Article 13. It suffices to say that the sort of change made at the Halifax MPP for the week of November 5, 2000 to accommodate the Remembrance Day Holiday did not trigger a bid requirement. Those were not changes of the sort that would lead an employee with seniority to reconsider the desirability of any position. I think changes would have to be at least long-, if not for an indeterminate period, to trigger Article 13.

Just as arbitrators have had to look behind the words of what is now Article 14.12, to the interests evidently sought to be protected, to give sensible effect to it and related provisions of the Collective Agreement, so too must I look behind the words of Article 13.01 to the interests it evidently seeks to protect.

Summary and Order.

Article 18.05 does not preclude the Employer from changing work schedules, including RDO's, it simply deals with the situation where an RDO overlaps with a holiday. The RDO's of the employees on whose behalf this Grievance was filed were not properly changed in accordance with either Article 14.12 because this was not the sort of change that falls under that provision. However, the Employer has discharged the onus, which, under Article 14.09(c) and on the facts before me, shifted to it, of establishing that at the relevant times it had done its part to bring about "meaningful" consultations on this change and that it was the Union's fault that the consultations did not take place, There was no requirement to conduct a bid for positions affected by the schedule changes made at the Halifax MPP for the week of November 5, 2000 to accommodate the Remembrance Day Holiday. This Grievance is therefore dismissed.

Innis Christie
Arbitrator

23p.