2-2-2002

Re Canada Post Corp and CUPW (105-00-00003)

Innis Christie

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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. 105-00-00003

BEFORE: Innis Christie, Arbitrator

HEARING DATE: September 20, 2001

AT: Saint John, N.B.

FOR THE UNION: Carole Woodhall, Union Representative
Kevin Suttie, Chief Shop Steward, Fundy Local
Kevin Murphy, Union Observer, Fundy Local

FOR THE EMPLOYER: Joe Doucette, Labour Relations Officer
Peter Griffith, Supervisor Collection and Delivery, Saint John
Peter Lystiuk, Superintendent Route Measurement

DATE OF AWARD: 02 February 2002

Union grievance dated April 26, 2000 on behalf of all employees in Group 2 alleging breach of the Collective Agreement between the parties bearing the

expiry date January 31, 2000, in that the Employer violated Articles 9, 46 and 47 and Appendix V by not providing the results of the five day count taken September 22-28, 1999 to Local representatives or Union observers to allow the Union to verify loading and unloading times of vehicles. The Union seeks an order that the Employer provide the results of the five day count taken September 22-28, 1999 to the Union and make appropriate adjustments to time values for the work functions affected.

AWARD

Preliminary Objections. The Employer made preliminary objections to my jurisdiction to deal with this matter based on: (i) the assertion that the matter had been dealt with in two of my previous awards, and (ii) timeliness. At the outset of the hearing in this matter on June 11, 2001 the representatives of the parties agreed that, subject to these two objections, 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 first preliminary objection arose from the assertion by the Union that the issue here flows from two earlier awards by me in the "regular" process and comes within the jurisdiction that I retained in those awards. The second is that this Grievance has been filed too late.

In my Preliminary Award dated July 30, 2001 I ruled that the **First Preliminary Objection** was ill conceived. Article 9.70 of the Collective Agreement does not address the basis upon which, as I understood Ms. Woodhall, the Union is asking me to look at two of my earlier awards rendered in the "regular" process. In each of those cases, as agreed by the parties at the outset of each hearing, I retained jurisdiction by stating that I

would remain seized after the issue of this award to deal with any matters arising from its application. To exercise that retained jurisdiction at the request of either of the parties does not constitute using the award in which I retained jurisdiction as precedent or applying Clause 9.103. Nor does it constitute referring to the award in which I retained jurisdiction "in subsequent arbitrations". The true exercise of retained jurisdiction constitutes a continuation of the same arbitration.

However, I stated that I had used the phrase "[t]he true exercise of retained jurisdiction" purposely, because there was still the question of whether what the Union seeks here falls within the jurisdiction that I retained in either of those awards. I stated that I could only determine that after I had understood the issues in this Grievance and in each of the awards in question. That, I held, would be a matter of argument at the next stage, with those awards before me.

On the question of why, if this is a matter of retained jurisdiction, it was coming before me as anew grievance, I decided tentatively, in the absence of any formal arbitral rulings between these parties on the point, that it would be unduly technical to refuse to exercise my retained jurisdiction on that basis, even though there is no mention in this Grievance of failure to abide an earlier award. I stated that although a simple letter to the arbitrator, copied to the other party, might have been more appropriate than filing a new grievance, there is no provision of which I was aware in this Collective Agreement specifically establishing a process for bringing a matter of retained jurisdiction back before an arbitrator.

I asked whether, after considering this matter together with the awards in which the Union says I retained jurisdiction to deal with the issues here, I were to decide that this was not "[t]he true exercise of retained jurisdiction" I would be disqualified from disposing of the issues here.? The Employer put before me the December 19, 1997 award of Arbitrator Kevin Burkett between these parties in *CUPW National*, CUPW No. N00-95-00019, in which he held that to be the effect of the revelation to him of the outcome of a regular award on the same issue before him in the formal process.

I held that would not be the effect here, unless in the regular awards which the Union was to put before me when this hearing was reconvened, as it now had been, it turned out that I had I ruled on the issue here. But I stated that I did not understand that to be the case. Indeed, I understood the Union's whole point to be that I was seized of issue or issues here but did not deal with them, leaving them to be dealt with, if necessary, as part of my retained jurisdiction.

In my Preliminary Award dated July 30, 2001 I ruled that The **Second Preliminary Objection** was that this Grievance, put before me at the hearing of June 11, 2001. was not untimely. I concluded that the Employer had waived any right it had to raise this preliminary objection. because the Employer dealt with the Grievance on its merits and had not otherwise indicated that it was making this objection until the eve of that hearing.

The Merits. As I stated in the introduction to both this award and my preliminary award, the Union grievance dated April 26, 2000 alleges the Employer violated the Collective Agreement by not providing the results of the five day count taken September 22-28, 1999 to Local representatives or

Union observers to allow the Union to verify loading and unloading times of vehicles. In the Grievance the Union seeks an order that the Employer provide the results of the five day count taken September 22-28, 1999 to the Union and make appropriate adjustments to time values for the work functions affected. Unfortunately, this alleged failure to provide results to the Union in the context of the Saint John restructure occurred two years prior to the hearing that has led to this award. At that hearing, therefore, the Union changed its remedial request and asked that I order the Employer to conduct another five day count of the loading and unloading of vehicle times no later than one month after this award, producing times that are accurate, complete and verifiable. The Union dropped the monetary award aspects of it original Grievance, but requested that I remain seized in case the parties are unable to work out the details of the implementation of any such order I decide to make.

At the hearing Peter Lystiuk, the Employer's Superintendent of Route Measurement, described the timing process with respect to item 12 on the O75's "Trans. Allowance: Obtain Load and Unload, Dispose of Vehicle". Kevin Murphy, who had been a Union Observer on the restructure, testified that he found Mr. Lystiuk's description "fairly complete". He fleshed out but did not contradict that description. He noted that the return of rolling stock to the corral was to be timed. Mr. Lystiuk agreed that if that was part of the normal process it would be timed.

Mr. Lystiuk stated that vehicles other than step vans are timed from a central location in the driveway, which, because they may be further or closer, captures the average. Step vans are timed to move to the loading dock and from the time they leave the door.

The specific issues raised by the Grievance are: [i]"time values for 2nd, 3rd, 4th additional loads, [ii] time values to obtain keys, [iii] time values to obtain additional rolling stock and [iv]waiting time for additional loads to arrive."

With respect to [i], the evidence was that if a vehicle, which happens to be one of the 20% measured, is normally loaded using, for example, a binnie, and on a day of measurement that vehicle needs two or more loads the loads needed will be measured. With respect to [iii], if rolling stock is not readily available time to locate it is not part of loading time and will not be measured. I recognize that if there is always a shortage, and therefore always delay, the measured time may not reflect the reality of how long the job takes. However, I accept Mr. Lystiuk's point that that is not a measurement issue. If management is not providing adequate equipment to do the job in accordance with the measured time that is a management issue and a different grievance.

With respect to [iv], if a walk required a second load the loading time for that would be timed. The time would, quite appropriately in my view, not include time waiting for unmanned vehicles to clear the loading dock, when the drivers should have been there. That problem appears to have arisen in the course of the September 1999 measurement of loading times.
I do not understand there to be any dispute that time must be allowed for [ii] the obtaining of keys. The evidence is that the organization of the workplace has changed in that respect so that the times may have changed, but where obtaining keys takes any extra time it is to be included.

Conclusion and Order. I do not know whether the Employer has already re-timed the loading and unloading of vehicles as discussed at the hearing in

this matter. If not, I hereby order I order the Employer to conduct another five day count for the purposes of column 12 on the O75's "Trans. Allowance: Obtain Load and Unload, Dispose of Vehicle", with the above considerations being applied, no later than one month after this Award, producing times that are accurate, complete and verifiable, and with the Union involved in accordance with the Collective Agreement and normal practice in Saint John. I will remain seized of this matter to deal with any issues arising from the interpretation or application of this Award.

Innis Christie
Arbitrator