4-29-2002

MWF, Local 1 v Halifax Shipyard

Innis Christie

2002-036

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IN THE MATTER OF AN ARBITRATION BETWEEN:

MARINE WORKERS FEDERATION, LOCAL No. 1

CAW CANADA

(The Union)

and

HALIFAX SHIPYARD, A DIVISION OF IRVING SHIPBUILDING INC.

(The Employer)

RE: Reimbursement for bridge tolls and automobile usage,
Policy Grievance 1-01-55B and similar individual grievances.

Local 1 and individual rig employees who have filed grievances

(the Grievors)

BEFORE: Innis Christie, Arbitrator

HEARING DATE: March 28, 2002

AT: Halifax, N.S.

FOR THE UNION: Les Holloway, CAW National Representative
Stephen Southall, Business Agent

FOR THE EMPLOYER: Karin McCaskill, counsel
David Thompson, Manager Employee Relations
Kevin Hudson, General Manager

DATE OF AWARD: April 29, 2002

Union policy grievance dated November 6, 2001and similar individual grievances alleging breach of Articles 1.03, 14.07(3), (4) and (7), and 25.02 of the Collective Agreement between the Employer and the Union dated as of January 1, 2001, which the parties agreed is the relevant Collective Agreement, in that the Employer did not compensate employees working on the rig "Eirik Raud" on the Dartmouth side of Halifax Harbour for automobile usage or reimburse the cost of bridge tolls. The Union requested "full restitution to all affected Local 1 employees".

At the outset of the hearing in this matter the parties agreed that I am properly seized of this matter, that I should remain seized after the issue of this Award to deal with all issues relating to remedy, arising from the policy grievance and the related individual grievances, and other any matters arising from the application of this Award, and that all time limits, either pre- or post-hearing, are waived.

AWARD

This Union Policy Grievance is said by the Union to affect six to seven hundred employees working for the Employer on the Eirik Raud oil rig on the Dartmouth side of Halifax Harbour. The Union claims that those employees are entitled to compensation for automobile usage and reimbursement for bridge tolls if they in fact have to pay tolls. The Employer claims that it is not obliged to compensate for automobile usage or reimburse for bridge tolls unless employees are on a day to day assignment "outside the vicinity of the Halifax plant".

Mr. Holloway, for the Union, and Ms. McCaskill, for the Employer, agreed that I am seized not only of the Policy Grievance but also of all the individual grievances that have been filed which raise the same issues. They agreed to proceed on the

basis that in the first hearing I would hear evidence general to all grievances and argument with regard to the correct interpretation of the relevant provisions of the Collective Agreement and then render this Award. I will not deal with remedies here. Following the release of this Award, at the request of either of the parties I will reconvene to hear evidence and argument on the remedies, if any, to be ordered with regard to both the Policy Grievance and individual grievances.

The most relevant provision of the Collective Agreement is Article 14.07, particularly paragraphs (4) and (7):

> 14.07 (1) Employees required to work outside the plant site, but within the Halifax/Dartmouth area, will arrange their own meals and transportation to the work site, and be prepared to commence work at the regular assigned starting time. Such employees will not be transported back to the plant site for lunch.
>
> (2) These men shall be notified the previous day that they will be employed outside the plant and instructed to make their own lunch provisions. Every reasonable effort will be made to provide warm, dry accommodation for the lunch period. Company to enquire if accommodation is available on the job site.
>
> (3) In assigning employees to jobs outside the vicinity of the Halifax plant, consideration will be given to the transportation problems that may be encountered by employees who are assigned to work outside the plant.
>
> (4) The employees shall be compensated for automobile usage at the rate of .26 per kilometre; kilometres are to be calculated from Plant to job site and return.
>
> (5) All parking, will be arranged and paid, if a fee applies, by the Company.
>
> (6) Arrangements will be made, by the company for facilities for lunches, personal needs and workshops, where such amenities are not otherwise provided at the work site.
>
> (7) Where the employee's personal automobile is used, bridge tolls will be reimbursed.

(8) Should the employee not have been notified the previous day and has not brought his lunch, he shall be given an opportunity to purchase a sandwich or cold meal prior to leaving the yard.

The Facts. The Eirik Raud is a very large oil drilling rig on which the Employer has a contract to do mechanical completion work. Because it is too high to pass under the bridges between Halifax and Dartmouth, it is moored at Woodside, beside the Dartmouth Ferry Terminal. The first site preparation work started in July of 2001 and the rig arrived in late July. The workforce has grown to more than 700. Of those, 70% are "new hires" to work on the Eirik Raud. Of the other 30% about half volunteered to move from the ship yard to the rig and half were assigned. Many had been on long lay-offs before they were called back to work on the rig. The workforce at the Halifax ship yard itself has in fact grown somewhat as the workforce on the rig has grown. There are employees working on the rig who, by virtue of their skills and seniority, could be working in the Halifax ship yard if they chose to.

By way of example, two of the individual Grievors, Steve Nash and Darrell Reid, were working at the Halifax ship yard before they volunteered to go to work on the rig. Both testified to the fact that for the period during which they have worked on the Eirik Raud they have gone to work each morning directly from their homes in Harrietsfield and Spryfield to the rig and returned directly home after work, without going to the ship yard on the Halifax side of the Harbour at all. Both travel alone in their own vehicles and cross one or other of the Halifax-Dartmouth bridges on the most direct route from home to the rig and back.

Steve Nash, who looks after the lunchroom facilities, was assigned to the rig from a similar job in the ship yard. He knows that until told otherwise he reports for work

directly to the rig. Darrel Reid, a general labourer, was recalled from layoff when work on the rig started and since then has only ever reported for work at the rig. He understands that if manpower was required in the ship yard and he had enough seniority he could apply to move there but he has never tried to do that.

Maurice Hatch, Vice-president of the Union Local, is a steelworker and sheet metal worker. He works at the ship yard but travels back and forth to the rig on Union business every week or so. Prior to his election in January of 2002 he was a Shop Steward for the steel yard for most of the previous eight to ten years, and for most of that time he was Chief Shop Steward. Either directly or through weekly meetings of the shop stewards he is familiar with issues that have arisen under the Collective Agreement.

Mr. Hatch testified that in 1991 he worked for the predecessor Employer on the oil rig Rowan Gorilla Three at Woodside. He volunteered for that assignment in response to a notice posted from July 12-19 that summer. The relevant passage in that "NOTICE", which is in evidence is:

> ... The rig will be docked at the Mobil Wharf next to Woodside Fabricators in Dartmouth. Those selected will be required to report for said work at the Mobil Wharf. Employees will be required to provide their own transportation, however bridge tolls and mileage will be reimbursed as per Article 16:13(c)(1-5) of the Collective Agreement. ...

Mr. Hatch testified that he was paid mileage to the job and reimbursed for bridge tolls while he worked on the Rowan Gorilla Three.

Paragraphs (2)-(5) of Article 16:13 of the 1989-92 Collective Agreement, in effect when Mr. Hatch worked on the Rowan Gorilla Three, are in precisely the same

words as paragraphs (4)-(7) of Article 14.07 of the Collective Agreement before me here, except for the mileage rate. However, the remainder of what was then Article 16:13 was worded somewhat differently from Article 14.07. Paragraph 16:13(a) stated:

> (a) For job of two (2) weeks or less in duration, any men working outside the vicinity of the Halifax Plant will be transported to and from the job on Company time at the start and finish of the shift in a vessel or suitable enclosed vehicle. These men will be notified the previous day that they will be employed outside the Plant and instructed to make their own lunch provisions. Every effort will be made to provide warm, dry accommodation for lunch period. Company to inquire if space is available on the job site.

The first sentence of this provision does not appear in the current Collective Agreement, and the second sentence now stands alone as paragraph (2) of Article 14.07.

The wording of what was paragraph 16:13(b), stating that "in assigning jobs outside the vicinity of the Halifax plant, consideration will be given to the transportation problems that may be encountered" now appears as paragraph (3) of Article 14.07 and what were the general words of paragraph 16:13(c) now appear as paragraph (1) of Article 14.07. However, immediately following the general words of paragraph 16:13(c) was a numbered paragraph 16:13(c)(1) that no longer appears in the Collective Agreement, "(1) This is to pertain to jobs of more than two (2) weeks duration." There is now no such limitation. Paragraph 16:13(d) then provided;

> Notwithstanding the foregoing, the parties may agree to implement different terms and conditions to those outlined above for jobs of two (2) weeks or less duration.

There was no equivalent of the current paragraph (8) of Article 14.07 in the 1989-92 Collective Agreement.

There was no evidence on the negotiation of the present wording of Article 14.07. In the 1997-2000 agreement between the predecessors to the parties the wording was as it is now, so all I can say is that in the interval between 1992 and 1997 the wording of Article 16:13 in the 1989-92 Collective Agreement was changed to the present Article 14.07.

Mr. Hatch testified that parking in various lots close to the Woodside work site of the Eirik Raud is arranged and paid for by the Employer, unless the employees chose to park at the Ferry Terminal, in which case they themselves pay. Pictures of these parking places were introduced in evidence. In cross-examination, David Thompson, the Employer's Manager Employee Relations, agreed that the Employer pays for employee parking in the Moirs parking lot and employees are not charged for parking there or at the yard. However, Mr. Thompson expressed the view that the Employer is not obliged to provide parking at the yard or elsewhere, although it does, as a matter of employee relations.

Beginning on December 21, 2000 for sixteen days some employees worked off site at Pier 21 for three shifts a day on the "Irving Primrose". That was an emergency job arising from a collision. Mr. Hatch testified that most of those employees came to the Halifax ship yard each morning and were then transported to the work site. Some volunteered to take their own cars directly to the work site. They were not paid mileage. Mr. Hatch testified that similar arrangements have been made three or four times in past couple of years for jobs lasting "a day or two". However, when pressed in cross-examination he said he did not think the length of the job

mattered. That practice had occurred mostly before the last round of collective bargaining, he testified, and sometimes under the current Collective Agreement.

The difference between that practice and the arrangements for those working on the Eirik Raud, Mr. Hatch testified, was that employees working on the Eirik Raud could not make the choice of being transported from the Halifax ship yard. They were required to provide their own transportation.

Stephen Southall, the Union's Business Agent, also testified that if the Employer is providing transportation to the work site it gives permission for employees to use their own vehicles, but does not pay for automobile usage or bridge tolls. Otherwise, Mr. Southall testified, the Employer has paid in accordance with paragraphs (4) and (7) of Article 14.07. The only example either way Mr. Southall could think of was the work on the "Irving Primrose" at Pier 21. No grievances were filed over the non-payment for automobile usage or bridge tolls in that instance.

David Thompson, the Employer's Manager Employee Relations, testified that when the Employer was planning for the Eirik Raud project it did not take into account the cost of paying employees working on the rig for automobile usage under paragraph (4) of Article 14.07 or of reimbursing for bridge tolls under paragraph (7), because it had not done so on other jobs outside the Halifax ship yard. He testified about the work on the "Irving Primrose", which began in December 21, 2000, and also about work on the "Kent Sprint" in May of 2000. Both were on the Halifax side of the harbour but "downtown", not at the ship yard site. In neither case, according to the Employer's records, were any payments made to compensate for automobile usage or to reimburse for bridge tolls.

Mr. Thompson was not involved in staffing for the work on the "Kent Sprint" but he arranged for the staffing of the "Irving Primrose" job. It ran three shifts a day over the Christmas period and had to be staffed by volunteers on over-time, many of whom were called in from lay-off. Mr. Thompson testified that he was the person who had told many of the employees that they were assigned to the "Primrose", and that he had told them to report for work directly to the dock where the ship was moored. He directly contradicted Mr. Southall's and Mr. Hatch's testimony that many of the employees were transported by the Employer by van from the ship yard to Pier 21. The Employer, Mr. Thompson said, has no vehicle or other means of providing such transportation. In cross-examination Mr. Thompson acknowledged that it was possible, for instance, that a foreman had transported an employee or employees from the ship yard to Pier 21. He did not remember transportation as an issue.

I note that Maurice Hatch was on the Union's bargaining team for the negotiation of the current Collective Agreement signed January 19, 2001 and dated January 1, 2001. He testified that there had been no discussion of Article 14.07 during those negotiations, although the work on the Irving Primrose over the Christmas period of 2000 would have been ongoing during the final stages of those negotiations.

Mr. Thompson testified that he had discussed with the officers of the Union any possible problems that might arise in the context of the work on the Eirik Raud and that there had been one formal meeting on the subject, on July 16, 2001. He put in evidence the agenda he prepared for that meeting. The only item relevant to Article 14.07 of the Collective Agreement is, "11. Parking – Will be provided in reasonable proximity to the site."

Mr. Thompson also entered into evidence his hand written notes of that meeting. They do not indicate, and he does not recall, who raised the question of reimbursement for travel. However, under the heading "Travel" the following appears:

> K.H. [Kevin Hudson, General Manager of the Halifax Shipyards, to whom Mr. Thompson reports] → No K^{md} [payment for kilometres] or bridge tolls.
> → The Co. agreed on the Reg. 21 [2001] contract.
> We could have gone with other contract. [the "offshore agreement"]
> K.H. – e.g. Pier 21 - No KM^s charged.
>
> SS [Steven Southall, Business Agent] → L. Holloway [Les Holloway, CAW National Representative] & AAM [Andrew MacArthur, Vice President of Irving Shipbuilding Inc., owner of the Employer] talking about this.

Mr. Thompson testified that the discussion of travel concluded with Steve Southall saying "leave it to Les Holloway and Andrew MacArthur". In cross-examination when Mr. Holloway suggested to Mr. Thompson that no such meeting had taken place, Mr. Thomson replied that he understood from his superiors that Mr. MacArthur had taken the position that there would be "no payment of that type." He did not suggest that there had been any agreement on the issue with the Union.

Mr. Thompson testified that his understanding is that Article 14.07, specifically sub-articles (4) and (7), applies when an employee is sent away from the established work site part way through a shift. He stated "It applies and we do pay it when an employee reports to the assigned work site and is then told to report elsewhere, typically for part of a shift". It could only apply after the first day of such an outside assignment if the employee was "repeatedly assigned away" and not once the assignment became permanent. That, he said, is the basis upon which

employees working on the Eirik Raud have been paid, or should have been, if such has not been the case in any instance.

Mr. Thompson testified that under Article 4.01, "Management Rights", the Employer has the right to assign employees to the work site where they are needed, regardless of seniority, although it tries to respect their wishes. In his understanding the application of Article 14.07 has nothing to do with whether an employee working "outside the plant site" or "outside the vicinity of the Halifax plant" is a volunteer.

The Issues. The Union claims that on the plain wording of Article 14.07 employees assigned to the Eirik Raud are entitled to compensation for automobile usage and reimbursement of bridge tolls if they in fact have to use tolls. The Employer claims that it is not obliged to pay compensation for automobile usage and reimbursement of bridge tolls unless employees are on a day to day assignment "outside the vicinity of the Halifax plant".

The Employer relies on the fact that employees who reported directly to Pier 21 for work on the Irving Primrose over the Christmas period in 2000 were not compensated for automobile usage, nor were those who reported directly for work on the "Kent Sprint" in May of 2000. However, the Union as well claims that past practice, on the Rowan Gorilla Three in 1991, favours its position, although the language of the Collective Agreement has changed somewhat. It relies on the fact that in the discussions of July 2001 the Union did not agree with the Employer's position, and the issue was left undetermined.

Decision. I have decided that, on the plain words of Article 14.07(4) and (7), I must allow this Grievance. I agree with the Union that entitlement to compensation for automobile usage under paragraph (4) and to be reimbursed for bridge tolls under paragraph (7) is not limited to employees on a day to day assignment "outside the vicinity of the Halifax plant". It applies to all employees who are, in the words of paragraph (1), "required to work outside the plant site but within the Halifax/Dartmouth area." Paragraph (4) of Article 14.07 is compensation for "usage" and paragraph (7) calls for bridge tolls to be "reimbursed", "where the employee's personal automobile is used".

Entitlement under Article 14.07 has nothing to do with whether employees have volunteered for the assignment "outside the plant". Nor does it have anything to do with whether they were actually working at the Halifax ship yard prior to being told to report to the Eirik Raud work site on the Dartmouth side of the harbour, or were newly hired or recalled from lay-off for that purpose.

Standing alone, paragraph (1) of Article 14.07, quoted in full at the outset of this Award, could not be clearer in the generality of its application to "employees required to work outside the plant site, but within the Halifax/Dartmouth area." There is nothing in these words to suggest that "employees" means anything other that "all employees" who meet what I will call the "geographic condition" of entitlement, that of being required to work outside the plant site, but within the Halifax/Dartmouth area. The natural reading of the other paragraphs of Article 14.07is that they too apply to all employees who meet the geographic condition" of being required to work outside the plant site, but within the Halifax/Dartmouth area.

Paragraph (3) states that it applies "In assigning employees to jobs outside the vicinity of the Halifax plant", and paragraphs (2) and (4)-(8) state no geographic condition, but there is no sensible reading other than that each of those paragraphs applies to the employees to whom paragraph (1) applies. This is the plain meaning of Article 14.07. It is only strengthened by an essentially unnecessary detour into the wording of the Collective Agreement as it was when Mr. Hatch worked on the Rowan Gorilla Three and was compensated for automobile usage and reimbursed his bridge tolls under the 1989-92 Collective Agreement.

The arrangement in the 1989-92 Collective Agreement of the various parts of what was then Article 16:13 makes it quite understandable why paragraph (3) of what is now Article 14.07 states its own version of the geographic condition of its application, while the other paragraphs of Article 14.07, other than paragraph (1), do not.

In the then Article 16:13, "For jobs of two (2) weeks or less in duration" the first sentence of paragraph (a) required the Employer to provide transportation "on Company time" to and from the job for "any men working outside the vicinity of the Halifax Plant." When that sentence was dropped in negotiations some time between 1992 and 1997, so was the version of the geographic condition it contained. The rest of paragraph (a) was in the same wording that now appears in paragraph (2) of Article 14.07.

In what is now paragraph (1) of Article 14:07 the parties have retained the version of the geographic condition that appeared in the then paragraph (c) of Article 16:13. Article 16:13(c) provided for quite different arrangements from those provided for by what was then paragraph (a). "Employees required to work outside

the plant site, but within the Halifax/Dartmouth area" were required to "arrange their own meals and transportation to the work site and be prepared to commence work at the regular starting time". But by sub-paragraph (1) "This [only] ...pertained to jobs of more than two (2) weeks in duration".

It is important to note that the distinction between those entitled to transportation under paragraph (a) of Article 16:13 and those who had to make their own arrangements under paragraph (c), but benefited by its numbered sub-paragraphs, was one of job duration, not where the work was done; not, in other words, the geographic condition.

In paragraph (3) of Article 14:07 the parties have simply retained the version of the geographic condition that appeared in Article 16:13(b).

Thus, in the 1989-92 Collective Agreement, the first three parts of the provision for arrangements for those working outside the Halifax ship yard each stated its own version of the geographic condition for the application of Article 16:13. Although to say the same thing three different ways was not good legal drafting, the three statements of the geographic condition were all clearly intended to, and did, mean the same thing, because each complemented the other. The numbered sub-paragraphs of paragraph 16:13(c) then only applied to jobs of more than two weeks in duration.

Sub-paragraphs (2)-(5) of the numbered sub-paragraphs of paragraph 16:13(c) are now paragraphs (4)-(7) of Article 14.07 in the current Collective Agreement. Now, of course, the Collective Agreement now says nothing whatever about whether a job lasts two weeks or more.

For the Employer, Ms. McCaskill quoted the award of D.C. McPhillips in *Re Simon Fraser Health Region and B.C. Nurses Union* (2000) 94 L.A.C. (4th) 115 at p. 122 where, in discussing the onus in interpretation disputes the arbitrator stated that "where the issue is a monetary benefit, it is expected that there will be clear language conferring such a benefit". At p. 127 the arbitrator adds "Common sense must prevail as one can imagine some very minor claims being made".

I agree, of course, that any obligation of the Employer must arise from the language of the Collective Agreement, and must say that I find that the language here clearer than it often is where there is a disputed interpretation. As the Nova Scotia Court of Appeal has said, for example in *Maritime Telegraph and Telephone Company, Limited* and *Atlantic Communication and Technical Workers' Union* and *Milton J. Vienot* (C.A. No. 102043, November 15, 1994, at p.16), an arbitrator's "primary jurisdiction is to interpret the collective agreement to answer the questions before him" or her. Brown and Beatty state in *Canadian Labour Arbitration* (3rd. Ed., looseleaf), in *para.* 42000;

> It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it. ... in determining the intention of the parties [however] the cardinal presumption is that the parties are assumed to have intended what they said, and the meaning of the collective agreement is to be sought in its express provisions.

An earlier award of mine, *Board of School Trustees, School District No. 70 (Alberni)* 1981, 29 L.A.C.(2d) 129, is one of those cited in support of this fundamental proposition. This, I still think, is a more insightful way of saying what Arbitrator McPhillips has said in the passage quoted, whether the issue is a

monetary benefit or any other entitlement of either party. But as the learned authors go on to state;

> When faced with a choice between two linguistically permissible interpretations, however, arbitrators have been guided by the reasonableness of each possible interpretation [citing, among others, the awards of Arbitrator Bruce Archibald in *City of Halifax* (1993), 36 L.A.C. 4th 364 and Arbitrator Bruce Outhouse in *F.A. Tucker (Atlantic) Ltd.* (1985) 20 L.A.C. (3d) 33], administrative feasibility and which interpretation would give rise to anomalies.
>
> ...
>
> In searching for the parties' intention with respect to a particular provision in the collective agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless the context reveals that the words were used in some other sense. [Citing again, among others, Arbitrator Outhouse's award in *F.A. Tucker (Atlantic) Ltd.* (supra)]

Counsel for the Employer submitted that paragraphs (4) and (7) of Article 14.07 of this Collective Agreement could not have been intended by the parties to apply to the facts before me because they use terms that show they contemplated the application of Article 14.07 only to employees who had worked in the plant, that is at the Halifax ship yard site, the day previous to the day for which they can claim entitlement to compensation for automobile usage and reimbursement of bridge tolls. Paragraph (1) provides that the employees to whom it applies will not be transported back to the plant for lunch. Paragraph (2) is then provides that they must notified the previous day so they can make their own arrangements for lunch the next day. Paragraph (8) then addresses the situation where such notice has not been given. Implicit in these three paragraphs, Counsel submitted, is the assumption that the employees to whom they apply have started work the previous day at the Halifax ship yard.

I do not find the Employer submissions based on the provisions about lunch convincing. Clearly Article 14.07 cannot apply only to employees who start the shift in question at the Halifax ship yard. That would make nonsense of the requirement that they arrange their own transportation "and be prepared to start work at the regular assigned starting time." Can it apply only to employees who are assigned to work outside that plant site for one day but not for two or more? This almost absurd conclusion can only be reached by saying that the requirement in paragraph (2) of Article 14.07 that "these men will be notified the previous day" implies that notification can only be given at the plant site and not elsewhere, including not at the assigned place of work outside the plant site. I cannot imagine that a reasonable employer would so constrain itself. From there it is a short and very reasonable step to say that these lunch provisions are perfectly compatible with an arrangement under which an employee who is assigned to work outside the plant site for any period, or indefinitely, knows that he or she must make lunch arrangements until told otherwise. On the face of this wording, I cannot imagine that the parties would have intended otherwise.

There is no evidence whatever to suggest that, by eliminating all mention of whether or not jobs were of two weeks duration, the parties agreed to move a situation in which the Employer is neither obliged to provide for transportation to and from the Halifax ship yard nor to provide any of the benefits formerly associated with outside assignments of more than two weeks, except where an employee is assigned from the ship yard on a daily basis.

Counsel for the Employer suggested that the fact that paragraph (4) of Article 14.07 bases compensation for automobile usage on kilometres "from Plant to job site and return" suggests that it is intended to apply only to employees who report first to

the Halifax ship yard and are then assigned elsewhere. I cannot read any such implication into Article 14.07. Again, clearly Article 14.07 cannot apply only to employees who start the shift in question at the Halifax ship yard. That would make nonsense of the requirement that they arrange their own transportation to the outside work site "and be prepared to start work at the regular assigned starting time." The basis of the compensation for automobile usage may be somewhat idiosyncratic but it is undoubtedly a matter of compromise in negotiations related to the predecessor Employer's obligation to provide transportation from the Halifax ship yard to any outside work site in the vicinity.

The fact that Article 14.04 makes a perfectly sensible arrangement for reimbursing the cost of transportation to employees "going to jobs outside the Halifax and Dartmouth metro area" does not seem to me to assist the Employer's case here.

With respect to past practice, I do not find the experience on the Rowan Gorilla Three to which Maurice Hatch testified very helpful. It may well account for Union expectations here but it is not recent and the Collective Agreement has changed as the result of negotiations of which I have no evidence.

The experiences with the Irving Primrose or the Kent Sprint are more recent. I find that, with the possible exception of a few employees who may have been given transportation by a foreman, the Employer did not provide transportation to work on the Irving Primrose in December of 2000. Mr. Hatch and Mr. Southall testified otherwise but I am not satisfied that they were as directly involved as Mr. Thompson was, nor did they testify on the basis of any records kept at the time. I must conclude, therefore, that whatever Mr. Hatch and Mr. Southall now think was the practice on that job and notwithstanding exceptional cases that may have come

to their attention, the Employer did not, in general, provide transportation to the Irving Primrose job and did not compensate for automobile usage in accordance with paragraph (4) of Article 14.07.

However, the fact that the Employer did not compensate under paragraphs (4) and (7) of Article 14.07 for the work done on the Irving Primrose or the Kent Sprint, and that there were no grievances filed, does not affect my interpretation of the relevant provisions of the Collective Agreement. Quite simply, the provisions of Article 14.07, particularly paragraphs (4) and (7), are clear and unambiguous. Even if these two occasions upon which employees were assigned to work outside the ship yard could be said to demonstrate a past practice, which I do not find they do, that is not a basis upon which to deny clear entitlements under the Collective Agreement. I note that counsel for the Employer, quite appropriately in my opinion, did not suggest that the facts in evidence estopped the Union from pressing the Grievances before me here. The requisites of that doctrine were clearly not fulfilled.

With respect to whether the evidence here did in fact establish a past practice, I refer to *Ocean Construction Supplies Ltd. v. Teamsters Union Local 213* (Canada Law Book, December 19, 1990) (McPhillips, chair) to which I was referred by counsel for the Employer on another point. There, at p. 9, the Arbitration Board rejected evidence of the Union as establishing a past practice because it did not meet the "fairly rigid standards" set out in *John Bertram and Sons Co. Ltd.* (1967) 18 L.A.C. 362 (Weiler), at pp. 367-68. I will not repeat that passage here nor do I need to determine whether two incidents as recent as the work on the Kent Sprint and the Irving Primrose did in fact constitute a past practice. As I have already said, even if they did, the Collective Agreement language before me is not ambiguous

such that these past non-payments by the Employer could lead me to interpret the Collective Agreement in its favour.

I am aware that a past practice may be considered to reveal a latent ambiguity in words which appear unambiguous on their face, as these do. However, considering the evidence of circumstances of the work on the Irving Primrose does not suggest to me any other possible mutually intended meaning for the words of paragraphs (4) and (7) of Article 14.07 than those I have already considered.

Counsel for the Employer stressed that fact that 70% of the employees on the Eirik Raud have never worked at the Halifax ship yard. "Why then", she asked, "does it make any sense to suggest" that they should be paid compensation for automobile usage and reimbursement of bridge tolls to the only regular place of work they have ever had. "Does it make sense that employees who live on the Dartmouth side of the bridge should be paid under paragraph (4) of Article 14.07 when they have a shorter trip to work than they would if they went to work at the Halifax ship yard?"

In this context counsel referred me to p. 8 of *Ocean Construction Supplies Ltd. v. Teamsters Union Local 213* , cited above, where chairman D.A. McPhillips, for the majority of the arbitration board, addressed a concern that the interpretation sought by the Union of the quite different collective agreement provision before him there, could result in payment of a travel "penalty", "where an employee is assigned to a depot closer to home". He stated;

> Although it is certainly within the right of the parties to negotiate a penalty provision which is unrelated to the actual inconvenience, the board itself is reluctant to arrive at such a conclusion implicitly.

I do not disagree with either part of this sentence, or with Arbitrator McPhillips' appeal to common sense in *Re Simon Fraser Health Region and B.C. Nurses Union* (2000) 94 L.A.C. (4th) 115 at p.127, quoted above. However, I have not arrived at my conclusion that employees assigned to the Eirik Raud are entitled to compensation for automobile usage and reimbursement of bridge tolls "implicitly". Their entitlement is explicit, in paragraphs (4) and (7) of Article 14.07of the Collective Agreement. The short answer to both of counsel's questions in the preceding paragraph is, of course, that that is what the parties negotiated. The Union might have sought the full cost of travel for employees required to bring their own vehicles to work and the Employer might have wished to pay nothing. All the Collective Agreement reveals is what they settled on. Whether it conforms with common sense is only relevant if their language leaves room for doubt about what the parties intended. Here the language is clear.

In reaching my conclusion that the Employer is required by paragraphs (4) and (7) of Article 14.07the Collective Agreement to compensate for automobile usage and to reimburse bridge tolls for employees assigned to the Eirik Raud site on the Dartmouth side of the harbour I have attached no significance to the fact that the Employer provides parking at that site. I agree with the Union that this is in apparent compliance with of the Collective Agreement, and it might seem surprising that the Employer is providing parking if it is of the view that it is not required to do so, but I accept Mr. Thompson's testimony that this has been done as a matter of employee relations.

Conclusion. On the plain words of Article 14.07(4) and (7), I allow this Grievance. I agree with the Union that entitlement to compensation for automobile usage under paragraph (4) and to be reimbursed for bridge tolls under paragraph (7) applies to

all employees who are, in the words of paragraph (1), "required to work outside the plant site but within the Halifax/Dartmouth area." That includes employees assigned permanently or indefinitely to work on the Eirik Raud. Paragraph (4) of Article 14.07 is compensation for "usage" and paragraph (7) calls for bridge tolls to be "reimbursed", "where the employee's personal automobile is used".

Innis Christie
Arbitrator

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