

Schulich School of Law, Dalhousie University

## Schulich Law Scholars

---

Innis Christie Collection

---

2-6-2003

### Re Canada Post Corp and CUPW (078-00-00463)

Innis Christie

Follow this and additional works at: [https://digitalcommons.schulichlaw.dal.ca/innischristie\\_collection](https://digitalcommons.schulichlaw.dal.ca/innischristie_collection)



Part of the [Dispute Resolution and Arbitration Commons](#), and the [Labor and Employment Law Commons](#)

---

03 059 020

IN THE MATTER OF A REGULAR ARBITRATION:

BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS

(The Union)

and

CANADA POST CORPORATION

(The Employer)

RE: *Moncton Local*

CUPW No. 078-00-00463

BEFORE: Innis Christie, Arbitrator

HEARING DATE: February 6, 2003

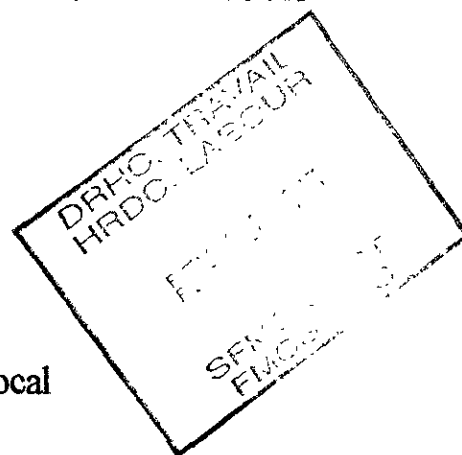
AT: Moncton, N.B.

FOR THE UNION: Doug Smith, Grievance Officer  
Clarence LeBlanc, President Moncton Local  
Jeannette Baiani, Grievor

FOR THE EMPLOYER: Joe Doucette, Labour Relations Officer Atlantic  
Scott Ferguson, Superintendent Collection and Delivery,  
Moncton

DATE OF AWARD: February 6, 2003

DATE OF WRITTEN CONFIRMATION OF AWARD: February 8, 2003



Union grievance, submitted in June 2002 on behalf of all affected employees alleging breach of the Collective Agreement between the parties bearing the expiry date January 31, 2003, in that the Employer violated Articles 13, 46 and 49, Appendix V and the MSCWSS in failing to convert Part-Time Route 23 to a full time route and staff the new route in accordance with the Collective Agreement. The Union sought an order that the Employer convert Part-Time Route 23 to a full-time route and grant full redress for all lost rights, earnings and benefits to any employees affected.

#### DATE OF WRITTEN CONFIRMATION OF AWARD

The issue is whether the Employer breached the Collective Agreement by failing to convert a part-time route to a full-time route and promote the senior part-time MSC to full-time. Ms. Jeanette Baiani was both the part-time route holder and, coincidentally, the senior part-timer in Moncton. The Employer acknowledged that from the end of June 2002 on the part-time route in question had exceeded the 360 minute maximum for a part-time route. However, the Employer took the position that the effect was not that the route automatically became a full-time route, as the Union claimed, but rather that the Employer was obliged to carry out a minor restructuring of the MSC routes and, by that process, bring Route 23 into conformity with the limits on part-time routes. For the Employer, Mr. Doucette acknowledged that the Employer had been "remiss" in not doing this.

This is not a grievance of failure to comply with Article 39.06:

### **39.06 Use of Part-time Employees**

The Corporation agrees that part-time employees are to be used only for the part-time operational requirements and that wherever practicable, such positions shall be combined in order to create full-time positions.

Nor, as Mr. Doucette pointed out for the Employer, does the Collective Agreement not contemplate the continued use of part-time MSCs:

### **49.03 Part-time Mail Service Couriers**

In accordance with established Corporation policy, part-time employees are to be used to meet continuing part-time requirements, e.g. late street letter box collection, late special deliveries, etc. A part-time employee in this context is defined as an employee working a minimum of 1/3 the hours of a full-time employee in the bargaining unit. The current practice of having weekend mail service courier functions performed by part-time employees will continue to apply.

Article 13.33 provides:

### **13.33 Restructuring**

Where a restructuring takes place in accordance with article 46 or 47, the provisions of those articles shall apply, whichever is applicable.

Article 13.34 then provides:

### **13.34 Conversion of a Part-Time Assignment**

Where a part-time assignment becomes a full-time assignment as a result of an extension of hours, a part-time employee becomes a full-time employee.

The concept of "minor restructuring" is found in Article 47.15:

#### **47.15 Minor Restructuring Exercise**

In the case of a minor restructuring exercise, the selection of routes may be made under the methods outlined in clause 47.16 or 47.17, as decided by the Union local, whose representatives shall inform the Corporation accordingly.

#### **47.16 First Method in Case of Minor Restructuring Exercise**

The routes affected are dealt with on an individual basis as follows:

Where fifty per cent (50%) or more of the calls are retained on a route, the present holder may retain it.

If he or she does not wish to do so, the route will be opened for bidding by letter carriers described in clause 47.12.

This bidding procedure shall also apply with respect to each route on which less than fifty per cent (50%) of the calls are retained and any additional route created as a result of the restructuring.

#### **47.17 Second Method in Case of Minor Restructuring Exercise**

The letter carriers assigned to routes which were reorganized will bid on these routes including any additional routes. Vacant routes, if any, will then be opened for bidding by the letter carriers described in clause 47.12.

Article 46 makes these provisions applicable to MSCs:

#### **46.01 Restructuring**

The provisions of article 47, adapted as may be necessary, shall apply to the restructuring of mail service courier and mail service courier (heavy vehicle) routes.

...

#### **46.04 Minor Restructuring**

The word "calls" found in clause 47.16 shall, for the mail service courier category, be replaced by the words "duties".

Appendix "V"(2) to the Collective Agreement provides in part:

**APPENDIX "V"(2)**

**DEFINITION OF LETTER CARRIER ROUTE MEASUREMENT SYSTEM**  
**AND**  
**MAIL SERVICE COURIER WORKLOAD STRUCTURING SYSTEM**

...

**Over-Assessed Routes:**

A full-time route which becomes assessed over four hundred and eighty (480) minutes or a part-time route assessed over three hundred and sixty (360) minutes.

Article 50.01(a) make it clear that the route measurement system applies to MSCs.

This limitation on the hours of a part-time Group 2 employee is reflected in the body of the Collective Agreement:

**14.02 Hours of Work - Part-time Employees**

...

(b) Except as provided in sub-paragraph 14.02(b)(i) [Christmas], the hours of work for a part-time employee in Group 2 shall not be more than thirty (30) hours per week, averaged over each twelve (12) week period, commencing with the signing date of this agreement.

Where a part-time employee is required to work more than six consecutive hours, Article 14.06 (a) requires that he or she be scheduled for a half hour meal break. Thus, as the parties agreed, when duties are added to an MSC route such that it goes over the 360 minute limit, it immediately goes over by another 30 minutes because of the lunch break.

Article 50.01(b) strongly supports the submission by Mr. Doucette for the Employer that Article 13.34 does not result in the *automatic* conversion of a part-time assignment to a full-time one, but rather contemplates the Employer acting on the

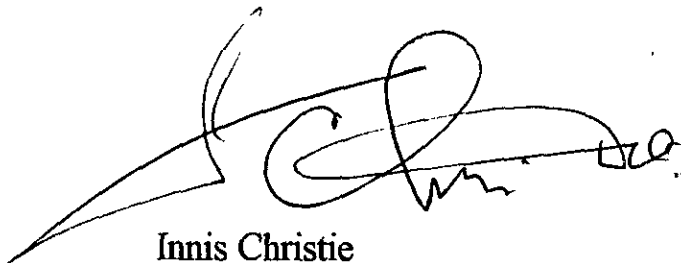
obligation to conduct a minor restructure, which, if it results in a new full time assignment, will mean that the senior part-time employee will become full-time, in accordance with Article 47.16, set out above. Article 50.01(b) provides:

(b) An employee who is able to demonstrate the workload is excessive may request a verification. If such verification shows an over-assessment, the employee will be paid in accordance with Appendix "V" or alternatively he or she may be provided with help for the over-assessment until adjustment can be made. Reasonable effort will be made to adjust a route which is over-assessed by fifteen (15) minutes or more within three (3) months. Where it is not possible to make such an adjustment, alternate accommodation may be made by local agreement.

There was no justification offered for the fact that no adjustment has been made in respect of Route 23 for over seven months. Indeed, no minor restructure exercise has even been planned.

In this context, I ordered that the Employer carry out a minor restructure exercise as soon as possible. I also ordered that Ms. Baiani be paid damages to compensate her for any losses she has suffered by not having been made a full-time MSC from the end of September (3 months after Route 23 went over 360 minutes) to the date when the minor restructure is put in place. If the result is to create a new full-time assignment she will get it by virtue of her seniority. If no new full-time assignment is created she will continue as a part-time MSC and will not be entitled to further damages from that point forward. Ms. Baiani is not to be penalized as a result of her uncertain status, caused by the Employer's delay. Insofar as the benefit she is entitled to from the end of September on involves increased payment into the pension plan, the Employer will pay her increased share for the period from the end of September to the date the minor restructure is put in place.

I remain seized of this matter. If the parties are unable to agree on the amount of compensation to which Ms. Baiani is entitled I will reconvene the hearing at the request of either of them to settle that issue.

A handwritten signature in black ink, appearing to read 'Innis Christie', with a long, sweeping horizontal stroke extending to the left.

Innis Christie  
Arbitrator

TP.