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8-17-2007

### Re Canada Post Corp and CUPW (Paris)

Innis Christie

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IN THE MATTER OF A FORMAL ARBITRATION:

BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS

(The Union)

and

CANADA POST CORPORATION

(The Employer)

RE: *Paris, S.* (The Grievor)

CUPW No. 096-03-01542

BEFORE: Innis Christie, Arbitrator

HEARING: July 19, 2007

AT: Halifax, N.S.

SCHEDULED HEARING DATES: August 20 and 24, 2007

FOR THE UNION: David Roberts, Counsel  
Doug Smith, Union Representative  
Lori Stacey, President, Nova Local

FOR THE EMPLOYER: Terry Roane, Counsel  
Andrew Taillon, Counsel  
Breagh Rathburn, Intern  
Jim Dunsworth, Plant Manager, Halifax Processing Plant  
Joanne Harrington, Labour Relations Officer

DATE OF CONSENT AWARD: August 17, 2007



Union grievance, submitted on August 18, 2006, on behalf of the Grievor alleging breach of the Collective Agreement between the parties bearing the expiry date January 31, 2007, in that the Employer violated Article 10 and all other related provisions by discharging the Grievor without just, reasonable or sufficient cause. The Union requested an order that the Grievor be fully reinstated and be compensated for all lost earnings and benefits and that all letters, reports and documents relating to the basis upon which he was discharged be removed from her personal file. The Union reserved the right to seek additional redress, including, but not limited to, damages and interest at the Bank of Canada rates.

At the outset of the hearing of this matter on February 1, 2007 the Parties agreed that I am properly seized of this matter and that I should remain seized after the issue of any Award in this matter to deal with any issues arising directly from its application. By my mediated Award of February 3, 2007, the Grievor was reinstated on conditions. In the context of my retained jurisdiction a hearing was held on July 19, 2007, after Ms. Paris had been again discharged from Canada Post on June 13, 2007 for a positive drug test. At the end of that day this matter was adjourned for further hearing on August 20 and 24, 2007. On August 15 I was advised that the parties had agreed that I issue this Consent Award.

## AWARD

### WHEREAS:

1. The Grievor has twice been released under article 10.10 of the parties' Collective Agreement and was continued in the employ of Canada Post on attendance related terms and conditions (copies attached as Appendix "A" and "B").

2. The Grievor was discharged by letter dated August 14, 2006 after what Canada Post considered to be an extended absence without leave and was reinstated upon disclosure of a drug related disability by a mediated Award issued by Arbitrator Christie on February 3, 2007 (copies of the 2006 letter of discharge and the Arbitration Award are attached as Appendix "C" and Appendix "D").
3. The matter was returned to Arbitrator Christie pursuant to his reservation of jurisdiction at paragraph 8 of his February 3, 2007 Award when Ms. Paris was again discharged from Canada Post on June 13, 2007 for a positive drug test.
4. The parties have agreed to the following arrangements, and further agree that these arrangements represent a last chance for Ms. Paris to demonstrate her suitability for employment at Canada Post, and that any accommodation beyond that described here would put Canada Post beyond the point of 'undue hardship'.

**THEREFORE:**

1. The Arbitration Hearing scheduled to continue on Monday, August 20, 2007 and Friday, August 24, 2007 will be adjourned to allow Ms. Paris to engage in a treatment program. This treatment program shall:
  - (a) be designed and monitored by Dr. Genevieve Campbell, M.D., of the Woodlawn Medical Clinic;
  - (b) include monthly reports to Canada Post from Dr. Campbell as to Ms. Paris' compliance with the requirements of the treatment program;
  - (c) include random drug testing after completion of the residential component of the treatment program at times decided in Dr. Campbell's discretion. The results of such tests will be included in the reports submitted to Canada Post by Dr. Campbell as per (b) above; and, if positive, shall render Ms. Paris ineligible for rehire by Canada Post.
2. Upon successful completion of her treatment program (and in any event prior to the expiration of 12 months from the date of this Award following

which all obligations placed upon Canada Post by this Award shall expire and Ms. Paris deemed ineligible for rehire by Canada Post) the Grievor will provide medical certification to Canada Post's medical consultant of her fitness to return to work on a full time basis. Such certification shall be provided by Dr. Campbell and shall be to the satisfaction of Canada Post's medical consultant.

3. Upon receipt of the medical certification described at paragraph 4 above, Canada Post (after a reasonable period for inquiry and investigation) will either:
  - (a) reinstate Ms. Paris to her employment without any loss of seniority but with loss of all salary and benefits from her June 13, 2007 discharge to the date of reinstatement; or
  - (b) will return the matter to Arbitrator Christie pursuant to the reservation of jurisdiction here. Arbitrator Christie's jurisdiction will be limited to deciding whether or not Ms. Paris has successfully completed her treatment program, has remained drug free and has provided sufficient certification of her medical fitness to return to work.
4. Should Ms. Paris be reinstated she will comply with the treatment recommendations of her medical professionals and shall abstain absolutely from the use of illegal drugs;
5. For a period of 24 months from the date of reinstatement:
  - (a) Ms. Paris shall provide Canada Post with a medical certificate for each and every absence for which illness or injury is claimed as a cause. Any such medical certificate shall include a statement respecting whether the absence is believed to be related to drugs or alcohol. To maintain appropriate confidentiality, any such medical certificate shall be provided to the plant manager of the facility in which Ms. Paris is employed. Ms. Paris shall provide any such medical certificate on the first day of return to work and shall seek immediate medical attention at the outset of any illness or injury that requires absence from work.

- (b) if she is unable to report to work Ms. Paris shall comply strictly with the notice requirements of Article 20.05 of the Collective Agreement; and
  - (c) Ms. Paris shall be subject to 'for cause' and random drug testing conducted at times and occasions chosen at the sole discretion of Pharmatox Inc. A positive result on any test shall be conclusively deemed just cause for termination of Ms. Paris' employment.
6. Should Ms. Paris breach any of the above terms and conditions set out at paragraphs 4 or 5 above, her employment will be terminated without recourse to grievance and arbitration procedure excepting only that Arbitrator Christie remains seized of any issue relating to proof of the alleged breach. Arbitrator Christie shall not have jurisdiction to modify penalty.
7. Arbitrator Christie will remain seized to deal with the issues described above and any issue related to the implementation of this Award.

**Order.**

I so order.



Innis Christie  
Arbitrator

**IN THE MATTER OF AN AGREEMENT  
BETWEEN  
CANADIAN UNION OF POSTAL WORKERS (The Union)  
AND  
CANADA POST CORPORATION (The Corporation)  
MEMORANDUM OF SETTLEMENT**

The Canadian Union of Postal Workers and Canada Post Corporation without prejudice to any position that either party may take in future cases involving or identical matters and/or circumstances, mutually agree to a full and final settlement with respect to grievance number 096-00-01360 - Susan Paris.

**General Terms of Settlement**

1. The Union agrees to withdraw the grievance.
2. The Corporation shall withdraw the letter of termination dated July 28, 2003, from the grievor's personal file, and this Memorandum of Settlement shall be substituted therefore and shall remain on the file for a period of one (1) year following the date of signing this Settlement.
3. The grievor will provide the Corporation with a medical certificate for each and every absence for which illness or injury is claimed as a cause. The grievor agrees to provide the medical certificate on the first day of return to work and agrees to seek prompt medical attention at the outset of any illness or injury, which requires absence from work.
4. The grievor shall maintain attendance at work such that his rate of short-term absenteeism for which illness or injury (excluding injury on duty) is claimed as a cause shall exceed the average rate of absenteeism for all employees of her shift and section at the Halifax Metro Postal Plant, or at whichever postal facility he may be working from time to time. Short-term absences are all absences having duration of five (5) consecutive working days or less.
5. The employer agrees to provide to the grievor and the Regional Office of the Union, the average rates of absenteeism, both short-term and total for the grievor's shift and section within thirty (30) days of the signing of this Memorandum. The average rates will be provided again at the six (6) month interval of the agreement.
6. The grievor may be terminated by the Corporation for breach of any of these conditions.
7. Wayne Thistle, Arbitrator shall remain seized of these proceedings in the event of any difficulties in the implementation of this Settlement. The parties agree that Arbitrator Thistle shall have jurisdiction to deal with any breach of these terms and conditions.
8. The grievor acknowledges that she understands all the conditions and this document and that he agrees to them voluntarily.

DATED THIS 26<sup>th</sup> DAY OF November, 2003.

  
FOR THE UNION

  
FOR THE CORPORATION

  
SUSAN PARIS

Nov. 27/03

**Memorandum of Settlement**

**RE: Grievance 096-00-01560 Susan Paris**

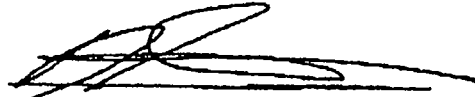
The Canadian Union of Postal Workers and Canada Post Corporation without prejudice to any position that either party may take in future cases involving similar or identical matters and/or circumstances, mutually agree to a full and final settlement of the grievance under the following terms:

1. The Union withdraws the grievance.
2. The Corporation shall withdraw the letter of termination dated March 11, 2004, from the grievor's personal file, and this Memorandum of Settlement shall be substituted therefore and shall remain on the file for a period of eighteen months (18) months following the date of signing this Settlement.
3. The grievor will provide the Corporation with a medical certificate for each and every absence for which illness or injury is claimed as a cause. The grievor agrees to provide the medical certificate on the first day of return to work and agrees to seek prompt medical attention at the outset of any illness or injury, which requires absence from work.
4. The grievor shall maintain attendance at work such that her rate of short-term absenteeism for which illness or injury (excluding injury on duty) is claimed as a cause shall not exceed the average rate of absenteeism for all employees of her shift and section at the Halifax Metro Post Office, or at whichever postal facility she may be working from time to time. Short-term absences are all absences having duration of five (5) consecutive working days or less.
5. The employer agrees to provide to the grievor and the Regional office of the Union, the average rates of absenteeism, both short-term and total for the grievor's class within thirty (30) days of the signing of this Memorandum. The average rates will be provided again at six (6) month intervals of the agreement.
6. The grievor may be terminated at any time for breach of any of these conditions.
7. Wayne Thistle, Arbitrator, shall remain seized of these proceedings in the event of any difficulties in the implementation of this Settlement. The parties agree that Arbitrator Thistle shall have jurisdiction to deal with any breach of these terms and conditions, but shall not have jurisdiction to modify the penalty.

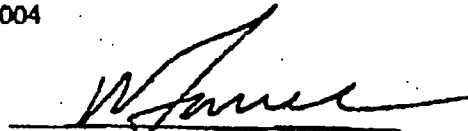


8. The grievor acknowledges that she understands all the conditions and this document and that she agrees to them voluntarily.

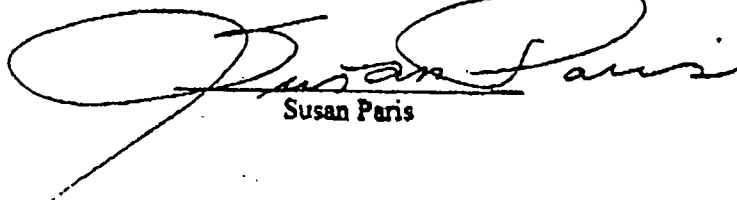
Dated at Halifax this 20<sup>th</sup> day of May 2004



Canadian Union of Postal Workers



Canada Post Corporation



Susan Paris

(67) X 1

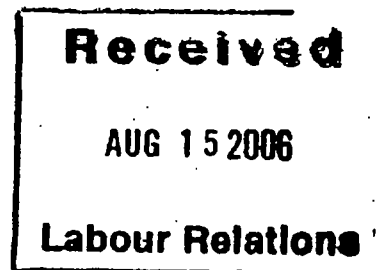


Halifax Mail Operations  
6175 Almon Street  
Halifax NS B3K 5N2

Gottiger SJ ~~PA~~ RPO

August 14, 2006

Susan Paris,  
FT PO-5, H.M.P.P.



Susan,

\* Picked up by  
S. Paris Aug 24

You have clearly and repeatedly demonstrated your complete and utter disregard for your position and the responsibilities it entails. First and foremost is your responsibility to report to your immediate Supervisor any and all absences from work. You have been given opportunity after opportunity to report to work and address these concerns. Each and every time you have chosen to disregard the written notices and remain absent without leave (AWOL) from your position at Canada Post. I refer to the following letters on your personal file:

June 23, 2006	Superintendent Ibrahim Orengo	AWOL Letter
July 28, 2006	Superintendent Sharon Simpson	AWOL Letter
August 1, 2006	Superintendent Sharon Simpson	AWOL Letter
August 4, 2006	Superintendent Sharon Simpson	AWOL Letter
August 9, 2006	Superintendent Sharon Simpson	AWOL Letter

In this day and age of increasing competition in the business world employers rely on their trained employees to report to work on a regular and consistent basis. When employees choose not to report for work and do not notify their employer of their absences it places undue burden on their co-workers and service to our customers suffers as a result.

After careful review and consideration of your personal file, specifically the second last paragraph in Superintendent S. Simpson's letter dated August 9, 2006, and I quote, "Failure to report on Friday August 11, 2006, will result in your discharge from Canada Post." By way of that letter you had been given one last opportunity to report for work. Your decision to repeatedly ignore written requests to return to work and/or qualify your absence has been addressed through progressive discipline.

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As previously stated your repeated disregard for your position and your responsibilities as an employee leave me with no alternative but to terminate your employment with Canada Post Corporation effective today Monday August 14, 2006.

A copy of this letter will be placed on your personal file.

Jim Dunsworth  
Plant Manager HMPP

Cc: personal file  
H. Fortier Corporate Security  
Shift Superintendents P. McPhee, A. Lintaman  
Labour relations  
Benefits Administration  
CUPW Nova Local

IN THE MATTER OF A FORMAL ARBITRATION:

BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS

(The Union)

and

CANADA POST CORPORATION

(The Employer)

RE: *Paris, S.* (The Grievor)

CUPW No. 096-03-01542

BEFORE: Innis Christie, Arbitrator

HEARING DATE: February 1, 2007

AT: Halifax, N.S.

FOR THE UNION: David Roberts, Counsel  
Doug Smith, Union Representative  
Lori Stacey, Nova Local

FOR THE EMPLOYER: Terry Roane, Counsel  
Erin Weiss, Counsel  
Joanne Harrington, Labour Relations Officer  
Jim Dunsworth, Manager Plant Operations  
Ibrahim Orengo, Superintendent, Dartmouth Delivery  
Centre  
Sharon Simpson, Superintendent Mail Operations

DATE OF AWARD: February 3, 2007

Union grievance, submitted on August 18, 2006, on behalf of the Grievor alleging breach of the Collective Agreement between the parties bearing the expiry date January 31, 2007, in that the Employer violated Article 10 and all other related provisions by discharging the Grievor without just, reasonable or sufficient cause. The Union requests an order that the Grievor be fully reinstated and be compensated for all lost earnings and benefits and that all letters, reports and documents relating to the basis upon which he was discharged be removed from her personal file. The Union reserved the right to seek additional redress, including, but not limited to, damages and interest at the Bank of Canada rates.

At the outset of the hearing the Parties agreed that I am properly seized of this matter and that I should remain seized after the issue of any Award in this matter to deal with any issues arising directly from its application.

#### AWARD

The Grievor was discharged by a letter dated August 14, 2006, for being absent without leave. In the course of the hearing the parties agreed on the following terms of this award, "without prejudice or precedent to any position the Parties have taken or may take in identical or similar circumstances", which are intended to give the Grievor a last chance to retain her job with the Employer:

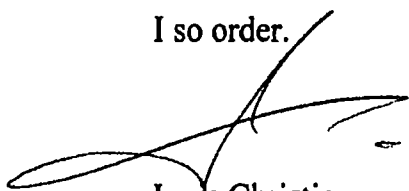
#### TERMS AND CONDITIONS

1. These terms and conditions shall be in effect 24 months from the date of this Award.

2. The Grievor shall provide the Employer with a medical certificate for each and every absence for which illness or injury is claimed as a cause. Any such medical certificate shall include a statement respecting whether the absence is believed to be related to drugs or alcohol. To maintain appropriate confidentiality, any such medical certificate shall be provided to the plant manager of the facility in which the Grievor is employed. The Grievor shall provide any such medical certificate on the first day of return to work and shall seek immediate medical attention at the outset of any illness or injury that requires absence from work.
3. If she is unable to report to work the Grievor shall comply strictly with the notice requirements of Article 20.05 of the Collective Agreement.
4. The letter of discharge issued by the Employer to the Grievor on August 14, 2006 shall be removed from her personal file and she shall be reinstated, provided the following conditions are first fulfilled:
  - (a) The Grievor has provided to Dr. Kent Pottle of Medisys medical certification, to the satisfaction of Dr. Pottle, of her fitness to return to work on a full-time basis,
  - (b) The Grievor has completed a drug/alcohol use assessment conducted by Pharmatox Inc., the results of which shall be provided to her, the Union and the Employer, which shall include:
    - (i) a review of her relevant history and treatment to date,
    - (ii) assessment of her current status prior to reinstatement, and
    - (iii) recommendations for future treatment.

5. The Grievor shall comply with the treatment recommendations of professionals who have examined her and Pharmatox Inc. A positive result on any test ordered pursuant to paragraph 4 above shall be conclusively deemed a breach of these terms and conditions.
6. Any breach of these terms and conditions will result in the termination of the Grievor's employment and such termination shall be deemed to be for just cause.
7. Upon reinstatement the Grievor shall be paid all wages and benefits effective the day after the cessation of her Employment Insurance benefits. If the Grievor has not returned to work in accordance with these terms and conditions one month from the date of this Award she shall continue to be paid all wages and benefits prior to reinstatement only if the delay is not in any way hers of the Union's fault. The onus will be on the Employer to prove such fault.
8. I retain jurisdiction over this matter, including jurisdiction to deal with any breach of these terms and conditions, but I shall not have jurisdiction to modify the penalty.

I so order.



Innis Christie  
Arbitrator

