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Citation: **2011 PSLRB 132**

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD
(Canada Border Services Agency)

Employer

Indexed as
Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)

In the matter of a policy grievance referred to adjudication

REASONS FOR DECISION

Before: Linda Gobeil, adjudicator

For the Bargaining Agent: Daniel Fisher

For the Employer: Jennifer Champagne

Decided on the basis of written submissions
filed August 4, 23 and 31, 2011.

I. Policy grievance referred to adjudication

[1] The Public Service Alliance of Canada ("the bargaining agent") presented a policy grievance to the Treasury Board ("the employer") on March 30, 2010, pursuant to section 220 of the *Public Service Labour Relations Act* ("the *Act*"). The bargaining agent made the following allegations:

> *The grievance relates to the interpretation and application of Appendix B-Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with respect to the variable shift scheduling arrangements of the Border Services Collective Agreement between the Treasury Board and the Public Service Alliance of Canada (PSAC).*
>
> *The PSAC maintains the Employer has contravened the provisions contained in Appendix B by not applying the principle of seniority to all variable shift schedule arrangements (VSSA) implemented after January 29, 2009, date of the signing of the applicable Border Services Collective Agreement.*

[2] As corrective action, the bargaining agent requested the following:

> *1. Declare that the Employer contravened Appendix B of the Border Services Collective Agreement;*
>
> *2. Order the Treasury Board and the Canada Border Services Agency to comply with its obligations under the Collective Agreement;*
>
> *3. Such other relief as the PSAC may request and the Board may allow.*

[3] In a letter dated January 11, 2011, the employer denied the grievance and replied as follows:

…

> *… Article 25.23 (a) of the collective agreement, which speaks of VSSA, states that local consultations aimed at establishing variable shift schedules will include all aspects of arrangements of shift schedules. Furthermore, Article 25.23(b) states that once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation.*
>
> *These provisions of the collective agreement suggest that there is a difference between the terms 'schedule' and*

> *'arrangement' and that 'implementation' is something that results from a newly negotiated variable shift schedule arrangement and not merely an existing variable shift schedule that is renewed.*
>
> *Certain clauses in Appendix B of the FB collective agreement provide insight into the intention of the parties with respect to seniority rights.*
>
> …
>
> *A plain reading of these clauses suggests that the parties intended that 'seniority' be used as the determining factor to allocate lines following the reopening and negotiation of a new VSSA and not merely an existing variable shift schedule that is renewed.*
>
> …

[4] On January 17, 2011, the bargaining agent referred the grievance to adjudication before the Public Service Labour Relations Board ("the Board").

II. Summary of the arguments

[5] The parties agreed to proceed by way of written submissions.

[6] The applicable collective agreement in this matter is the agreement between the Treasury Board and the Public Service Alliance of Canada – Border Services Group (all employees) – expiry date: 20 June 2011 ("the collective agreement"). The collective agreement was signed on January 29, 2009.

[7] The Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with respect to the Variable Shift Scheduling Arrangements is part of the collective agreement ("Appendix B").

[8] The relevant clauses of the collective agreement and Appendix B thereof are as follows:

…

25.23 Variable Shift Schedule Arrangements

(a) Notwithstanding the provisions of clauses 25.06 and 25.13 to 25.22 inclusive, consultation may be held at the local level with a view to establishing shift schedules which may be different from those established in clauses 25.13 and 25.17. Such consultation will include all aspects of arrangements of shift schedules.

(b) Once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation.

(c) Both parties will endeavour to meet the preferences of the employees in regard to such arrangements.

(d) It is understood that the flexible application of such arrangements must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements. Such flexible application of this clause must respect the average hours of work over the duration of the master schedule and must be consistent with operational requirements as determined by the Employer.

(e) Employees covered by this clause shall be subject to the provisions respecting variable hours of work established in clauses 25.24 to 25.27 inclusive.

Terms and Conditions Governing the Administration of Variable Hours of Work

25.24 *The terms and conditions governing the administration of variable hours of work implemented pursuant to clauses 25.09, 25.10 and 25.23 are specified in clauses 25.24 to 25.27 inclusive. This Agreement is modified by these provisions to the extent specified herein.*

25.25 *Notwithstanding anything to the contrary contained in this Agreement, the implementation of any variation in hours shall not result in any additional overtime work or additional payment by reason only of such variation, nor shall it be deemed to prohibit the right of the Employer to schedule any hours of work permitted by the terms of this Agreement.*

25.26

(a) The scheduled hours of work of any day as set forth in a variable schedule specified in clause 25.24 may exceed or be less than seven decimal five (7.5) hours; starting and finishing times, meal breaks and rest periods shall be determined according to operational requirements as determined by the Employer; and the daily hours of work shall be consecutive.

(b) Such schedules shall provide for an average of thirty-seven decimal five (37.5) hours of work per week over the life of the schedule.

(i) The maximum life of a shift schedule shall be six (6) months.

(ii) The maximum life of other types of schedule shall be twenty-eight (28) days except when the normal weekly and daily hours of work are varied by the Employer to allow for summer and winter hours in accordance with clause 25.10, in which case the life of a schedule shall be one (1) year.

(iii) The maximum life of a schedule for officers working for the Canadian Pari-Mutuel Agency shall be one (1) year.

(c) Whenever an employee changes his or her variable hours or no longer works variable hours, all appropriate adjustments will be made.

[9] **[Appendix B]**

Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to the Variable Shift Scheduling Arrangements.

This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit.

This appendix will only apply to Variable Shift Schedule Arrangements (VSSA) implemented following the signing of this collective agreement.

1. consultation process

The intent of this appendix is to provide the parties with a process to facilitate reaching agreement at the local level, within prescribed timeframes.

2. VSSA discussions

2.1 Local consultation pursuant to clause 25.23(a) of the agreement will take place within five (5) days of notice served by either party or to reopen an existing variable shift schedule agreement or negotiate a new variable shift schedule arrangement. Prior to this meeting, the Employer will provide to the Union the following information in respect of its operational requirements:

(a) the number of scheduled employees required for each hour,

and

(b) the rationale for scheduling

2.2 The number of employees identified in paragraph 2.1 does not represent the minimum presence required on any shift.

2.3 Discussions at the local level shall be concluded within five (5) weeks from the time of the first meeting identified in paragraph 2.1 above.

2.4 Should the parties come to an agreement on a proposed VSSA schedule at the local level, the union shall submit the schedule for ratification by the employees.

2.5 Should the discussions at the local level not result in an agreement on a proposed VSSA schedule, the parties will immediately refer the outstanding issues to representatives from the Union and regional representatives from the Employer for further consultation.

2.6 Representatives identified under 2.5 above shall conclude their consultation within a maximum of three (3) weeks from the date the outstanding issues have been referred to their attention by the local committee.

2.7 Joint recommendations of the representatives identified under 2.5 above shall be sent back to the local level for consideration for a maximum of one (1) week period.

2.8 Should the parties come to an agreement on a proposed VSSA schedule at the local level, the union shall submit the schedule for ratification by the employees. Otherwise, the union will submit the last Employer VSSA proposal to a vote.

2.9 The results of the vote identified in paragraphs 2.4 or 2.8 will be provided to the Employer representatives within two (2) weeks of the vote having taken place.

2.10 Where proposed VSSA is rejected, by mutual agreement, the current VSSA may be extended. Should either party not elect to extend the current VSSA, shift schedule consistent with 25.13 will take effect. For employees not already covered by an existing VSSA, the current scheduling arrangement will remain in force.

2.11 In the event that the proposed VSSA is accepted by a ratification vote, the new schedule will be posted in accordance with clause 25.16 of the agreement.

2.12 Except as provided in paragraph 2.10 above, both parties may terminate a VSSA by sending the other a thirty (30) day notice of termination of the existing VSSA unless discussions are on-going pursuant to this appendix.

2.13 Upon mutual agreement by the parties, timeframes included in the provisions of this appendix may be extended.

3. VSSA line selection

3.1 Upon ratification of a new VSSA, the Employer will establish the requirements for populating this schedule.

3.2 The Employer will canvass all employees covered by this specific VSSA for volunteers to populate the schedule.

3.3 Should more than one employee meeting the qualifications required select the same line on the schedule, years of service as defined in clause 34.03 will be used as the determining factor to allocate the line.

3.4 In the event lines become vacant, the Employer will reassess its scheduling requirement. Should the line still be required, the Employer will review the qualifications required prior to canvassing all employees covered by this specific VSSA. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service as defined in clause 34.03 will be used as the determining factor to allocate the line.

4. Vacation scheduling

4.1 Employees will submit their annual leave requests on or before April 15th for each year. The Employer will respond to such requests no later than May 1st for the summer leave period and no later than October 1st for the winter holiday season leave period.

4.2 The summer and winter holidays periods are:

for the summer leave period, between June 1 and September 30.

for the winter holiday season leave period, from December 1 to March 31.

4.3 In the case of excessive vacation leave requests for a specific period, years of service as defined in clause 34.03 of the Agreement shall be used as the determining factor for granting such requests. For summer leave requests, years of service shall be applied for a maximum of two-weeks per employee in order to ensure that as many employees as possible might take annual leave during the summer months.

4.4 Requests submitted after April 15th shall be dealt with on a first (1st) come first (1st) serve basis.

[*sic* throughout]

[10] Most of the parties' arguments are reproduced below.

A. <u>For the bargaining agent</u>

…

3. *The grievance alleges contravention of Appendix B of the Collective Agreement –Memorandum of Understanding Between the Treasury Board and the Public Service Alliance of Canada with respect to the Variable Shift Scheduling Arrangements.*

…

8. *It is the position of the Public Service Alliance of Canada … that seniority should be recognized by the Canada Border Agency… for line selection and vacation scheduling in every FB work location across the country where a VSSA is in place <u>regardless of when the VSSA was negotiated.</u> (emphasis added)*

9. *A number of viable VSSA's were in force –and still are- at the time the collective agreement was signed on January 29, 2009.*

10. *Within a maximum of six months of having signed the … collective agreement, seniority should have been applied with respect to vacant line selection and vacation scheduling for VSSAs that were in existence at the time.*

…

12. *On each occasion where a new shift schedule covered by a VSSA is posted, the VSSA is being implemented. It is the Union's position that VSSAs are implemented on regular and ongoing basis.*

…

15. *For those VSSA's which were already in place when the parties signed off on the new Collective Agreement seniority should have applied.*

16. *The Union takes the position that Appendix B applies to Variable Shift Schedules that were negotiated before the signing of the Collective Agreement on January 29, 2009.*

17. *Article 26.26(b) of the Collective Agreement states:*

    Such schedules shall provide for an average of thirty-seven decimal five (37.5) hours of worked (sic) per week over the life of the schedule.

    (i) The maximum life of a shift schedule shall be six (6) months.

18. The above article has a transitional effect which recognizes that the 'maximum life' of a VSSA is limited to six months. Every VSSA must after six (6) months, be bridged to conform to the seniority requirements of Appendix B.

…

21. A VSSA is the creation of a schedule … that has been fully consulted. 'VSSA' and the 'schedule' are interchangeable as noted in Appendix B at Article 2.10. Therefore, by extending a current VSSA, the schedule is extended.

22. Therefore, VSSA schedules which were in effect before the signing of the Collective Agreement but were later 'renewed', 'rolled over' or 'cycled through' become new Schedules in compliance with Appendix B.

23. The Union's position is that seniority under the new FB Collective Agreement should have applied to the selection of vacant lines and to vacation scheduling for all current VSSA's upon their renewal date.

24. Seniority need apply both during the initial populating of the schedule..., as well as for line allocation (and vacation scheduling) as these subsequently become vacant for newly negotiated VSSA's.

25. To not recognize the seniority rights afforded at Appendix B… would create unfair and prejudicial results- the denial of seniority rights and the parties' forced obligation to renegotiate all the existing VSSAs.

26. To force the parties to reopen VSSAs in order to allow seniority bidding on vacant lines and for seniority based on vacation scheduling would dismantle the seniority rights of the employees.

27. In other words, the Union is not proposing that the bidding process must take place every schedule. Rather, where VSSA schedules were in existence prior to the signing of the agreement, once cycled through, vacant lines and vacation scheduling should be allocated as per Appendix B.

…

30. Appendix B secures bargained rights vis-à-vis 'seniority'. Seniority must be used as the determining factor when allocating lines for an existing VSSA as obligations flow from the text of the Collective Agreement and Appendix B based on years of service.

Public Service Alliance of Canada v. Communications Security Establishment, 2009 PSLRB 121.

> *31. Clear language is required to deny a collective agreement benefit to any employee. The Collective Agreement and Appendix B do not contain any limitation on 'seniority' or 'years of service'.*
>
> United Nurses of Alberta, Local 121-R v. Calgary Regional Health Authority (2000) 93 L.A.C. (4th) 427.
>
> *32. The enforcement of seniority rights causes absolutely no harm to the Employer. Appendix B of the Collective Agreement recognizes and protects seniority rights. In the absence of seniority being enforced, the Union suffers a prejudice.*
>
> …
>
> *34. To accept the Employer's interpretation leads to an absurd result – the setting aside of seniority rights. Union document 5 (the Employer's grievance response), clearly states that existing variable shift schedules are not subject to seniority rights. According to the rules of interpretation, the Union suggests that this creates an absurdity.*

[11] In support of its position, the bargaining agent also refers me to:

> *Public Service Alliance v. Treasury Board (Canada Border Services Agency), 2009 PSLRB 66;*
>
> *Lajoie v. Treasury Board (Revenue Canada-Taxation), (1992) F.C.J. 1019 (CA);*
>
> *Buchmann v. Canada Customs and Revenue Agency, 2002 PSSRB 14.*

[12] The bargaining agent concludes with the following:

> *36. Seniority under the new FB Collective Agreement must be applied for the selection of vacant lines and vacations scheduling for all current VSSA's once they've cycled through.*
>
> *37. In compliance with the Collective Agreement and Appendix B, seniority need be recognized by the Employer for line selection and vacation scheduling in every FB work location across the country where a VSSA is in place, regardless of its negotiated date.*
>
> …

B. For the employer

[13] The employer takes the position that Appendix B applies only to VSSAs implemented since the collective agreement was signed in January 2009.

> *…The continuation of the provision of a VSSA in existence on January 29, 2009 does not qualify as a "new implementation". Consequently, a VSSA agreement has to expire or be cancelled and subsequently be replaced with a new one or be renegotiated before the provision of the appendix can apply.*
>
> *As per the wording of Appendix B, it "… will only apply to Variable Shifts Schedule Arrangements (VSSA) implemented following the signing of this collective agreement." The words are clear and have to be read in their normal grammatical context: only VSSA's implemented after the signing of the collective agreement will be subject to Appendix B.*
>
> *A VSSA signed before the collective agreement came into force does not automatically constitute a newly implemented VSSA merely because six months have elapsed. The collective agreement requires a number of steps before such VSSA can be implemented, and subject to Appendix B.*

[14] The representative for the employer refers to clause 2.1 of Appendix B and argues as follows:

…

> *The wording of this provision clearly refers to something different than a mere de facto continuation of an old VSSA. Local consultations have to take place, once notice has been served, and the old VSSA has to be "reopened" or "renegotiated" again by the parties. The fact that a period of 6 months would have elapsed does not suffice to meet these requirements. Further, additional prerequisites are referred to in section 2.3 to 2.13 of Appendix B with respect to what is meant by the "reopening" or "negotiating" of a new VSSA….*

[15] The representative for the employer refers me to clauses 2.3, 2.4, 2.5, 2.6, 2.7 and 2.8 of Appendix B and argues that, to "be implemented following the signing of this collective agreement", a VSSA has to go through the various steps described in clauses 2.3 to 2.8 of Appendix B.

…

> *…The mere continuation of a VSSA signed prior to the coming into force of the collective agreement without any*

> *consultation or any of these additional steps taken place would not be subject to Appendix B. The parties have clearly intended that "seniority" only be used as a determining factor to allocate lines once a new VSSA was reopened or negotiated and agreed upon.*

[16] The representative for the employer also refers to clause 25.23(b) of Appendix B in support of the argument that the implementation of a VSSA is the result of a newly negotiated VSSA and not just an existing VSSA that is continued.

[17] The employer disagrees with the bargaining agent's proposition that the terms "schedule" and "VSSA" are interchangeable. For the employer,

> *…a VSSA agreement has to expire or be cancelled and then be subsequently reopened or negotiated before the seniority provisions apply. Section 3.1 even clearly states the "upon ratification of a <u>new</u> VSSA, the Employer will establish the requirements for populating this schedule" and as per section 3.4, will use years of service as the determining factor where more than one employee select the same line on the schedule.*
>
> [Emphasis added]

[18] No evidence was presented by either party to demonstrate how VSSAs currently in place were implemented. Accordingly, the bargaining agent cannot simply argue that a VSSA is implemented every time a shift schedule is posted, as no evidence of any consultation, ratification or vote can be presented.

[19] Although the employer recognizes that its position means that the parties will need to renegotiate a VSSA if they wish for Appendix B to apply, the employer submits that that is the meaning and intent of the collective agreement and is the only interpretation possible that is in keeping with its wording.

[20] Finally, the employer concludes by stating that the wording of the collective agreement must be interpreted by reference to its ordinary meaning; the only way to apply Appendix B is through the renegotiation of a VSSA.

C. <u>Bargaining agent's rebuttal</u>

[21] In its rebuttal, the bargaining agent reiterates its position and adds that:

…

> *"…the steps required to recognize an already an existing VSSA –as set out in the collective agreement and Appendix B- are satisfied. In the absence of a new or renegotiated VSSA, Appendix B recognizes those already in force."*
>
> *Appendix B and the collective agreement do not constitute a concurrent two-tier VSSA approach. To comply, seniority needs to be recognized after 6 months.*
>
> *…*
>
> *Article 25.23(b) does not suggest that implementation is something new, which results from a newly negotiated variable shift schedule-Appendix B clarifies and converts the transition from an already existing variable shift schedule become the de facto 'new' schedule after 6 months…*
>
> [*sic throughout*]

III. Issue

[22] This is a reference to adjudication of a policy grievance. In this instance, the basis for the grievance is the employer's conclusion that Appendix B does not apply to VSSAs already in force at the time of the signing of the collective agreement. Specifically, should the employer have applied years of service for line and vacation selections for VSSAs, regardless of when they were negotiated?

IV. Reasons

[23] In my view, Appendix B and its clauses related to years of service apply only to new VSSAs implemented after the signing of the collective agreement or to VSSAs that were in force before the signing of the collective agreement but that have been subject to consultation between the parties as per clause 2.1 of Appendix B. In other words, the mere fact that VSSAs existed at the time of the signing of the collective agreement and which were merely cycled through or renewed after the signing of the collective agreement is not sufficient to trigger the application of the clauses related to years of service. The parties must first engage in the discussion process specified beginning in clause 2.1 and on before the rest of Appendix B can apply.

[24] A review of clauses 25.23 to 25.27 of the collective agreement indicates that the parties intended to allow flexibility at the local level in the establishment of the work schedule and its related arrangements.

[25] The parties also entered into a Memorandum of Agreement that is part of the collective agreement: Appendix B. That document details the process to be followed when dealing with VSSAs.

[26] In my view, by incorporating Appendix B, the parties decided to add to the generality of clauses 25.23 to 25.27 of the collective agreement by developing a step-by-step, detailed process to facilitate the reaching of an agreement on VSSAs at the local level.

[27] At the start Appendix B, quite clearly, indicates that the parties intended it to apply only to VSSAs implemented after the signing of the collective agreement meaning those VSSAs negotiated after the signing of the collective agreement or those which were renewed or renegotiated in accordance with the process set out in Appendix B.

> *"This appendix will only apply to Variable Shift Schedules Arrangements (VSSA) implemented following the signing of this collective agreement."*
>
> [Emphasis added]

[28] Can the words "…implemented following the signing of this collective agreement" include, as suggested by the bargaining agent, situations where a VSSA was in force before the signing of the agreement but was later "renewed, rolled over or cycled through in the absence of the process detailed in Appendix B"? I do not think so. In those cases, the parties need to get involved in the discussion process as specified in clause 2.1 of Appendix B and therefore either reopen the VSSA or negotiate a new one before the clauses related to years of service can apply.

[29] *Brown and Beatty*, Canadian Labour Arbitration, Vol. 1, 4th edition, August 2011, para 4:2110 states the following:

> *In searching for the parties' intention with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless to do so 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… It has been stated, however, that where there is no ambiguity or lack of clarity in meaning, effect must be given to the words of the agreement, notwithstanding that the result may be unfair or*

> *oppressive, or that they were deliberately vague to permit continuing consensual adjustments.*

[30] A review of the steps described in Appendix B again reveals a very detailed protocol that in my opinion, needs to be followed before a new VSSA can be implemented in accordance with the collective agreement.

[31] The parties agreed to put in place an elaborate mechanism that only makes sense in the context of a VSSA negotiated under Appendix B. I believe it is a step-by-step process that needs to be followed and that one party cannot introduce an element of this process, such as years of service, at some point in the life of a VSSA, without having gone through all the other elements of that process.

[32] Again, a plain reading of the clauses of Appendix B leads me to conclude that Appendix B only applies to situations where a new VSSA is being negotiated or an existing one is renegotiated or reopened after discussion between the parties in accordance with Appendix B. Merely extending the term of a VSSA that existed before the signing of the collective agreement, without engaging in the discussion process provided for in clause 2.1 of Appendix B, does not qualify it as a new VSSA.

[33] I do not agree with the bargaining agent's argument that, every time a new schedule covered by a VSSA is posted, the VSSA is then implemented for the purposes of Appendix B and therefore subject to the concept of "seniority". I agree with the employer's argument that a VSSA is different from a "schedule". The two elements should not be mixed up. A schedule is a timetable established under the umbrella of a VSSA that indicate the hours of work for each employee.

[34] I do not believe that employees can simply add the years of service provision in clause 3 of Appendix B to the terms of VSSAs without showing evidence that the process described in Appendix B has been followed. The process stated in Appendix B needs to be read as a whole. One can only resort to the concept of years of service when satisfied that all other steps provided for in Appendix B have been taken. In the matter before me, there is no evidence that that was the case.

[35] The bargaining agent argues that clause 25.26 of the collective agreement, and its reference to the maximum life of a schedule being limited to six months, has a transitional effect and that, after the six months, every VSSA must be bridged "…to conform to the seniority requirements of Appendix B." Again, nowhere in the collective

agreement or Appendix B is there any reference made to transitional measures that would allow for that interpretation. Transitional measures cannot be inferred.

[36] The bargaining agent argues that to not recognize the seniority rights would "create an unfair and prejudicial results and the parties would be force to renegotiated all existing VSSAs" and later on that "to force the parties to reopen the VSSA… would dismantle the seniority rights of employees." The bargaining agent also maintains that "clear language is required to deny a collective agreement benefit to any employee" While I appreciate that the parties have to go through a detailed process set out in Appendix B, I must point out that there is no evidence to the effect that the results of deciding that Appendix B applies only to "new" VSSAs would be unfair and unreasonable. Moreover, while I understand the burden that going through the process of Appendix B imposes on the parties, I cannot disregard what the parties have agreed to in terms of process.

[37] Furthermore, there is also no evidence that the results would lead to the dismantling of seniority rights as argued by the bargaining agent nor is there evidence to support the argument that a benefit is being denied to employees. In this case, a benefit should be derived under Appendix B requirements only if the established process is followed.

[38] The bargaining agent also maintains that "the enforcement of seniority rights causes absolutely not harm to the employer… and that to accept the employer's interpretation leads to an absurd results-the setting aside of seniority rights". While there is no evidence on the issue of harm to the employer, I do not believe that I have to decide on the matter when, again, the language in this instance is clear. There is also no evidence that the employer's interpretation would lead to an absurd result. Again I understand that the employer denied the application of Appendix B, specifically its clauses on years of service, to situations where VSSAs were "implemented" after the signing of the collective agreement. However, I understand the employer's position to be that the years of service clauses in Appendix B will apply when new VSSAs are negotiated or reopened and agreed to.

…

> *"Accordingly, as per the wording of the collective agreement, a VSSA agreement has to expire or be cancelled and then be subsequently reopened or negotiated before the seniority*

> *provisions apply…"* (Employer's submission filed August 23, 2011).

[39] In conclusion, I understand that the process described in Appendix B could be seen as somewhat cumbersome; but, that is not a reason for me to depart from the plain wording negotiated by the parties. As an adjudicator, I do not have the power to amend, add, change or vary the collective agreement or to make a decision that is inconsistent with its terms.

[40] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[41] The grievance is dismissed.

November 17, 2011.

Linda Gobeil,
adjudicator