



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JACK NORRIS, RICHARD C. FOSTER
AND MARC BEAUDRY

Grievors

and

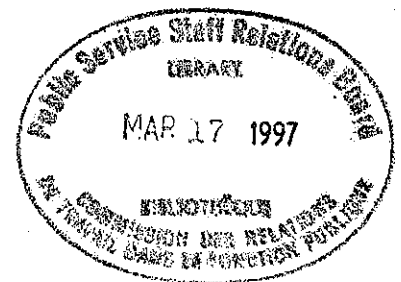
TREASURY BOARD
(Canadian Heritage - Parks Canada)

Employer

Before: Muriel Korngold Wexler, Deputy Chairperson

For the Grievors: David Landry, Public Service Alliance of Canada

For the Employer: Agnès Lévesque, Counsel



Heard at Ottawa, Ontario,
July 25 and 26, 1996 and December 18 and 19, 1996.

DECISION

This decision concerns grievances presented in late March and April 1995 by Messrs. Jack Norris, Richard Clayton Foster and Marc Beaudry contesting the employer's action to reduce their hours of work during the 1995-1996 season.

The Evidence

Messrs. Norris, Foster and Beaudry are lock (or canal) operators (also called canalmen), employed at Canadian Heritage (Parks Canada, formerly called Environment Canada). Messrs. Norris and Beaudry are lock or canal operators on the Rideau Canal whereas Mr. Foster works on the Trent-Severn Waterway.

Mr. Foster testified that he has been a lock operator since 1986. He was first hired as a MOC-4 assigned to Lock 15 at Healey Falls for one season. The following season he operated Lock 13, Campbellford Lock, which has a dam. During that season, Mr. Foster acted in the lockmaster position. During the 1994 and 1996 seasons, Mr. Foster was assigned to Lock 16 and 17 at Healey Falls. This is a complex lock because it is a flight lock with two chambers which can be raised and lowered at the same time. In 1995, Mr. Foster operated Lock 10 at Haigues Reach.

Mr. Foster described the duties of a lock operator. They control the water going through the dams and operate the locks. There are Hydro plants at most of the dams under Canadian Heritage's control. Thus, the lock operators maintain the station, do maintenance work such as painting, cut five acres of grass, help put the boats through the lock, keep the place clean, assist the boaters, guide the boaters through complex locks, collect passage (boating) fees, and perform some public relations work. The lock operators deal with boaters and tourists in general. There are picnic tables near the locks and the public uses the area to fish. Hence, the lock operators must maintain the area.

The lock operators normally start their duties sometime in early April and their first duty is to open the station and prepare it for the boaters. They have to rake the stones and sticks off the lawn, paint, replace and repair, control the water for the station, deliver supplies to the other stations and acquire supplies from the administrative offices. The canals open to the public and boaters in mid-May and close on or about October 16 (the Thanksgiving weekend). Indeterminate full-time lock operators are required to do winter watches; these are done between October 15

(when the canals close to the boaters) and April 1 of the following year. The winter watch consists of cleaning snow from the gates and controlling water levels. This work is performed by a water control crew and they also assist Ontario Hydro when there is a problem and the water freezes. The water control is a daily function all year round and it is important. Without water control, there could be floods in the spring. More particularly, the winter watch duties are as follows: water control at different dams; ensure public safety at sites; snow removal; salting roads and stairs; minor maintenance; pick up branches; and some interpretation duties. In the Northern Area, the hours of work are usually from 8:00 a.m. to 4:30 p.m. and the water control is done on weekends.

When Mr. Foster first started his employment as a lock operator in 1986, he was a seasonal employee. For the first two years of his employment, he worked 85 percent of 2080 hours. His first season was from June 20 to October 15, 1986 (Exhibits 5 and 6). Mr. Foster was asked to work more hours and he was entitled to compensatory time. On January 26, 1987, his seasonal employment was extended from February 22, 1987 to March 31, 1987 (Exhibit 7) and he was transferred to Lock 13, Southern Area. In addition, his seasonal appointment was renewed and his season started on May 7, 1987 and ended February 29, 1988. This appointment was called a seasonal recall (Exhibits 8 and 9). He again was only required to work 81 percent of 2080 hours.

On August 31, 1988, Mr. Foster was offered an indeterminate full-time appointment to a lock operator position in the Southern Area, at Haigues Reach, Lock 10. This appointment became effective August 30, 1988. He was again placed on six months probation (Exhibits 10 and 11). His hours of work were 2080 a year and the earnings were equalized pursuant to Appendix "H" of the General Labour and Trades (GLT) Group Specific Agreement signed between the Treasury Board and the Public Service Alliance of Canada (PSAC). Appendix "H" provides that Mr. Foster was entitled to receive straight-time compensation for all hours worked or on authorized leave, up to a maximum of 2080 hours in any fiscal year. The earnings were equalized over the year and he was paid 80 hours for each two week period. All time worked in excess of 2080 hours in a fiscal year was deemed to be overtime and was compensated at the proper overtime rate.

Mr. Foster declared that he has always worked 2080 hours except for one year when he took leave without pay for union business and, in 1995, when the employer reduced his hours of work. Mr. Foster added that he has always started his season the first Monday after April 1st at which time he worked five days a week, 40 hours a week, and the hours would vary during the weekend. From mid-May, he would work 40-45 days straight, 8-9 hours during a weekday and 10 or 10 1/2 hours a day during the weekend. From late June, he worked 12 hours a day during 12 days and, then, he would have two days off or he could have six days on and one day off. After the second week in August, the work day was cut by one hour to 11 hours a day. After the Labour Day weekend in September and this until October 15, his hours of work were 8 or 9 hours during a weekday and 10-10 1/2 hours during the weekend.

In addition, during the period May 15 to October 15, he was entitled to 10 days off which he had to take during the 11-12-hour day period because there were students available for relief. On most stations there are two people assigned. The employer considered assigning only one person to operate the locks but this was found to be unsafe. Labour Canada had found that the operations of the locks required the assignment of two qualified lock operators because of the hazard of drowning. According to Labour Canada, the general public or the boater could not be considered as a qualified person under the Canada Labour Code, Part II, because that person would not fall under the control of the employer. The boater is not subject to any employee-employer relationship. The general public could not be held responsible to ensure the safety and health of the lock staff (Exhibit 38).

At Lock 10, Mr. Foster reported to the Lockmaster, Mr. Robert Duck, who in turn reported to Mr. John Lewis, Superintendent, Trent-Severn Waterway.

Mr. Foster declared that, in 1995, the employer called him to return to work later in the season. The lockmasters reported to work on April 3, 1995 whereas the lock operators returned to work on April 18, 1995. The lock operators were also informed that for 1996, and all subsequent years, the return to work would not be earlier than May 1st of each year (Exhibit 13). Thus, in 1995, the lock operators were recalled 15 days later than they had been in the past.

Moreover, in 1995, the employer shortened the hours of operation of the locks. In 1995 and 1996, the hours of operation for the Rideau Canal were:

- mid-May to mid-June:
 - Monday to Thursday: 8:30 - 16:30
 - Friday to Sunday and holiday: 8:30 - 19:30
- mid-June to on or about September 2: 8:30 - 19:30
- on or about September 3 to September 15: 8:30 - 16:30
- September 16 to mid-October:
 - Monday to Friday: 9:30 - 15:30
 - Saturday and Sunday: 8:30 - 16:30

For the Trent-Severn Waterway:

- mid-May to on or about June 20-24:
 - Monday to Thursday: 10:00 - 16:00
 - Friday to Sunday and holiday: 9:00 - 19:30
- on or about June 21-24 to on or about mid-August: 8:30 - 20:30
- mid-August to early September: 8:30 - 19:30
- early September to mid-October:
 - Monday to Friday: 10:00 - 16:00
 - Saturday, Sunday and Thanksgiving: 9:00 - 18:00

(Exhibit 4)

The period from early April to the end of June is called "spring shoulder season" and the period from Labour Day to the end of the navigation season is called the "late shoulder season".

Mr. Foster explained that the boater has to get to the lock one-half hour before closing and for hydraulic or complex locks, at least three quarters of an hour before.

Mr. Foster declared that over the last couple of years management discussed reducing the hours of operation. Finally, this was confirmed on March 9, 1995 when Mr. John Lewis, Superintendent, Trent-Severn Waterway, wrote that for the 1995-1996 season, the lockmasters would maintain their work schedule at 2080 hours. However, the situation was different for the lock operators. The memorandum of Mr. Lewis reads as follows:

This is to confirm your recall to duty for the 1995 operating season of the Trent-Severn Waterway.

As you are aware, an extensive review of the Operations of the Waterway has been conducted in two stages; an internal review process, followed by a review by an independent committee. These reviews have confirmed the need to revise staff work schedules to better reflect workload demand and visitor traffic. In this regard, a reduction in hours of operation during the shoulder season was announced by the Minister, on October 19, 1994.

In accordance with the recommendations of the various review processes, and after consultation with the Union of Canadian Transport Employees, spring recall of Lock Operators will be delayed until April 18th, for the 1995 season. Recall for 1996, and all subsequent years, will be no earlier than May 1st, of each year. In addition, reductions in operating hours during the week in the spring and fall shoulder seasons will take place this year.

In this regard, and by copy of this memorandum, you are requested to report for duty on April 18, 1995. You will be advised shortly of your individual work schedule for the remainder of the year.

Should you have any questions or require further clarification of any of the above points, which are specific to your individual situation, please feel free to contact your Area Superintendent. If there is sufficient interest, I would be pleased to arrange a general meeting of Operating Staff in each Area.

I regret the necessity of these measures, however, they are essential to maintaining a viable Waterway which will continue to meet the needs of the Canadian public.

I thank you in advance for your continued cooperation, which will ensure a successful 1995 operating season.

(Exhibit 13)

When Mr. Foster received this memorandum of March 9, 1995, he realized that he would not work 2080 hours during the 1995-1996 season. In 1995, he was struck off strength from April 1 to 18, 1995. Mr. Foster testified that in 1995 he worked 1944 hours (93 percent of the 2080 hours) and was off work from March 17 to May 18, 1996. During that period of time, he was struck off strength and he collected unemployment insurance benefits.

The employer explained to the employees that reviews had been done of the organization and hours of operation, and that there were fewer employees required. The employer alleged that cuts were justified because of lack of money. Moreover, there were also fewer boaters going through the locks. The employer has organized flying crews to operate various locks. A crew drives from one lock to another.

In the fall of 1995, Mr. Foster ran three locks that way. In 1995, Mr. Foster was responsible for Lock 10 but was asked to operate in addition Locks 8 and 9. The employer has also instituted the "super lockmaster" system where a lockmaster is responsible for three locks. For example, at Healey Falls the lockmaster was normally responsible for Lock 16 and 17 but, in 1995 and 1996, he was also assigned Lock 15. Mr. Foster explained that there are no opportunities for advancement because of the added responsibilities to the lockmaster duties.

Mr. Foster added that the employer took his 2080 hours of work away and plans to take even more. The employer does not recognize the fact that he is a full-time indeterminate employee; he never applied to become a seasonal employee. As a seasonal employee, he does not work the winter watches.

Mr. Foster recognized that in his section some employees were declared surplus (the revenue collector, a clerk, etc.). The lock operators are now responsible for the collection of revenues and fees and for bringing these monies to the bank. In addition, the employer has reduced the number of term employees responsible for maintenance, so some work does not get done. According to Mr. Foster, the level of services has deteriorated. In addition, in 1996 the lock operators did not receive new uniforms even though these had been ordered. The work remained constant but there are fewer employees to perform it. The lock operators are expected to do more work in less time.

Mr. Foster has always requested his winter watch to start just before Christmas. He goes hunting from the end of October to the first week of December. In general, the employer tries to accommodate the wishes of the employees.

Mr. Foster explained that at Hailey Falls it takes 45 minutes to "lock a boat". Mr. Foster has other duties than to just operate the lock. He has maintenance to do, assist at other stations (dams), pick up the garbage, the mail run, pick up supplies,

collect fees, etc. The lock operators work as a team with the lockmaster between locks, sector, and within the waterway. In addition, a lock operator may be called to act as a lockmaster during the latter's absence. Mr. Foster has been a union representative on the Health and Safety Committee and is also involved in the Employee Assistance Program (EAP). In 1994, Mr. Foster was Vice-President of the Southern Area, Local 00056 of the Union of Canadian Transport Employees (UCTE), Public Service Alliance of Canada (PSAC); he acknowledged that he was present at most of the labour management consultation meetings and there had been discussion of such reductions of personnel and hours of operation.

Mr. John (Jim) Keenan, Chair of the Canals Review Team, reviewed the organization and hours of operation. He produced a report (Exhibit 25). Mr. Keenan came to Mr. Foster's lock and they did discuss his work, duties, and operation of the locks. The employer did ask the staff for ideas and input as to where cuts could be made.

Mr. Keenan testified that he was contacted by Mr. Tom Lee, Assistant Deputy Minister, Parks Canada, in late July 1994. He was asked to chair a working group comprised of Ms. Paula Neice and Mr. Don Golding (the Canals Review Team). Ms. Neice was a private consultant and Mr. Golding had been a longtime employee of Parks Canada, a member of the Team Council in Banff, and had been for 10 years President of the National Component, PSAC. This review team was created in August 1994. They were asked to look at three general issues: deficiencies in operations of canals; fees for services and other charges to increase revenues generated by the Rideau and Trent-Severn canals; and how canals could increase contributions. Mr. Keenan explained that he insisted that there be no constraints within his terms of reference and with the recommendations. They first met on August 30, 1994 and they were asked for an interim report by the end of September 1994 concerning the hours of operation of the canals, fees and other revenue for the 1995 season.

Mr. Keenan added that the team had access to previous studies: "Project 30", concerning a study of the Ontario and Quebec canals; various reports leading to operational reviews; reviews conducted by canals' management; reports from public meetings conducted by the canals authority; and a wide variety of public information.

During the month of September 1994, the team had an intensive schedule of meetings with groups and individuals so as to acquire information. They met with the managers, staff, and union of each canal area. In addition, they held at each canal area focus group meetings and met a cross section of the public. They also met with the manager of the New York State Canal Authority and with people from the British Canal Systems. In addition, they conducted staff consultations. A cross section of the staff was invited to attend. They did the same with the "union". Management was not present at these consultations. The interim report was issued on September 30, 1994 and the first draft of the overall report was dated December 20, 1994. The final draft was produced by mid-February 1995 and circulated to all persons consulted. The final overall draft was issued on March 30, 1995.

Mr. Keenan explained that, on the basis of the information acquired, the team attempted to establish an acceptable reduction in hours of operation and service. The report also concluded that there was a need to find monies for the delivery of the service. The team concluded that the only reduction was to apply during the weekly hours in the shoulder seasons because during those periods there were significantly fewer boaters than during the high season and weekends. The team was also aware that the cost of the lock operations was a major component of the cost of the service and it would bear some of the cost reduction. The team recommended the maintenance of the hours for the lockmasters because of their role. Priority was given to those who were most knowledgeable and experienced at the locks. The team was of the opinion that in order to face the challenges caused by the reductions, the lockmasters were important in terms of team building of the organization. The final document is entitled: "Rideau and Trent-Severn Historic Canals: Corridors of Change" (Exhibit 25). Mr. Foster declared that the "union" disagreed with the employer's proposals concerning the cuts to operations. In his view, there had been cuts every year and they have been increasing.

On April 29, 1994, the bargaining agent, Local 00056, UCTE presented its written comments, concerns, and counterproposals to the operational review of the Trent-Severn Waterway (Exhibit 16). However, the employer did not concur with the suggestions and figures of the bargaining agent.

Mr. Jack Norris has worked as a lock operator since 1977 at the Rideau Canal. In 1977, he first started as a student and then as a casual. He competed for an indeterminate full-time position and was appointed to it in 1983. Prior to 1983, he was not required and did not work winter watches. In 1995, he was placed on leave without pay, which he changed to vacation leave, because of lack of work from April 1 to 13, 1995 (Exhibit 18). He started work on April 18, 1995 as instructed and was a lock operator until the second week of September 1995. However, as of mid-September 1995, he ended up working in Perth painting a bridge during the five weekdays and at the lockstation on the weekend. This went on until the end of October 1995. His hours of work had been affected because management had instituted a "travelling crew" and his services were no longer required at the lock. So as to allow Mr. Norris to complete his 2080 hours in 1995, the employer requested Mr. Norris to work as a security guard at Laurier House in Ottawa at a lower rate of pay. Mr. Norris did have a winter watch in 1995.

In 1996, the employer delayed Mr. Norris' return to work as a lock operator for a full month. He was required instead to work at the Main Shops as a labourer at a lower rate of pay. He reported to the lock on May 1, 1996.

From 1981 to 1983, Mr. Norris was a "full-time seasonal lock operator" and after the season, sometimes, he had another job. In 1991, he was a full-time indeterminate lock operator at the Nicholson Lock and he also had other jobs after the navigational season. Mr. Norris explained that the paint job of the Perth bridge resulted from an agreement between management and the bargaining agent. The work was assigned first to full-time indeterminate lock operators at the Beveridges Lockstation. Then, it went to the ones of the Southern Area (those working from Narrows to Lake Ontario), and, thirdly, to the ones from the Northern Area (Burritts Rapids to the Ottawa River). It was then offered to seasonal lock operators of the Southern Area and lastly to the seasonal lock operators of the Northern Area. The central area is from Burritts Rapids to Narrows (Exhibit 19).

Mr. Norris described his duties as a lock operator. Prior to April 1995, he would open the water control, get the station and lawns ready, do maintenance, painting and repair work of the buildings, flower beds and gates. This work was not done after 1995. In 1995-1996, Mr. Norris worked 2180 hours whereas in 1994-1995, he had

worked 2095 hours. Moreover, he had winter watches every year (Exhibit 35). He was paid \$30,344.62 in 1995, whereas he made \$29,880.56 in 1994.

Mr. Marc Beaudry has been employed at the Ottawa Lock, Rideau Canal, since June 1990 and as a seasonal (MOC-4 or 5) .90 since 1991. However, he worked as a MOC-5 1.0. Mr. Beaudry worked winter watches from 1991 to 1995. He was assigned the winter watch every year on an acting basis. Thus, he has always worked 2080 hours. In 1995, he worked as a lock operator from mid-April to mid-September. He then filled a vacancy until the end of October 1995 and, as a result, he did work a winter watch in 1995. However, according to Mr. Beaudry, his hours in 1995 did not add up to 2080. He calculated that he was nine days short. Ms. Agnès Lévesque, counsel for the employer, challenged this statement. However, evidence was presented by Ms. Lévesque that demonstrated that Mr. Beaudry made \$2,221 more in 1995 than in 1994 (Exhibit 35). In 1995-1996, Mr. Beaudry worked 2111 hours whereas in 1994-1995, he had worked 2056 hours. When confronted with this evidence, Mr. Beaudry did not challenge or present evidence to contradict these facts. At the time of the adjudication hearing, Mr. Beaudry was Acting Lockmaster (MOC-7) at the Ottawa Lockstation.

In 1995 he earned \$29,899 and \$30,636 in 1994, or in fiscal year 1994-1995 he earned \$30,289 and in 1995-1996 \$29,733.

In 1996, Mr. Beaudry spoke to Mr. John W.A. Bonser, Superintendent, Rideau Canal, concerning the reduction in his hours of work as a lock operator. In response, on May 6, 1996, Mr. Bonser wrote the following (Exhibit 23):

This is in response to our telephone conversation wherein you requested a written response to the following questions;

- a) Why your hours of work have been reduced since 1995,*
- b) What is your present status as an employee,*
- c) What effect has this reduction had on your hours of work.*

As you recall, in response to government budget reductions, the Rideau Canal was directed in 1993 to conduct an extensive and in-depth review of all aspects of its organization and operations. This review resulted in the production of the 'Rideau Canal Operational Review Report', issued in March, 1994. This report recommended, among

other things, that Canal hours of operation and associated costs be streamlined to better reflect demand for services. Among the recommendations were the proposals to delay the annual April recall to duty for Canal Operators, reduction in hours of operation in the Fall shoulder season, and reduction in staff complement during that time.

The above-mentioned report and its recommendations were the subject of further review via the "Rideau and Trent-Severn Historic Canals: Corridors of Change" report. This report supported many of the proposals contained in the Operational Review Report including the recommendations concerning reduction of Canal Operator hours and staffing levels at lockstations. Shortly thereafter, the Department of Canadian Heritage approved implementation of the proposed changes in hours of operation and work.

As a result of these changes, your position was impacted as follows; you continue to be an indeterminate seasonal employee; your recall to duty date is changed from approx. April 1 to approx. May 1; starting about mid-September, you are scheduled to work weekends only until the end of navigation. The total reduction in hours for the entire year for your position will be approx. 324 hours.

Although the above would be your normal work schedule for 1996, it does not preclude the possibility of additional hours of work via replacement of absent staff and/or project work should it become available. Indeed, during the 1995-1996 fiscal year you worked an additional 260 hours as a result of the Hog's Back and Laurier House projects.

The Northern Area has only one Hydro plant. It is located at Rideau Falls and is operated by Public Works.

Mr. Arnold Hockaday has been the President of Local 00056, UCTE, since 1993 and he was involved in the written comments and counterproposals of the bargaining agent (Exhibit 16) to the employer's document: "Rideau and Trent-Severn Historic Canals: Corridors of Change" (Exhibit 25). The employer gave the bargaining agent three weeks to comment on Exhibit 25. The bargaining agent found Mr. Keenan's team's recommendations to be devastating to its members. Many Local 00056, UCTE, members were concerned about the cuts in services to the public and the reduction in hours of operation and number of staff to do the job. The bargaining agent and management held a labour-management consultation meeting after the submission of the comments of the bargaining agent (Exhibit 16) and Mr. John Lewis,

Superintendent, Trent-Severn Waterway, commented on the efforts of the bargaining agent. Mr. Hockaday declared that, in the fall of 1993, the bargaining agent was informed that the employer had to cut \$300,000.

Mr. Hockaday testified that he met with Messrs. Keenan and Golding and Ms. Neice on three occasions. They discussed the operations, the views of the bargaining agent on how the employees should be treated, and the effects of the cuts on the employees and services.

Mr. John Bonser testified that he has been employed by Parks Canada since 1976 and as Superintendent of the Rideau Canal since 1990. He has been responsible for the overall efficient operation of the Rideau Canal and he has to provide adequate personnel to allow the passage of boats. There are 23 lockstations and one bridge station at the Rideau Canal.

Mr. Bonser explained that in late 1992 local management identified a budgetary shortfall for the following years. The situation was brought to the attention of senior officers of the Department (Parks Canada) who managed to find monies on the condition that local management would review, study, and identify how to cover these budgetary shortfalls. The shortfall was \$500,000 per year as of 1993 during a three-year period with respect to both the Trent-Severn Waterway and the Rideau Canal. Mr. Bonser had to find \$300,000 for 1994, \$205,000 for the following year, and an additional \$94,000 for 1994. Thus, local management reviewed how to reduce the deficiencies and increase the revenues. At the same time, in 1993, Parks Canada was going through a national operational review of all canals. This review was done in conjunction with the canals in the province of Quebec.

The national review was completed in the fall of 1993 and it was called "Project 30". This study gave a broad overview of all canals within Canada. It recommended that the budget be reduced by 30 percent. Mr. Bonser and others managed to negotiate that the reduction be only 20 percent instead. Then, in June 1993, a meeting was held in Cornwall between regional management and the bargaining agent where information was exchanged on the internal reviews of the canals. In November 1993, the UCTE informed management that they had problems participating in these reviews. However, they requested that they be informed of the

results before they became public. Mr. Bonser added that in March 1994, management presented the study to the bargaining agent at the labour management committee at which time comments were requested from the staff. The bargaining agent did respond objecting to the proposed reductions. In addition, during the spring of 1994 inspections when directors and superintendents of the canals visited all locks and staff, comments on the proposed reductions were solicited from all staff.

Then, in June 1994, the then Minister in charge of the then Department of Environment, Parks Canada, (at present called Canadian Heritage) invited all affected persons for a national consultation concerning fees. In addition, in August 1994, Mr. Tom Lee, the Assistant Deputy Minister, decided on an independent study on the canal operations and this is when he appointed Mr. Jim Keenan, Ms. Paula Neice and Mr. Don Golding. Thus, in October 1994, Mr. Lee asked this three-person task force to also look at the hours of operation of the canals for the 1995 season. Since the October 1994 interim report recommended the protection of the lockmasters' hours of work, when this interim report was published on October 20, 1994, Mr. Bonser wrote to all his staff announcing the task force's recommendations that there would be a reduction of hours of work for the 1995 season:

As you are aware, an independent review team has been examining the Rideau Canal and Trent-Severn Waterway to determine more efficient ways of delivering services in line with Parks Canada approach to business planning and to meet reduction requirements already announced.

An interim report has recommended modifications to the hours of operation and fees charged at both waterways. As a result, the length of the 1995 boating season will not be shortened, and reductions in hours of operation will only occur during the weekday periods of the spring and fall shoulder seasons. Hours of operation during July and August and the extended hours on weekends during the spring will remain unchanged for 1995. Fees for mooring and lockage for 1995 will be increased by the average of 10 percent. These decisions were communicated to the general public via a press release from the Minister's office.

Although this is an interim report, the review team is continuing its study. The reduction in hours during the weekday in the shoulder seasons will have an impact on staff hours. We are presently examining lock use and potential impact of reductions during the shoulder seasons. We will be consulting your union representatives as a new workplan for

1995 is structured. Following the consultation process, options will be reviewed and decisions made and communicated to you as soon as possible.

We are committed to an open process and it is hoped that we can work constructively together.

Attached is a copy of the summary of the interim report. Please feel free to discuss it with your Area Superintendent or Canal Headquarters Manager.

(Exhibit 26)

In addition, Mr. Bonser organized a meeting to discuss the formation of a committee to look at the implementation of these reductions in the hours of work. However, this committee was never constituted.

Mr. Bonser declared that even though he was not part of the review team that produced this report ("Rideau and Trent-Severn Historic Canals: Corridors of Change" (Exhibit 25)), he was consulted as a member of the "Canals Management Team". Moreover, Mr. Bonser was a member of the "Steering Committee" concerning this report. Since this report recommended that the hours of navigation be reduced, Mr. Bonser decided to call all lock operators to report for work on May 1 instead of April 1, 1995.

Moreover, the hours of operation as of September 1995 were further reduced by one hour on weekdays. However, Mr. Bonser felt it was unfair to delay the return to work by a full month; thus, he recalled the lock operators to report for work in mid-April. However, for 1996, they were recalled a full month later (May 1, 1996).

Thus, the Rideau Canal budget was reduced by 20 percent and 80 percent of the overall budget is salary. In addition to the reduction in hours of operation, Mr. Bonser deleted vacant positions and lowered the percentage of P/Ys of seasonal positions. The policy of the Rideau Canal since 1988 is to try to provide additional work to their lock operators instead of hiring people from the outside (Exhibit 27). Moreover, in 1995, the Rideau Canal, which was organized into three areas with an area manager at their head, was reorganized into two areas. However, in 1996 it went back to three areas because there was a reduction in supervisors. In 1995, one lockmaster was declared surplus when the "super lockmaster" system was introduced.

Mr. Bonser explained that management decided to preserve the hours of work of the lockmasters because of their level of responsibility and knowledge of the canal. During the pre-season and season, the only difference between the duties of the lock operator and the lockmaster is the supervisory responsibility. The particularities of the canal operation are the need for a certain flexibility on the part of the employees. It is difficult to forecast at the end of the navigation season who and how many of the lock operators will accept extra work. Some lock operators have other jobs and commitments. The Rideau Canal management has implemented many and is in the process of implementing many more of the 122 recommendations found in the Keenan-Neice-Golding report. However, some of these recommendations will require further consultation with staff before the implementation stage.

Mr. Bonser explained that Mr. Norris was a full-time employee and was treated as such until 1995. Full-time means that he worked 2080 hours. Mr. Bonser added that when the 2080 hours are reduced, the employee is no longer full-time and he may be considered a seasonal employee. Mr. Bonser referred to the relevant collective agreement covering the General Labour and Trades group whereby it is stated that employees are not guaranteed any maximum or minimum hours of work (Exhibit 2, Appendix "H", Article 5).

Mr. Bonser compared the hours worked by the lock operators before 1995 and in 1995-1996. Thirty-four employees were lock operators (full-time and seasonal). Of these, 15 in 1995-1996 met or exceeded their hours of work in 1994, 13 worked 97 percent or better than in 1994, and three lock operators had 90 percent or more hours of work than in 1994. In addition, three lock operators were unavailable for extra work because of authorized leave (two) or personal commitment (one).

Mr. John Lewis has worked for Parks Canada since 1975 and as Superintendent of the Trent-Severn Waterway since 1982. He explained that the canal under his responsibility is 240 miles long. He is responsible for the operation, maintenance, capital, development on the system, water management, resource conservation, and realty services.

The services provided at the Trent-Severn Waterway are similar to those provided on the Rideau Canal. The primary mandate is navigation. The difference

between these two waterways is the size of the system as well as some of the complexity with respect to water management. The number of water controls operated by the Trent-Severn Waterway is much greater than the Rideau Canal. Also, the visitation and number of boats are higher.

Mr. Lewis submitted in evidence the hours of operation of the Trent-Severn Waterway for the 1994, 1995 and 1996 seasons:

TRENT-SEVERN WATERWAY HOURS OF OPERATION			TOTAL HRS.
1994			
<i>May 20 - June 23</i>	<i>Monday to Thursday</i>	<i>9:00 to 4:30</i>	<i>142.5</i>
	<i>Friday to Sunday</i>	<i>9:00 to 7:30</i>	<i>157.5</i>
	<i>Holiday Monday</i>	<i>9:00 to 7:30</i>	<i>10.5</i>
<i>June 24 - August 14</i>		<i>8:30 to 8:30</i>	<i>624</i>
<i>August 15 - Sept. 5</i>		<i>8:30 to 7:30</i>	<i>242</i>
<i>Sept. 6 - October 12</i>	<i>Monday to Friday</i>	<i>9:00 to 4:30</i>	<i>195</i>
	<i>Saturday, Sunday</i>	<i>9:00 to 6:00</i>	<i>90</i>
	<i>Thanksgiving Monday</i>	<i>9:00 to 6:00</i>	<i>9</i>
			TOTAL 1470.5
1995			
<i>May 19 - June 22</i>	<i>Monday to Thursday</i>	<i>10:00 to 4:00</i>	<i>114</i>
	<i>Friday to Sunday</i>	<i>9:00 to 7:30</i>	<i>157.5</i>
	<i>Holiday Monday</i>	<i>9:00 to 7:30</i>	<i>10.5</i>
<i>June 23 - August 13</i>		<i>8:30 to 8:30</i>	<i>624</i>
<i>August 14 - Sept. 4</i>		<i>8:30 to 7:30</i>	<i>242</i>
<i>Sept. 5 - October 11</i>	<i>Monday to Friday</i>	<i>10:00 to 4:00</i>	<i>156</i>
	<i>Saturday, Sunday</i>	<i>9:00 to 6:00</i>	<i>90</i>
	<i>Thanksgiving Monday</i>	<i>9:00 to 6:00</i>	<i>9</i>
			TOTAL 1403

1996

May 17 - June 20	Monday to Thursday	10:00 to 4:00	114
	Friday to Sunday	9:00 to 7:30	157.5
	Holiday Monday	9:00 to 7:30	10.5
June 21 - August 11		8:30 to 8:30	624
August 12 - Sept. 2		8:30 to 7:30	242
Sept. 3 - October 16	Monday to Friday	10:00 to 4:00	186
	Saturday, Sunday	9:00 to 6:00	108
	Thanksgiving Monday	9:00 to 6:00	9

TOTAL 1451**PREVIOUS YEARS HOURS OF OPERATION**

1992 - 1512.5

1993 - 1470.5

(Exhibit 28)

In 1994, Mr. Lewis discovered that the Trent-Severn Waterway had a shortfall for the year 1993 in the amount of \$295,000. Management gave him a reprieve for 1993 but he had to find the money to cover 1994. So, in 1994, he had to find \$155,000. The budgetary reduction for the Trent-Severn Waterway amounted to \$450,000 in total. As a result, the Trent-Severn operational review was conducted in 1993-1994. It was decided to abolish nine vacant positions and declare surplus six employees in the administrative support group in addition to savings in the goods and services budget. Thus, in October 1993, he was informed of a 20 percent reduction per year over three years as of 1995. On October 20, 1994, Mr. Lewis sent a memorandum to all staff explaining the situation:

As you are aware, an independent review team has been examining the Rideau Canal and Trent-Severn Waterway to determine more efficient ways of delivering services in line with Parks Canada's approach to business planning and to meet reduction requirements already announced.

An interim report has recommended modifications to the hours of operation and fees charged at both Canals. As a result, the length of the 1995 boating season will not be shortened, and reductions in hours of operation will only occur during the weekday periods of the spring and fall shoulder seasons. Hours of operation during July and August and the extended hours on weekends during the spring and fall will remain unchanged for 1995. Fees for mooring and

lockage for 1995 will be increased by an average of 10 percent. These decisions are being communicated to the general public via a press release from the Minister's office. (copy attached)

Although this is an interim report, the review team is continuing it's (sic) study. The reduction in hours during the weekdays in the shoulder seasons will have an impact on staff hours. We are currently examining lock use and the potential impact of reductions during the shoulder seasons. We will be consulting your union representatives as a new workplan for 1995 is structured. Following the consultation process, options will be reviewed and decisions made and communicated to you as soon as possible.

We are committed to an open process and it is hoped that we can work constructively together.

Attached is a copy of the summary of the interim report. Please feel free to discuss it with your Area Superintendent or Canal Headquarters Manager.

(Exhibit 29)

The reduction in hours of operation resulted from the comments offered by the interested public at three public meetings. The public preferred a reduction in hours of operation during the shoulder seasons and weekdays. This preference was echoed by a number of stakeholders, namely, private sector businesses, marinas, private resorts, the Chamber of Commerce, and other business interests. Mr. Lewis looked at the lock usage during the navigational season and noticed that the demand was lower during the shoulder seasons and weekdays. In addition, municipal councillors and provincial and federal Members of Parliament were consulted. Thus, the return to work of lock operators was delayed to April 18, 1995 and their hours of work were reduced in line with the hours of operation of the locks open to the public (Exhibits 13, 30 and 31).

Mr. Lewis explained that the winter watch is tied to water management which takes high priority. The schedules are prepared in conjunction with the employees. The priority for the winter watches goes first to employees "continuing full-time" then to the seasonal ones, depending on the number of hours they are entitled to, in descending order. The hours of work of the lockmasters and "continuing full-time" maintenance staff are protected. Mr. Foster became a seasonal employee when his hours of work were reduced. Lockmasters are classified one level above lock operators. According to Mr. Lewis, all lockmasters are MOC-5 with a C-2 (supervisory

differential) whereas all lock operators are MOC-5 except the ones at Rainy Falls. Mr. Lewis added that the fact that the reduction in hours of work affected only lock operators was based on the Keenan-Neice-Golding report.

Mr. David Ballinger has been employed at Parks Canada since 1973. At the time of the adjudication hearing, he was the Acting Service Coordinator. His substantive position is Director of Canal Operations and, as such, he is responsible for water management, realty property functions, resource conservation, visitors' activities, functional guidance or direction on the operational side.

Mr. Ballinger described the lockmasters' and lock operators' responsibilities. As of April 1, they are in charge of the control of water flow, preparation of the buildings, locks and bridge to get them ready for the public, ground maintenance, painting, staff training. The waterway opens to the public on the Friday of the long weekend in May. Once it is open for navigation, the lockmaster and lock operators are responsible for the sale of dockage, mooring permits, and the enforcement of canal regulations. When the waterway closes the first Wednesday following the Thanksgiving weekend in October, the lockmaster and lock operators must board up the buildings, reduce the water level, do maintenance work, paint, grout, store equipment, and organize the crews for the winter work. During the winter season, they clear the snow and perform water control duties.

Mr. Ballinger reviewed the statistics prepared by management concerning the traffic on the waterways. He explained that school periods, vacations, the economy, cost of fees, and the weather are elements affecting traffic on the canals. However, the reduction in the terms of operation of the locks has not affected the traffic (Exhibit 32).

On March 28, 1994, Mr. Ballinger and Ms. Marian Stranak issued a report entitled "Rideau Canal, Operational Review Report" (Exhibit 33) where he recommended that the administration be reorganized and reduced (page 30), the same for the main office and shops (page 17) and services (page 22). Project 30 was started around the same time. Project 30 looked at all the canals in Canada operated by Parks Canada (Exhibit 34).

Mr. Michael Largy has been employed as a Human Resources Advisor at the Rideau Canal since 1988. He was aware that the "canals" were experiencing a crunch. Thus, he was involved to some degree in the composition and assessment of the various options outlined in the Operational Review Report in order to address the budgetary constraints. Mr. Largy had the Pay and Benefits Unit produce a document showing the hours of work for 1995-1996 in the cases of Messrs. Norris and Beaudry (Exhibit 35).

Mr. Fred Alyea has been employed 24 years with the Trent-Severn Waterway of which 15 years have been as the Director of Canal Operations. Mr. Alyea produced statistics showing the decline in the number of vessels going through the locks from 1993 to 1995 (Exhibit 36). He explained the decline was the result of the state of our economy and the weather. On March 14, 1994, Mr. Alyea issued his operational review of the Trent-Severn Waterway (Exhibit 37). He commenced his study in 1993. He recommended a number of reductions. He even considered using only one person at each lock but this proved unacceptable to Labour Canada (Exhibit 38). Mr. Alyea added that he employs summer students and term employees to cover vacancies and leave situations.

Mr. Robert Derikosis retired from the Public Service in 1995. He was a negotiator with Treasury Board from 1975 to 1995 and Chief Negotiator since 1978. He was responsible for the General Labour and Trades group (GLT) since 1976 either in his capacity as Pay and Benefits or Compensation Officer or as a negotiator.

Mr. Derikosis testified that during the first round of negotiations for the GLT group, the lock operators were governed by the same provisions as all members of the group. There were no special provisions or arrangements for lock operators. During the second round of negotiations, the parties reached an agreement covering lock operators. A Letter of Understanding was signed addressing four concerns: hours of work; overtime; standby; and reporting pay. In the third round of negotiations, the appendices to the GLT agreement were negotiated to cover unusual operations that were unique and could not be met under the formal provisions of the agreement. The purpose of Appendix "H" was to provide maximum flexibility to lock operators. The only reference to hours of work in Appendix "H" is Article 5; the other provisions deal with payment. There are no provisions for the number of hours of work in a day or

week and there is no daily or weekly overtime. However, there is a reference to 2080 hours in a year. Articles 3 and 4 deal with the manner of calculation and payment. The provisions are worded in such a manner as to provide flexibility because of the uncertainty of the season. Compensatory leave is built up during the navigational period. The overtime entitlement kicks in after the lock operators have worked 2080 hours. Lock operators are entitled to sick leave, annual leave credits, and paid designated holidays.

Mr. Gordon Kritsch was the negotiator for the GLT group on behalf of the bargaining agent, the PSAC, from 1969 to mid-1976. Mr. Kritsch explained that in 1972, Article 5 of Appendix "H" was introduced. This Article provided:

5. Maximum or Minimum Hours at Work

Nothing in this letter shall be construed to mean that canal operating employees are guaranteed any maximum or minimum hours of work.

(Exhibit 40)

The introduction of this Article formalized an agreement that had been in place for years. This Article appeared in every collective agreement negotiated at the time by the PSAC and the Treasury Board. Mr. Kritsch added that the parties agreed to this provision without any discussion.

It is worthy of note that Article 5 of Appendix "H" and clause 23.10 of the GLT agreement (Exhibit 2) are almost identical.

Arguments

Mr. Landry, representative of the grievors, made the following representations.

Mr. Landry reviewed in detail Articles 2, 3 and 5 of Appendix "H" of the relevant collective agreement covering the GLT group entered into between the PSAC and the Treasury Board on May 17, 1989, Codes: 653/89 and 603/89 (Exhibit 2). Mr. Landry pointed out that Article 1 of Appendix "H" excludes the application of Article 23 of the GLT collective agreement (Exhibit 2).

According to Mr. Landry's thesis, Article 5 of Appendix "H" does not mean that the employer can permanently reduce the hours of work. If this were so, then the employer could reduce the hours of work, e.g. to two hours a week, which could result in a minimum connection with the employee.

Mr. Landry pointed out that, in 1995, Mr. Foster lost 136 working hours. He has been an indeterminate full-time employee. Section 8 of the *Public Service Employment Act* provides that the Public Service Commission has the exclusive right on appointments and it is under that authority that Mr. Foster was appointed. Mr. Landry explained that Article 5 of Appendix "H" means that, while there is no guarantee of maximum or minimum hours of work, the normal conditions of employment cannot be changed permanently. In the case here the reduction in hours of work was not temporary; rather the employer made it permanent. The employer changed Mr. Foster's employment status. Mr. Foster was reduced to a seasonal employee as a result of the reduction in his hours of work. Mr. Landry added that matters provided for under the *Public Service Employment Act* are not negotiable. The employer should have identified Mr. Foster's position as surplus, laid him off and then offered him the seasonal position.

Mr. Landry argued that Article 5 has a special meaning under Appendix "H" and clause 23.10 has a generic meaning within the GLT agreement. Mr. Landry pointed out that the following PSAC collective agreements contain an identical provision: Ships' Crews (SC), clause 22.06; General Services (GS), clause 19.08; Programme Administration (PM), clause 18.20; Clerical and Regulatory (CR), clause 25.20; General Technical (GT), clause 22.04; Secretarial, Stenographic and Typing (ST), clause 24.20; Heating, Power and Stationary Plant Operation (HP), clause 23.06; Correctional Services (CX), clause 21.04; Firefighters (FR), clause 22.04; Primary Products Inspection (PPI), clause 21.05; Engineering and Scientific Support (EG), clause 22.03; Administrative Services (AS), clause 18.16; and Technical Inspection (TI), clause 22.04. In this regard, Mr. Landry cited the Vibert decision (Board file 166-2-23958). Mr. Landry added that a reduction in hours of work could lead to extreme situations if the employer has such an unfettered right.

Mr. Landry referred to Article M-39 of the Master Agreement between the PSAC and the Treasury Board (Exhibit 1). This provision provides for part-time employees

and it applies to lock operators. Thus, full-time status is assumed since part-time status has been defined. He emphasized that Article M-39 uses the expression normal hours of work. According to Mr. Landry's thesis, clause 23.10 of the GLT agreement cannot amend the provisions found in clauses 23.01 to 23.04. Moreover, clause 23.10 only provides for a temporary and specific situation. In his view, what the employer did in this case was to turn full-time employees into part-time employees on a permanent basis thereby affecting their benefits. This is a major change in terms and conditions of employment.

Mr. Landry submitted that subclause M-2.01(o) of the PSAC Master Agreement (Exhibit 1) differentiates between full-time and part-time employees. Articles 3-1 and 3-2 of Appendix "H" provide that when lock operators work beyond 2080 hours, they are entitled to overtime compensation. Mr. Landry referred also to the *Public Sector Compensation Act (1991, S.C., c. 30)* and the *Government Expenditures Restraint Act, (1993, No. 2, S.C., c. 13)* which extend the compensation plan of the PSAC Master Agreement and GLT group specific agreement. Mr. Landry argued that in light of these statutes, the GLT compensation plan cannot be changed.

Mr. Landry submitted further that the doctrine of estoppel applies in this case. Mr. Landry referred to Article 48 of the GLT collective agreement which provides for job security. Clause 48.01 stipulates:

48.01 Subject to the willingness and capacity of individual employees to accept relocation and retraining, the Employer will make every reasonable effort to ensure that any reduction in the work force will be accomplished through attrition.

The employer reduced the hours of work but it did not affect the positions. The employer treated the grievors as a full-time employee (Mr. Foster) or seasonal with a certain amount of fixed hours of work. The employer entered into individual contracts with the grievors. The grievors have always been treated in a certain manner and their hours of work were well defined. Thus, the employer cannot change the past practice until the parties return to the bargaining table for the next collective agreement. The grievors applied and were appointed to full-time positions. They worked the 2080 hours (Mr. Foster) or a portion of these hours according to their letters of appointment.

In this regard, Mr. Landry cited: Lansey (Board file 166-2-25569); Oates (Board file 166-2-25880); Defoy (Board file 166-2-25506); Air-Care Ltd. v. United Steel Workers of America (1974), 3 N.R. 267; Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild, Local 87 (1983), 10 L.A.C. (3d) 1; and Collin v. Pattison Industries Ltd. 95 CLLC 141.

Mr. Landry concluded that we are dealing here with a brand new practice by the employer. Full-time status is an acquired right.

Ms. Lévesque, counsel for the employer, reviewed the provisions of all the appendices and the GLT collective agreement.

Ms. Lévesque pointed out that subclause 46.02(b) refers to Appendix "H" which is the principal document to look at before considering the general provisions of the GLT collective agreement. Article 1 of Appendix "H" is a general provision and stipulates that Article 23 of the GLT collective agreement does not apply. This Article 23 defines the day and week and contains in clause 23.10 the same provision as Article 5 of Appendix "H". However, there is a difference between clause 23.10 and Article 5 of Appendix "H" because lock workers have no daily or weekly hours of work. The parties wanted flexibility in the case of lock operations. Ms. Lévesque reviewed all the other appendices of the GLT collective agreement and concluded that the group envisaged by each appendix adapted the Hours of Work provision to their needs. The appendices make no reference to full-time or part-time employees. In this regard, Ms. Lévesque referred to Article M-39 of the PSAC Master Agreement where we find that part-time employees work fewer hours than a full-time employee.

Ms. Lévesque reviewed the evidence. The reduction in the budget of Parks Canada started in 1994. The 1994 deficit was absorbed by the Department so no actual reductions resulted. However, it prompted the Department to study and look at how it could meet the reductions starting in 1995. A three-year plan was devised requiring a 20 percent reduction and an increase in revenues of over 25 percent. The bargaining agents and the public were consulted. The employer considered the reduction of staff (P/Y) but this was not possible for safety reasons. Thus, the costs in the operations, administrative offices and employees' hours of work were reduced instead. The hours of operation were reduced and the lock operators were called back

later in the season and their hours of work were reduced. The start of the canal season varies from year to year. Every year, when the canal workers are called back, they are told when the season will start and end. Thus, in 1995, there was nothing different in this regard and their season started April 18.

Ms. Lévesque argued that nothing in the collective agreement prevents the employer from calling them back later. The employer needs the flexibility. Full-time employee is not defined in Appendix "H". Ms. Lévesque compared Appendix "H" to Appendix "E" where article 1(b) provides:

The hours of work shall be scheduled on annual basis to average two thousand and eighty (2080) hours per year.

Ms. Lévesque pointed out that the employer reduced all lock operators' hours of work proportionally. The lockmasters kept their hours of work because of their knowledge and experience. The hours of work can vary. Sometimes the employer can provide additional work but this is dependent on operational requirements, weather, tourists and the economy.

Ms. Lévesque referred to paragraphs 7(a) and (d) and 11(2)(a) of the *Financial Administration Act*:

7.(1) The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to

- (a) general administrative policy in the public service of Canada;*
- (d) the review of annual and longer term expenditure plans and programs of departments, and the determination of priorities with respect thereto;*

...

11.(2) Subject to the provisions of any enactment respecting the powers and functions of a separate employer but notwithstanding any other provision contained in any enactment, the Treasury Board may, in the exercise of its responsibilities in relation to personnel management including its responsibilities in relation to employer and employee relations in the public service, and without limiting the generality of sections 7 to 10,

- (a) *determine the requirements of the public service with respect to human resources and provide for the allocation and effective utilization of human resources within the public service;*

She referred as well to sections 22, 23, 24 and 29 of the *Public Service Employment Act*. She pointed out that the case here is not lack of work but a case of lack of funds. The lock operators are needed so this is not a case of lay-off. Ms. Lévesque referred also to the definition of employee in section 2 of the *Public Service Staff Relations Act*. Thus, as long as a person works one-third of the normal period, he is an employee. Nothing prevents the employer from reducing the hours of work because the affected persons are still employees. Ms. Lévesque read also section 2.1 of the *Public Service Employment Act* concerning the definition of an employee:

"employee" means a person employed in that part of the Public Service to which the Commission has the exclusive right and authority to appoint persons;

Thus, the employer cannot reduce the hours of work further than one-third because otherwise the person loses his status.

Ms. Lévesque pointed out that the grievors were never promised 2080 hours. The main difference between full-time and seasonal employees is the winter watch. The canal season opens in May and closes in October but in addition there are winter watches which are a requirement for full-time employees. The difference in full-time and seasonal employment is the availability of work in the winter. The full-time employee is guaranteed a winter watch.

Ms. Lévesque cited: *Air-Care Ltd. v. United Steel Workers of America* (supra); *Attorney General of Canada v. Gray* [1978] 1 F.C. 808; *Public Service Alliance of Canada et al. v. Canadian Grain Commission et al.* (1986), 5 F.T.R. 51; *Canada v. Justinen and Neilson* (1986), 70 N.R. 151; *Coopey* (Board file 166-2-15355); and *Murray and Shaver* (Board files 166-2-26588 and 26592).

Ms. Lévesque argued that the doctrine of estoppel is not applicable here. The employer made no promise in this case. In this regard, Ms. Lévesque quoted: *The Queen v. Charland et al.* [1982] 1 F.C. 455; *The Queen et al. v. Canadian Air Traffic Control Association* [1984] 1 F.C. 1081; and *Reclamation Systems Inc. v. Bob Rae et al.*

(1996) 27 O.R. (3d) 419. Furthermore, there is no evidence of detrimental reliance on the part of the employees. Thus, estoppel does not apply.

Ms. Lévesque distinguished the Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild decision (supra). In the case of the lock operators, operational requirements require two persons at each lock. Moreover, the Workforce Adjustment Directive has no application because the grievors' work is required and they knew that the employer wanted them to return for the season.

Mr. Landry replied that Appendix "H" provides that some clauses of the GLT Agreement apply. Article M-39 of the Master Agreement does apply to Appendix "H". A seasonal employee is a part-time employee because he works less than a full-time employee. A full-time employee is someone who has acquired a right to a full-time status. In this case, it is based on working 2080 hours per year. The issue concerns the total number of hours of work and not when the grievors were called back to work. Mr. Landry distinguished the Gray decision (supra) where the focus was the severance pay. In Canadian Grain Commission (supra) there was no statutory bar to a temporary lay off. In Justinen and Neilson (supra) the Federal Court of Appeal affirmed that the employer has no right to reduce the employees' salary. Concerning the application of the doctrine of estoppel, Mr. Landry explained that the detriment is the loss of income and employment security. Mr. Foster was promised full-time employment (Exhibit 10) and he relied on this. In Coopey (supra) the shut down was temporary whereas in our case the situation is indefinite.

Determination

The issue I have to decide is whether there is any provision in the Master Agreement, the GLT group specific agreement and, in particular, Appendix "H" thereof, which prohibits the employer from reducing the hours of work of the grievors.

The uncontested evidence established that, in 1995, the employer reduced the regular hours of work of the grievors as lock operators because of budgetary constraints. The employer decided that only lock operators would be affected. The hours of work of the lockmasters remained the same as before 1995. The lockmasters and lock operators perform similar duties. The only difference between these two is

their knowledge and experience which entitles the lockmasters to higher pay (namely, MOC-5-C-2). The lockmasters are entitled to a supervisory differential.

All three grievors are lock operators (canalmen) and their terms and conditions of employment are provided for in the GLT Group Specific Agreement, in particular Appendix "H" thereof (Exhibit 2), and the PSAC Master Agreement.

Up to 1995, Messrs. Foster and Beaudry were full-time indeterminate lock operators working 2080 hours a year in addition to any overtime they might have worked. Moreover, they were also entitled to work winter watches because of the 2080 hours worked. In 1995, their season started April 18, 1995 (instead of April 3) and the hours of operation of the locks during the 1995 season were also reduced. On the other hand, Mr. Norris was employed as a seasonal .90 lock operator from 1991 to 1995 when he was advised that his hours of work were being reduced. However, since he was in an acting position he ended up working 2080 hours a year and winter watches.

The issue revolves on whether the employer violated the relevant collective agreement when it advised the grievors in March 1995 of the reduction in their hours of work during the 1995 season. In addition, this reduction in hours of work is of a permanent nature since the following year, the grievors were only recalled to work on May 1, 1996 and the evidence is that this reduction in hours of work will continue indefinitely.

The relevant portions of the collective agreement (the PSAC Master Agreement, GLT Group Specific Agreement and Appendix "H") must be read as a whole. This Appendix applies to lockmasters, bridgemasters and canalmen.

I will now review the relevant provisions applicable to this case.

The PSAC Master Agreement states:

ARTICLE M-6

MANAGERIAL RESPONSIBILITIES

M-6.01 Except to the extent provided herein, this Agreement in no way restricts the authority of those charged with managerial responsibilities in the Public Service.

M-37.03 The following directives, policies or regulations, as amended from time to time by National Joint Council recommendation and which have been approved by the Treasury Board of Canada, form part of this collective agreement:

...

(28) *Work Force Adjustment Policy.*

Appendix "H" of the GLT Group Specific Agreement provides in Article 5 that:

5. Nothing in this appendix shall be construed to mean that employees are guaranteed any maximum or minimum hours of work.

Article 1 of this Appendix "H" clearly indicates that Article 23 of the GLT Group Specific Agreement does not apply to the grievors. Article 23 provides for Hours of Work and Overtime.

Article 2 of Appendix "H" provides:

2-1 An employee is entitled to receive straight-time compensation at the rate specified for the employee's classification level for all hours worked or for which the employee is granted authorized leave with pay, up to a maximum total of two thousand and eighty (2080) hours in any fiscal year.

2-2 In order to equalize earnings over the year, an employee shall be paid eighty (80) hours for each two (2)-week period when the employee is at work, or on approved leave with pay, subject to such adjustments as may be necessary during the last three (3) months of the fiscal year. All hours worked which are in excess of eighty (80) in a two (2)-week period, shall be credited to the employee's compensatory leave account.

Articles 3 and 4 of Appendix "H" stipulate the entitlement and calculation of the compensation for overtime, standby and call-back.

Article 5 of Appendix "H" must be read with all the other provisions concerning the Hours of Work for lock operators. Articles 2-1 and 5 must be given some meaning and they cannot be ignored. These articles are clear and unambiguous. Article 5

clearly stipulates that the employer does not guarantee any maximum or minimum hours of work. It is interesting to note that clause 23.10 of the GLT Group Specific Agreement provides for the same non-guarantee. However, Article 2-1 provides that straight time compensation is applied to the maximum of 2080 hours. This seems to indicate that the "normal" hours of work for lock operators are 2080.

I have carefully reviewed the jurisprudence cited by Mr. Landry and Ms. Lévesque and I find that the decisions in the Air-Care Ltd. v. United Steel Workers of America (supra) and the Re Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild (supra) are the most relevant to the matter in issue here.

In the Air-Care Ltd. case, Mr. Justice Dickson of the Supreme Court of Canada had to decide in 1974 whether the employer had the right to reduce the work week of all employees due to a temporary lack of work. The collective agreement contained the identical provision to Article 5 of Appendix "H". Dickson, J., found at pages 271 and 272, that:

The Company had the right, in my view, under the terms of the agreement, to reduce the hours of work for a period, rather than impose a lay-off. When the Arbitration Board held otherwise it added to the agreement by imposing upon the Company a duty, not assumed through collective bargaining, to lay off employees whenever there was a shortage of work, and in doing so the Board acted in violation of Article 7.03 which expressly limited the jurisdiction of the Board to deciding the matter within the existing provisions of the agreement and explicitly denied it the power to add to, subtract from, alter or amend the agreement in any respect.

In Re Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild decided in 1983, the employer reduced the hours of work of some of the part-time employees in the classified advertising department. The reduction in hours of work was for an indefinite period of time.

At page 14 of Re Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild, we find a passage from Re U.S.W., Local 4215 and Liberty Ornamental Iron Ltd. (1968), 19 L.A.C. 42, where at page 46 the arbitration board wrote:

In considering whether the company has violated the collective agreement in reducing the work-week, it is necessary to consider the agreement as a whole to deduce the intention of the parties. The board has canvassed the Ontario and American authorities which are available to it. There is considerable discrepancy in these precedents from which one must conclude that much turns on the specific wording of each individual agreement.

In the Re Toronto Star case (supra), the employer decided to cut back the hours of 17 of the part-time employees to avoid having to lay off anyone. Moreover, the relevant collective agreement did not contain a management rights clause and there was no guaranteed number of hours clause. The evidence established that in general the number of hours of the affected employees had remained constant through several re-hires and they had never before been unilaterally reduced by management. The arbitration board distinguished the Air-Care Ltd. (supra) case on the grounds that the reduction in hours of work affected all employees and it was for a temporary period (a few weeks) whereas in the case of the part-timers it affected only 17 employees and it was for an indefinite period. The arbitration board allowed the grievance on the ground that the situation was of an indefinite, protracted reduction in hours of work. This reasoning was based also on the arbitral decision in Re E.S. and Robinson (Canada Ltd.) and Printing Specialties and Paper Products Union, Local 466 (1976), 11 L.A.C. (2d) 408, which had to deal also with a temporary reduction in the hours of work. Moreover, in the Re Toronto Star case, the union maintained that, if the employer had a need to reduce the manpower capacity, pursuant to the collective agreement, it had to resort to the lay-off provisions. The arbitration board agreed with the union's position in this regard.

The case before me concerns an indefinite reduction in the hours of work of all lock operators. The employer reduced the hours of work for the seasons 1995 and 1996 and the evidence was to the effect that the reduction in the hours of work will continue.

According to the jurisprudence, in such a case, where the collective agreement contains lay-off provisions, the employer does not have the right to reduce the hours of work unless it is for a temporary duration and it affects all employees of the same group or classification. In our case, the employer chose to reduce the hours of work of the lock operators only and leave the lockmasters with their hours of work

unaffected. However, the evidence also demonstrated that the employer could not lay off any lock operators because Labour Canada required that there be two lock operators to operate each lock.

I find that the employer does not guarantee hours of work. Thus, it can legally reduce the hours of work and change the status of the position occupied by the grievors. However, if it chooses to reduce substantially the hours of work on a permanent basis, it will then have to resort to the lay-off procedures of the collective agreement. The reduction in hours can only be done for a limited period. However, in the case of Messrs. Foster, Norris and Beaudry, the employer did not have to resort to the lay-off provisions as provided for in the relevant PSAC Master Agreement and the Work Force Adjustment Directive which forms part of the collective agreement for the following reasons.

The evidence establishes that Messrs. Norris and Beaudry actually worked more hours in fiscal years 1994-1995 and 1995-1996 than in 1993-1994 (Exhibit 35) and it seems therefore that there was no violation of the relevant collective agreement in relation to them. Moreover, the evidence is also to the effect that these two grievors suffered no loss in pay as alleged in their respective grievances.

Concerning grievor Foster, he testified that, in 1995, he worked 1944 hours or 93 percent of 2080 hours and he was struck off strength from April 1 to 18, 1995 and from March 17 to May 18, 1996. The evidence therefore showed that there was a reduction in his hours of work. In his grievances, Mr. Foster requests that he be reinstated to a full-time indeterminate position (Board file 166-2-26795) and made whole (Board file 166-2-27131). I find that in the circumstances of this case, the reduction in hours of work in the case of Mr. Foster is only seven percent, thus not significant, and in the cases of Messrs. Beaudry and Norris, there was no reduction in hours in 1995. The jurisprudence cited has no application to the cases before me because the evidence is to the effect that only Mr. Foster suffered a reduction in hours of work and it was not significant. Moreover, the evidence also demonstrated that the employer required two lock operators to operate the locks. Thus, there was no evidence adduced to show that the employer could lay off staff and continue operating the locks.

In conclusion, I am not convinced that the reduction in hours of work in the case of Mr. Foster was so significant as to constitute a repudiation of his employment relationship which might have triggered the application of the lay-off provisions of the collective agreement.

I do notice that evidence was adduced that the hours of work were further reduced in 1996 and 1997. The evidence demonstrated that the grievors were recalled to work on May 1, 1996. At this time, I do not have grievances in this regard. However, I am of the view that in a case of a significant reduction in hours of work, it may be that the employee could allege that such a reduction constitutes a repudiation of his employment relationship and he may be entitled to the application of the lay-off provisions of the collective agreement and relevant statutes. However, this is not the case here.

With respect to Mr. Landry's argument on estoppel, I find that the grievors failed to demonstrate that they or the bargaining agent had relied to their detriment on an employer's promise. All three grievors were appointed to specific lock operator positions; however, there is no evidence that the bargaining agent and the grievors relied to their detriment on the employer's "promise" of a certain number of hours of work. Furthermore, Mr. Landry has not satisfied me that the *Public Sector Compensation Act* and the *Government Expenditures Restraint Act* prevent the employer from reducing the grievors' hours of work. Concerning Mr. Landry's argument with respect to the application of the *Public Service Employment Act*, pursuant to sections 91 and 92 of the *Public Service Staff Relations Act*, I have no jurisdiction to deal with this issue.

For all these reasons, the grievances of Messrs. Foster, Norris and Beaudry are hereby dismissed.

Muriel Korngold Wexler,
Deputy Chairperson

OTTAWA, March 12, 1997.