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Citation: 2001 PSSRB 112

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

GARY E. COMEAU

Grievor

and

TREASURY BOARD
(Fisheries and Oceans)

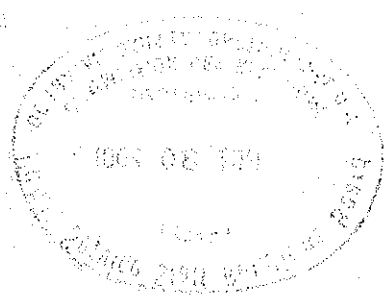
Employer

Before: Anne E. Bertrand, Board Member

For the Grievor: Jim L. Shields, Counsel

For the Employer: Mala Khanna, Counsel

Heard at Halifax, Nova Scotia,
April 30, 2001.



I — FACTS

[1] The grievance form filed by Gary Earl Comeau, the grievor, reports as follows:

> *I grieve that I was assigned standby duties for a period from Jan 3 - Jan 5/2000 only, in contravention of Article 29, Clause 29.05 of the Agreement...*

[2] The corrective action requested by the grievor is that he be paid for five days as per the five-day period found in sub-clause 29.05 of the collective agreement between the Treasury Board and the International Brotherhood of Electrical Workers ("IBEW"), Local 2228 in relation to the Electronics Group (Code 404/98).

[3] To this, the employer replied at the first level as follows:

> *13 April 2000*
>
> . . .
>
> *Dear Mr. Comeau,*
>
> *This letter is in response to your grievance (Reference #C99/00-096) received on March 31, 2000, regarding assignment of standby duties during January, 2000. After reviewing the facts of the situation, I find that your supervisor was correct in dismissing your application for additional standby pay, and your grievance is therefore respectfully denied, with this explanation:*
>
> *On the basis of Article 29.05 of the IBEW collective agreement, you have applied for additional standby shifts that were not assigned to you during the Y2K rollover period in January 2000.* ***This Article is intended to ensure employees' personal time is properly respected in the assignment of regular standby shifts. However, Article 29.08 defines the right of the Employer to schedule "standby duty in a specific instance where there is a requirement known in advance." Since the standby duty assigned to you during January 2000 was not part of a regular or rotational schedule, but rather a one-time assignment scheduled in advance,*** *I find that your supervisor was correct in both the assignment of your shifts and in providing remuneration only for the shifts assigned, and that no further entitlement is due.*
>
> *Sincerely,*
>
> *"Allan Dares"*
> *Superintendent*
> *Equipment & Systems Maintenance*
> *Technical Services*
> *DFO/Canadian Coast Guard, Maritimes Region*

[Emphasis added]

[4] The employer's second level response:

> *JUN- 8 2000*
>
> . . .
>
> *Dear Mr. Comeau:*
>
> *You submitted a second level transmittal concerning the assignment of standby duties from January 3 - 5, 2000. I met with your union representative, Mr. Phil Johnson, on May 19, 2000, to discuss your concerns.*
>
> *The standby duties were assigned in relation to the Y2K issues from December 29th, 1999 to January 5th, 2000.* ***In your case, the period of standby assigned was from January 3rd to January 5th inclusive. The planned period of standby duties concluded on January 5th and no other employee in your unit was assigned standby duties for the remainder of the regular work week.***
>
> *It is not the intent of Clause 29.05 to impose a five-day minimum standby period on management or employees. Based on the information provided at the hearing [sic] regret that I am unable to grant your corrective action requested and your grievance is denied at the second level.*
>
> *Yours truly,*
>
> *"Neil A. Bellefontaine"*
> *Regional Director-General*
> *Maritimes Region*

[Emphasis added]

[5] The employer's third and final level response:

> *Nov 15 2000*
>
> . . .
>
> *Dear Mr. Comeau:*
>
> *This is further to your grievance forwarded to the final level of the departmental grievance procedure regarding the application of the article on standby of your collective agreement of the International Brotherhood of Electrical Workers.*
>
> *I have carefully reviewed the circumstances surrounding your grievances and I have also given consideration to the arguments presented by Mr. Dan Boulet.*
>
> *It is my understanding that Article 29.05 is intended for use during regular scheduling, whereas Article 29.08, is intended for particular specific situations. In keeping with the government-wide Y2K readiness, the period in question*

intended for particular specific situations. In keeping with the government-wide Y2K readiness, the period in question was an exceptional circumstance and not part of a regular or rotational schedule.

In light of the above, your grievance is denied at the final level.

Yours sincerely,

"John Adams"

[6] As a preliminary matter, the parties entered as evidence by consent an Agreed Statement of Fact, as well as a Schedule of Work to depict the uncontested facts in this matter.

[7] The Agreed Statement of Fact provides as follows:

Board Reference No. 166-2-30313

PUBLIC SERVICE STAFF RELATIONS BOARD
In the Matter of an Adjudication Between
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2228
and
TREASURY BOARD (FISHERIES AND OCEANS)
Concerning the Grievance of Gary E. Comeau

DISPUTE:

The grievor's entitlement to standby pay under, and the interpretation of, Article 29 of the Collective Agreement between the parties

AGREED STATEMENT OF FACT:

1. *The grievor is an EL-04 employed by the Department of Fisheries and Oceans in the coast guard technical support section in Dartmouth, Nova Scotia.*

2. *The IBEW Local 2228 is the grievor's certified bargaining agent.*

3. *In the month of November, 1999, the employer published a standby list and the grievor was assigned standby duties for a period from January 3, 2000 to January 5, 2000.*

4. *The employer assigned the grievor standby duties for the purpose of emergency support during the Y2K readiness period.*

5. *The grievor received standby pay from the employer pursuant to Article 29.01 for the three (3) aforementioned days of standby duty.*

6. *The grievor, through IBEW 2228, initiated a grievance claiming an entitlement to five (5) days standby assignment and pay pursuant to, in part, Article 29.05 of the collective agreement between the parties.*

7. *The employer denied the grievance and relies, in part, upon Article 29.08 of the collective agreement between the parties.*

8. *Either party may call additional evidence, in the event that such may be required.*

FOR THE BROTHERHOOD	*FOR THE TREASURY BOARD*
"James L. Shields" *Solicitor for the IBEW, 2228*	*"Harvey A. Newman"* *Solicitor for the Treasury Board*

[8] The Schedule of Work, also introduced by consent (Exhibit G-2), depicts the dates when the grievor was scheduled to be on standby to work as provided by this Schedule of Work posted in November of 1999. The Schedule of Work provides as follows:

Technician Shift Schedule for Y2K Day-Zero Coverage

STATION: *Dartmouth*

DATE	*SHIFT*	*DUTY EL*	*STANDBY EL-L*	*STANDBY EL-S*	*STANDBY (...)*
Dec. 29, 1999	*1600-2400*	*- - -*	*Veniot, P.*	*Kinrade, H.*	*Crowell, A.*
Dec. 30, 1999	*0000-0800*	*- - -*	*Veniot, P.*	*Kinrade, H.*	*Crowell, A.*
	0800-1600		*xxx*	*xxx*	*xxx*
	1600-2400	*- - -*	*Veniot, P.*	*Szuchs, M.*	*Crowell, A.*
Dec. 31, 1999	*0000-0800*	*- - -*	*Ewing, M.*	*Szuchs, M.*	*Roberts, T.*
	0800-1600		*xxx*	*xxx*	*xxx*
	1600-2000	*Clements, R.*	*Ewing, M.*	*Brown, R.*	*Roberts, T.*
	2000-2400	*Fleming, B.*	*Ewing, M.*	*Brown, R.*	*Roberts, T.*
Jan. 1, 2000	*0000-0800*	*Fleming, B.*	*Ewing, M.*	*Brown, R.*	*Roberts, T.*
	0800-1600	*Comeau, G.*	*Ewing, M.*	*Brown, R.*	*Roberts, T.*
	1600-2000	*Comeau, G.*	*Ewing, M.*	*Brown, R.*	*Roberts, T.*
	2000-2400	*Veniot, P.*	*Ewing, M.*	*Brown, R.*	*Roberts, T.*
Jan. 2, 2000	*0000-0800*	*Veniot, P.*	*Ewing, M.*	*Brown, R.*	*Roberts, T.*
	0800-1600	*- - -*	*Ewing, M.*	*Woodford, R.*	*Roberts, T.*
	1600-2400	*- - -*	*Ewing, M.*	*Woodford, R.*	*Roberts, T.*
Jan. 3, 2000	*0000-0800*	*- - -*	*Comeau, G.*	*Woodford, R.*	*Lindsay, P.*
	0800-1600	*- - -*	*xxx*	*xxx*	*Lindsay, P.*
	1600-2400	*- - -*	*Comeau, G.*	*Malin, R.*	*Lindsay, P.*
Jan. 4, 2000	*0000-0800*	*- - -*	*Comeau, G.*	*Malin, R.*	*Lindsay, P.*
	0800-1600		*xxx*	*xxx*	*xxx*

	1600-2400	*- - -*	*Comeau, G.*	*Samland, H.*	*Lindsay, P.*
Jan. 5, 2000	*0000-0800*	*- - -*	*Comeau, G*	*Anderson, L.*	*Lindsay, P.*
	0800-1600		*xxx*	*xxx*	*xxx*
	1600-2400	*- - -*	*Comeau, G.*	*LeBlanc, B.*	*Lindsay, P.*

Note: xxx denotes normal working shift; - - - denotes no coverage.

[9] We also heard evidence from Paul McKiel, Supervisor for Technician Maintenance for the Department of Fisheries and Oceans ("D.F.O.") for more than one year at the time of this hearing. He supervises some 22 technicians and administrative personnel for the maintenance of electronics for the Coast Guard. McKiel has been with the D.F.O. for 27 years.

[10] With the pending problem of the Y2K impact on computer systems, McKiel became involved as a Regional Implementation Officer for the Y2K project two years prior to January 1st, 2000, referred to as "Day Zero", and he was Y2K Project Manager in his region from September 1st, 1999 to February 2nd, 2000.

[11] The National Office of the D.F.O determined that it would be appropriate to have guidelines on how to best respond to the Y2K situation. Consequently, guidelines were developed and the National Office in Ottawa instilled their implementation by the regional offices as those saw fit. One guideline suggested that, during the first two days following Day Zero, employees would be required on standby; however, the predetermined dates "as points of contact in case of problems" were from December 29, 1999 to January 5, 2000, according to McKiel. Essentially it was the view of D.F.O. that employees be available for points of contact for five days after the event.

[12] McKiel was not responsible for determining who would be on standby. That decision was left to the supervisors and their employees. Gary Comeau, the grievor, was required to be on standby for three days as per the schedule for shift work posted in November of 1999. The three days for which he was scheduled to be on standby were January 3, 4 and 5, 2000. According to McKiel, no other employees on this special Schedule of Work (Exh. G-2) for Y2K received more than a three-day standby requirement.

[13] On a form entitled "Extra Duty Report" introduced as Exhibit E-1, the grievor, Gerald Comeau, filed his hours of work as having reported to work on January 1st for his regular shift and as well as overtime hours, and on January 5th, he reported for eight hours as having been called in on standby. These hours were approved for

payment. Whereas the present grievance is a request by the grievor for payment of standby duties for the following two days, January 6th and 7th, the Extra Duty Report signed by Comeau does not indicate any request for payment for those two additional days.

[14] McKiel explained that there is no on-going requirement for standby services on a 24-hour basis, standby being used only as an emergency measure. In the last 15 months, McKiel has not had to resort to standby for emergency or other unforseen events. There are regular day shifts in the morning, in the afternoon and the graveyard shift, each of 7.5 hours per shift, Monday through Friday. McKiel also pointed out that while the National Office had set guidelines for the standby requirements during the Y2K Day Zero plan, the regions were left to determine the number of days they required standby employees. McKiel was not the one in charge of determining the number of days for his region and he testified not being aware of the number of days for standby in other locations.

[15] Daniel Boulet also testified at this hearing and he is the Business Manager for Comeau's bargaining agent, the IBEW. Boulet oversees the application of the collective agreement and is aware of the grievor's case. Boulet investigated other cases in which employees were required to be on standby for the Y2K project and he found that some employees in other regions had been paid for five standby days, Monday to Friday, when required to be on standby for Y2K. Those regions were Sarnia and Oakville. He explained that in those two regions of Ontario, employees had been paid for five days for being on standby from December 27, 1999 for the entire week, and then from January 3, 2000 on forward for another five days. It appeared in those cases, the standby days were from Monday through Friday and thus were calculated as such for the entitlement to standby wages. In other words, those employees were paid for five days from Monday December 27, 1999 to Friday December 31, 1999, and for another five days from Monday January 3, 2000 to Friday January 7, 2000. Boulet, however, could not indicate whether the employees in those regions had been scheduled to be on standby for the entire five-day week as opposed to only three days and paid for five days. Moreover, the cases in Ontario were the only two out of the 30 - 50 total sites in Canada.

[16] Boulet also indicated that he was aware of only one case in which an employee placed on standby for three days had been paid for three days as opposed to being

paid for five days as per Article 29.05 of the collective agreement (Exhibit G-3). Consequently, Boulet could not indicate whether the employee in Sarnia had been placed on standby for one day and paid for the entire week of five days or whether he had been placed on standby for the total five days and therefore paid for the total five days.

II — SUMMATION - GRIEVOR'S POSITION

[17] The grievor is of the view that there is a single issue in this matter and it is whether the employer is required by Article 29.05 of the collective agreement to pay an employee for five days of standby wages when an employee is scheduled to be on standby during that five-day period. Article 29 has been in the collective agreement for many years and has remained unchanged throughout these years. He states that Article 29.05 is imperative and it reads "*the Employer agrees that standby for the afternoon and/or night shifts shall be on a five (5) day basis, Monday to Friday inclusive*".

[18] In conjunction with this Article, the grievor refers to Article 29.08 in which "*the Employer shall have the right to put an employee on standby duty in a specific instance where there is a requirement known in advance*".

[19] The grievor describes Article 29.08 as being an operative clause which allows the employer to engage the standby provisions; and when the employer chooses to do so, the employer is then caught by Article 29.05 which directs the employer to pay an employee for the entire week, Monday through Friday, regardless of the number of days on which the employer sought to place the employee on standby. The grievor therefore views Article 29.05 as a minimum requirement to pay an employee for five days of work while on standby, and he takes this view due to the fact that an employee who normally completes his regular shifts has his free time infringed when required to be placed on standby by the rights of the employer to set a special requirement for extra work. The infringement on an employee's free time is compensated by allowing that employee to be reimbursed for wages for that time. And, according to Article 29.05, that standby time is an imperative Monday-through-Friday-five-day period by the use of the word "*shall*" in that clause, argues Mr. Shields on behalf of the grievor.

[20] The grievor is of the view that an adjudicator must determine the intentions of the parties when interpreting the collective agreement and in doing so, the adjudicator must look at the ordinary words used by the parties in order to extract their

intentions. Parties are known to not be perfect in the drafting of their intentions and that is why rules of constructions and interpretations of collective agreements have developed to direct adjudicators and tribunals to look at ordinary words in their ordinary sentences. The grievor argues that if a tribunal finds that there may be more than one interpretation for a same collective agreement provision, then three criteria guide the interpretation process:

a) the reasonableness of each interpretation perceived;
b) the administrative feasibility of each interpretation; and
c) whether either interpretation gives rise to an anomaly or conflict with another provision of the collective agreement.

[21] The grievor adds that the context within which the clause operates is also an important factor for consideration. For instance, in the case of standby requirement placing an employee in ready alert and thereby infringing on his/her free time, the interpretation must attract a similar respect of the employer's obligation to pay for such infringement.

[22] The grievor also refers to the various sub-clauses of Article 29 to illustrate his position. Essentially, the standby provision in its totality indicates that the employer has a right to put an employee on standby. In order to do so, the employer must give notice to the employee in writing and such notice must be given at least seven days prior to the standby taking place. Once those preconditions have been met, the employee must be on standby and he or she cannot refuse to report to work. The grievor says that after all of these conditions have been met and an employee does report to work on the standby, he or she must be compensated for the five days, and this being the most reasonable interpretation to give to Articles 29 in its totality, and it best reflects past practices.

[23] In support of his position, the grievor presents this Board's earlier decision in *MacAdams* (Board File 166-2-26601) in which case the employer argued that it had a right to put an employee on standby and that such a right is not an obligation. The grievor also referred to the final response letter of the employer in the current grievance involving Gary Comeau and it illustrates the employer's position that Article 29.05 is intended for use during "regular scheduling" whereas Article 29.08 is intended for particular specific situations such as the Y2K readiness program, ie. an exceptional circumstance. The grievor regards the employer's interpretation of these clauses as

not specifically providing for regular scheduling standby and exceptional cases standby, as those words are nowhere reflected in the various subclauses of Article 29. There are no words either to restrict the application of Article 29.05 that the five days will not be minimum payment of standby wages.

[24] Finally, it is the grievor's position that there is no conflict between the reading and interpretation of Articles 29.05 and 29.08 and the language found in the current collective agreement was also present in 1995 in the *MacAdams* case. The grievor states that his view is the correct one given that in two other regions, the employer paid its employees for five days' wages for standby.

III — SUMMATION - EMPLOYER'S POSITION

[25] The employer argues that the Y2K readiness plan was certainly not part of regular ongoing needs of the D.F.O. but rather a specific requirement for particular needs and that this specific requirement was known in advance which reflects the wording of Article 29.08. The grievor was placed on standby and paid accordingly. While the employer admits that Article 29 in its entirety is not the clearest of clauses, the intentions of the parties can be delineated from the words of the various clauses.

[26] The essence of article 29 is the employer's right to place employees on standby and, according to Article 29.03, there will be no payment for any employee placed on standby who is unable to work. Therefore, the employer argues that, even with the requirement of standby, no pay is automatically disbursed to the employee if that employee does not work. The employer adds that Article 29.05 does not contain any words which state that a minimum of five days must be paid for the standby requirement, and this all ties in with the reading of Article 29.01 which is the pivotal clause setting out the requirements for standby.

[27] Furthermore, a reading of Articles 29.08 and 29.09 shows a clear distinction between a specific instance where standby requirement is known in advance and a known requirement for standby duties on a continuing basis, therefore illustrating that the parties had contemplated different kinds of standby in their work.

[28] The employer's counsel presents two cases in support of its position: *Mullins* (Board File 166-2-17752) and *Re Cardinal Transportation B.C. Inc. and Canadian Union of Public Employees, Local 561*, 62 L.A.C. (4th) 230.

[29] In the *Mullins* case, the employee was actually paid for the infringement of his time and in the present case, the grievor was paid for the standby requirement and therefore the infringement on his free time, but he was not paid for the other two days for which he claims for the reason that he was not placed on standby for those two days. The employer therefore states that given the grievor's free time was not infringed, there was no need to pay him for those two days.

[30] The *Re Cardinal* case stands for the proposition that the bargaining agent has the burden to show that the words of the collective agreement are unclear and that it gives rise to a conflict in order to look at any past practices. In the present case, the grievor has failed to show that the words are unclear given that the he contemplated a standby requirement of three days, he contemplated therefore a financial benefit of three days and that is what he received. The employer adds that the grievor never contemplated a financial benefit beyond the five days as is evident by the Extra Duty Report which he filed and presented to the employer for payment, and that he did not testify in this matter.

IV — GRIEVOR'S REBUTTAL

[31] In rebuttal, the grievor states simply that he has met the burden of the requirements to show that Article 29.09 has been fulfilled because he relies on Article 29.05 to anticipate being paid for the entire five days.

V — DECISION

[32] I note for the record that the grievor did not testify at this hearing, and the parties did not present any evidence of how the subject clause 29.05 of the collective agreement has been used by the parties in the past.

[33] It is best to illustrate Article 29 in its entirety to aid in the interpretation of this article. It reads as follows:

ARTICLE 29
STANDBY

> ***29.01*** *When an employee is notified in writing that he/she will be required to be available for work during his/her off-duty hours the employee shall be entitled to a standby payment of thirteen dollars ($13) for each consecutive eight*

(8) hours or portion thereof that he/she is required to remain available.

29.02 *While an employee is not required to have a telephone, an employee designated for standby duty shall be available during his/her period of standby at a known telephone number and be able to return to duty as quickly as is practicable when he/she is called, but in any event not later than one (1) hour after he/she is called.*

29.03 *No payment for standby will be made for any eight (8) hour period referred to in clause 29.01 if an employee is unable to report for duty when required during that period.*

29.04 *No employee will be assigned standby duties when otherwise not required to work on a statutory holiday or lieu day.*

29.05 *The Employer agrees that standby for the afternoon and/or night shifts shall be on a five (5) day basis, Monday to Friday inclusive.*

29.06 *When an employee is required for standby duties on weekends one employee per weekend will be assigned to such standby unless mutually arranged otherwise at local work sites.*

29.07 *In respect of clauses 29.05 and 29.06 the Employer agrees to give seven (7) days' notice of such standby requirement unless it is essential to provide a replacement due to the inability of the assigned employee to assume or continue standby duties.*

29.08 *The Employer shall have the right to put an employee on standby duty in a specific instance where there is a requirement known in advance.*

29.09 *When there is a known requirement for standby duties on a continuing basis the Employer will use his best endeavours to distribute the standby duties on an equitable basis among qualified available employees and on a weekly basis.*

29.10 *An employee on standby who was called into work and who reports to work in accordance with the above shall be compensated in accordance with the Call-Back provisions of this Agreement.*

29.11 *In respect of employees of External Affairs who are posted abroad and where an employee is required to have a telephone installed, the Employer shall pay that portion of the employee's telephone installation and rental cost which exceeds the Ottawa rate for similar services.*

> *29.12 The Employer agrees that in those areas where Electronic paging devices are both available and practicable they will be provided without cost to those employees on standby*

[34] I reviewed the caselaw submitted by the parties and I offer the following comments. The *MacAdams* case, supra, involved a matter in which an employee grieved for having been removed from the standby list from which an employer assigned standby duties on a rotational basis among its employees. Clause 29.09 in this 1995 case reflected the same as that of today in that standby duties on a continuing basis would have to be distributed by the employer on an equitable basis among qualified available employees and on a weekly basis. This issue surrounded the use of both civilian and military personnel on the standby list and that the employer intended to change the standby list to only include military personnel, the grievor being a civilian. That case therefore revolved around the interpretation of "equitable distribution" of standby duties. The adjudicator found that the employer's management rights were expressly subject to the provisions of the standby clause which the adjudicator also found to be an ambiguous provision in the collective agreement. That adjudicator therefore looked at past practices as an aid to interpretation and awarded the grievor standby pay as if that practice had been in place during the period he held the position affected, i.e. that the employer had both military and civilian personnel on the standby list. The *MacAdams* case was upheld on judicial review.

[35] In *Mullins*, supra, a dispute arose from an employee's right to claim overtime and standby pay by virtue of the fact that the grievor was first to be called on a list available to the employer on a 24-hour basis in the event the employer had to call back employees for extra duties. The adjudicator found that in order to qualify for standby pay and other related wages under the provisions of the collective agreement, the employee had to make himself available to be reached by the employer on the employer's instructions so that he could be ordered to work overtime. And, an employee who was not designated by the employer to be on standby was free to do as he pleased with his own time. The adjudicator found that given that the grievor in that case had not been asked by the employer to maintain himself in readiness to respond to a call, he was not entitled to standby pay. That case also distinguished between overtime under Article 25, between call back to work under Article 28, and between standby under Article 29. In the case of Mr. Mullins, the evidence was that the

employer never required the grievor to be in a state of readiness on the date claimed by the grievor for owed standby wages and that in fact the grievor testified that he was not at home to receive a call by the employer to be called back to work on the date in question, therefore not available "to be called back to work".

[36] The *Re Cardinal* case, supra, involved a first collective agreement between the parties and a dispute as to holiday pay entitlement for transportation employees. The adjudicator found that there was clearly an ambiguity in the related clause of the collective agreement which could not be resolved by considering the language of the collective agreement as a whole. Given such ambiguity, the tribunal had to look at some evidence of the mutual intentions of the parties from their bargaining history or from their past practice evidence. In this case, however, this was a first collective agreement and no such evidence was available. The union therefore was unable to meet its onus to establish clear and cogent evidence for the entitlement to receive the monetary benefit it claimed. In reference to such a statement, the adjudicator cited *Noranda Mines* (April 27, 1981), unreported (Hope). In the absence of cogent and clear evidence, the adjudicator could not impute an obligation on the employer to pay a monetary benefit.

[37] I had the benefit of reading *Noranda Mines*, supra, cited in the *Re Cardinal* case and found such case to be helpful. In that case, disputes arose as to the interpretation of health plan provisions in a first collective agreement after the merger of two companies with two distinct prior agreements. The employer argued it required extrinsic evidence to interpret the ambiguous clauses causing the disputes. The adjudicator reiterated the test for interpretation of collective agreement provisions after having referred to the case of *University of British Columbia v. Canadian Uion of Public Employees, Local 116* (1977), 1 CLRBR 13:

> . . .
>
> *Undoubtedly the situation in BC is that the concept of ambiguity, a test that is somewhat rigorous, is not so rigidly applied with respect ot collective agreements. That softening of the common law principles of the interpretation of contracts is seen as essential to the legal principles governing more rigid contractual relationships. A collective agreement is a living thing designed to achieve and preserve harmony between two groups with competing economic interests who must pursue those interests in common cause.*

> *Inflexible principles of contractual interpretation do not reflect the realism of the atmosphere in which collective agreements are negotiated or the very real limitations imposed on parties in seeking to extract and define all of the nuances of their relationship in a written document.*
>
> *But the move towards flexibility does not in any way erode the fundamental principles of contract that govern a collective bargaining relationship. The least that is required of an arbitrator under the UBC v CUPE case is "a bona fide doubt about the proper meaning of the language in the agreement."*
>
> *That standard may be less rigorous than the ambiguity test in the common law of contract but it is not an invitation to continuously revisit the negotiations giving rise to the agreement in any case of dispute over the proper interpretation of the language.*
>
> *The "bona fide doubt" spoken about in UBC v CUPE is not the bona fide doubt of the parties but the bona fide doubt of the arbitrator arising from his reading of the collective agreement. Sanctity of contract plays an important role in collective bargaining relationships as it does in any other contractual relationship and parties should not find themselves deprived of the fruits of their bargain on the assertion by the other party that something different was intended or sought in the collective bargaining process.*
>
> . . .
>
> *The task of an arbitrator in addressing issues of disputed interpretation is to first examine the language to see if it creates of itself or in the contract in which it appears in the collective agreement a bona fide doubt about the proper meaning of the language.*
>
> . . .
>
> (at pp. 8-13)
>
> **[Emphasis added]**

[38] What I retained from this passage is the principle that a "bona fide doubt" or ambiguity in the provisions of the collective agreement subject of interpretation must reside with the arbitrator from his or her reading of the collective agreement, and not merely because the parties to the dispute say it to be so.

[39] The comments of the adjudicator in *Noranda Mines* mirrors that of many other adjudicators as found in the collective work of Brown & Beatty *Canadian Labour Arbitration* (3rd Ed.):

...

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

...

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 that would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless the context reveals that the words were used in some other sense....

...

The context in which words are found is also a primary source of their meaning. Thus, it is said that the words under consideration should be read in the context of the sentence, section and agreement as a whole....

...

(at pg. 4:2100)

[40] In the present case, while for the moment I can see one may have a query as to the object of Article 29.05, that is whether it refers to shift days or payment days as suggests the grievor, I find upon my reading of the sub-clauses of Article 29 that they are not ambiguous in their composition. I read Articles 29.05 and 29.06 together and they make sense, particularly in the context within which they relate to standby work. I cannot find a "bona fide doubt" about their proper meaning.

[41] According to me, when the parties to the collective agreement wrote Article 29.05, they wished to distinguish between standby work for shifts during a regular weekday and standby work for shifts during the weekend. I say this for the reason that employees working on the regular morning or regular afternoon weekday shifts would not be put on standby for weekend work, and that is why standby was described on a basis of the five days from Monday to Friday, i.e. the regular days of the week.

[42] If standby were to be required, the parties incorporated into Article 29.07 the requirement of a prior specific request (seven days' notice); however, an employee working on the Monday to Friday regular weekday shift could not be placed on standby on the weekend in any event, once again giving credence to a plain reading of the standby provisions for employees working on weekdays and for those working on weekends.

[43] The construction of those clauses reflects the recognized effort of the parties to the collective agreement to prevent the infringement upon the employees' more desired time off – that during the weekend. In support of this interpretation is the fact that the employer must give seven days' notice to the employee who will be subject to standby. This is intended to minimize as much as possible the inconvenience to the employee who may be called upon to work during his or her time off and to allow that employee to plan a week in advance.

[44] I disagree with the grievor's position that an employee who is called upon to work on standby for one day shall necessarily be paid for five days by virtue of Article 29.05. I cannot see how such an interpretation makes sense after a plain reading of Article 29 in its entirety, nor in a reasonable and practical application of standby request and payment for same. In fact, I find that the three days' standby pay paid to the grievor respected his entitlement under the collective agreement.

ISSUED at Fredericton, New Brunswick, this 27th day of October, 2001.

Anne E. Bertrand,
Board Member