

ARBITRATION AWARD

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA
(UNDE, LOCAL 90125)
(hereinafter called the "Union")

AND:

SERCO FACILITIES MANAGEMENT INC.
(hereinafter called the "Employer")

GRIEVOR: Germaine McLean

COUNSEL: For the Union

Ray Domeij

For the Employer

Denis Mahoney

ARBITRATOR: James C. Oakley

The arbitration hearing was held at Happy Valley-Goose Bay, Labrador on June 9, 2009. The parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Arbitrator would remain seized of the matter for ninety (90) days following publication of the Award in the event there is a question of interpretation or compensation arising from the Award.
5. Witness were excluded from the hearing.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Serco Facilities Management Inc. at 5 Wing Goose Bay and Public Service Alliance of Canada, UNDE Local 90125, expires March 31, 2008
- Consent 2 - Grievance Form File # 08-06, Grievor - Germaine McLean
- Consent 3 - Letter dated June 2, 2008 from Natasha McLean, Human Resources Director of Serco to Germaine McLean
- Consent 4 - Letter dated July 10, 2008 from Dusty Miller, Site Manager to Germaine McLean
- Consent 5 - Letter dated July 28, 2008 from Jackie de Aguayo, Coordinator, Representation, Collective Bargaining Branch, Public Service Alliance of Canada to Natasha McLean, Human Resources Director, Serco Facilities Management Inc.
- Consent 6 - Letter dated April 4, 2008 from Germaine McLean to Natasha McLean
- Consent 7 - Letter dated April 4, 2008 from Natasha McLean, HR Director, Serco Facilities Management Inc. to Germaine McLean
- RF - 1 Bargaining proposals of Public Service Alliance of Canada effective date July 1, 2002
- NM - 1 Excerpts from Collective Agreement between the parties dated 1998 to 2002

NM - 2 Excerpts from Collective Agreement between Serco Facilities Management Inc. and Canadian Air Traffic Control Association, Local 5454

Nature of the Grievance

The Grievor, Germaine McLean, resigned from her employment with Serco Facilities Management Inc. (“Serco”) and claimed entitlement to severance pay under Article 37 of the Collective Agreement. The Employer denied the claim for severance pay. The parties dispute the interpretation of the Collective Agreement with respect to entitlement to severance pay. The Employer also claims that the Union is estopped from claiming severance pay as a result of statements made by Union representatives.

Collective Agreement

The relevant Articles of the Collective Agreement are as follows:

Article 37 Layoff/Recall and Severance

...

37.07 Where an employee is to be permanently laid off and elects to take severance as herein provided, he/she shall also be entitled to:

- a) reasonable leave of absence with pay not to exceed six (6) paid regular shifts for the purpose of being interviewed by a prospective employer including time for related travel upon provision of a letter from the prospective employer requesting the employee to attend for the job interview.
- b) Job search assistance co-ordinated by the Human Resources Department.

37.08 Employees subject to lay-off for an indefinite period shall have the option of:

- a) accepting layoff, retaining the right of recall for up to one (1) year;
- or
- b) accepting termination from the Employer with full pay for the remainder of the notice period, waiving the right to recall by accepting severance pay outlined below.

37.12 Recall

- a) Employees who have been laid off and have not accepted severance pay shall be entitled to recall as set out in 37.02 in inverse order of lay off for a period of one (1) year from the date of lay off. Upon expiry of the recall period, an employee shall receive severance pay if he/she has not been recalled.
- b) An employee who is laid off shall have the right of recall for a period of one (1) year for any vacant or newly created bargaining unit positions for which the employee is qualified (within the meaning of the Staffing Article) to perform the duties of the job, within a reasonable period of familiarization.
- c) Any vacancies filled by an employee exercising their rights under this Article are exempt from the Staffing Article posting process.

37.13 Severance shall be calculated on the basis of the employee’s weekly rate of pay on the last day of work.

37.14 Upon termination, eligible full time and part time employees, including seasonal employees, shall be entitled to two weeks pay for the first complete year, plus one week’s pay for each additional year of service with Serco. Part years are to be prorated.

...

Article 44 Employee Status

...

44.04 Seasonal employees

A seasonal employee is an employee hired on a permanent basis for work that is not continuous throughout the year.

Unless otherwise provided for in this Agreement, seasonal employees shall be entitled to all the provisions provided under this agreement.

Seasonal employees will not be utilized as operational firefighters.

...

c) Recall & Severance

Providing there are the requirements for staff, seasonal employees will be recalled by the Employer, in order of seniority, for the subsequent work season, unless the seasonal employee has been notified by the Employer not later than his/her last day of

employment, that, consistent with the provisions of this agreement, he/she will not be recalled.

If a seasonal employee is not recalled because of a change in staffing requirements, he or she shall be entitled to severance payments as per Article 37.13 of the collective agreement where he/she is prepared to surrender any and all recall rights. Service will be calculated based on actual time employed.

...

Article 46 Break in Service and Employment

46.01 Service and employment will be terminated when an employee:

- a) resigns or retires;
- b) is laid off and receives severance pay as per the provisions of Article 37.13;
- c) is discharged for just and sufficient cause;
- d) abandons his/her position by failing to report for duty for three (3) consecutive work days. Termination will not take place if the employee has notified the Employer in advance of the three days and has provided a reason acceptable to the Employer, or is able to provide a reason acceptable to the Employer upon his/her return.

Evidence

The witness called by the Union was Germaine McLean, the Grievor. The witnesses called by the Employer were Sandra Turner, Human Resources Supervisor, Randy Ford, Labour Relations Officer, and Natasha McLean, Human Resources Manager.

The Grievor, Germaine McLean, was employed by Serco for about 7 ½ years. She resigned from her position as CSC Clerk by letter dated April 4, 2008. Ms. McLean testified that she was offered a position at the Department of National Defence. The new position did not involve shift work. She asked Serco to grant her a leave of absence so that she could “try out” the new job. The request for leave of absence was not granted. She resigned from her position giving the notice requested. After she resigned, her benefit plan and pension plan were terminated. She later requested payment of severance pay. The Employer denied her request. She had expected to receive severance pay. The

Union filed a grievance dated May 7, 2008 requesting payment of severance pay under Articles 37, 46 and any other relevant Article. The Employer denied the grievance. The grievance was referred to arbitration.

The Collective Agreement under which the grievance was filed was in effect from July 1, 2002 to March 31, 2008. This is the second Collective Agreement between the parties. The first collective agreement was in effect from 1998 to 2002. Article 37.13 of that collective agreement contained the following provision with respect to severance pay:

- 37.13 Severance shall be calculated on the basis of the employee's weekly rate of pay on the last day of work.
- a) Upon termination, eligible full time and part time employees including seasonal employees shall be entitled to the following severance pay:
 - b) two weeks pay for first complete year plus one week's pay for each additional year of service with Serco.

Part years are to be prorated.

Sandra Turner, Human Resources Supervisor, testified that her duties include responding to inquiries from employees about severance pay. She testified that the Employer's practice is to pay severance pay to employees who are laid off and whose employment is terminated for redundancy. She said that about 100 to 120 employees left the employ of the Employer from 1998 to date. About 25 of those employees were laid off and eligible for severance pay.

Natasha McLean testified that she has held the position of Human Resources Manager for Serco in Goose Bay from 2008 to present. She held the position of Human Resources Director for Canadian Operations, based in Ottawa, with responsibility for Goose Bay, from 2004 to 2008, and she held the position of Human Resources Manager in Goose Bay from 2001 to 2004. She testified that the Employer's interpretation of Article 37 was that severance pay was payable when there was a permanent layoff initiated by the Employer. The Employer has given this interpretation to anyone who inquires about severance pay. There was no written policy about severance pay. She testified that there were no other grievances claiming severance pay prior to the current grievance of Germaine McLean. There have been grievances filed subsequent to the current grievance. Natasha

McLean was a member of the Employer's bargaining team during negotiations in 2002. She testified that the Employer's position during collective bargaining in 2002 was that severance pay was payable only in the event of permanent layoff. The Union submitted a proposal to amend Article 37.13 which would have changed the language regarding eligibility for severance pay. The Union's proposal stated that employees shall be entitled to severance pay "upon termination of employment, either compulsory, voluntary, at retirement or upon death"

Natasha McLean testified that, at the time of collective bargaining in 2002, Serco was in the process of bidding on a new fixed price commercial contract for an 11 year period from 2003 to 2014. Serco accounted for the cost of the new Collective Agreement with the Union when preparing its bid. Ms. McLean said the bid was based upon the Employer's interpretation of entitlement to severance pay under Article 37. She agreed that the estimated cost of severance pay was not a significant cost factor when preparing the bid for the commercial contract.

Randy Ford has held the position of Labour Relations Officer for Serco since October, 2005. Prior to that date, he was a bargaining unit employee of Serco. He was the Local Union President from 1998 to 2004. He was a member of the Union's bargaining team during the 2002 negotiations. He understood at that time that the Employer's interpretation of the collective agreement was that severance pay was paid only on layoff. The Employer's interpretation was not in writing. Mr. Ford believed that during the 2002 negotiations, the chief negotiator for the Union was aware of the Employer's interpretation, but did not agree with the interpretation. The Union made a proposal during the 2002 negotiations that severance pay would be paid in the event of death, layoff or resignation. Mr. Ford referred to the Union's bargaining proposal and testified that the outcome of collective bargaining in 2002 was the current contract language. He testified that in 2002 he made a presentation on behalf of the Union to the bidders competing for the Public Works and Government Services Canada contract. He explained to the bidders that the tentative Collective Agreement negotiated between the Union and Serco could apply to any successful bidder.

Sandra Turner testified that prior to the 2002 negotiations, she had a discussion with one of the Union's bargaining team members, about the Employer's interpretation of Article 37 and payment of severance pay. She was told that the Union did not agree with the Employer's interpretation.

Natasha McLean was asked about the collective agreement between the Employer and the Canadian Air Traffic Control Association (CATCA). The language of that collective agreement with respect to payment of severance pay stated as follows:

33.07 For the purposes of Article 33.05(b) and 33.06 above, Employees shall receive severance pay based on two (2) weeks' pay for the first complete year of service, plus one week's pay for each additional year of service with the Employer, with a maximum benefit of thirty (30) weeks' pay. Length of service is to be determined as of the date of lay off. Part years are to be prorated. Severance pay shall be calculated based on the hours in the Employee's work week, pursuant to Article 16.01, and the Employee's regular rate of pay as of the date of lay off.

Ms. McLean testified that she was not a member of the bargaining committee at the time the collective agreement with CATCA was negotiated.

Union Submission

The Union submitted that when the Grievor resigned, she was terminated within the meaning of the Collective Agreement. The Grievor gave the notice required. She had provided valuable services to the Employer. The Grievor was terminated according to the definition of "termination of employment" in *Black's Law Dictionary* which was "a complete severance of relationship of employer and employee". Article 46.01 lists various events where employment will be terminated, including resignation. Under Article 37.14 severance pay is payable to employees upon termination. Termination of employment means the events listed in Article 46. Severance pay under Article 37.14 is payable to employees who are terminated within the meaning of Article 46. The parties could have used the word "layoff" in Article 37.14, but they chose to use the word "termination". The *Canada Labour Code* did not apply to the interpretation of the Collective Agreement because the parties had not used the same language. The parties could have used the same language in Article 37.14 as they used in Articles 37.07 and 37.08, but they chose not to do so. The Union's interpretation did not lead to an absurd result, considering that employees have invested their time in the Employer's operation and they are entitled to receive compensation when leaving employment. The Union referred to the statement in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, that severance pay is a benefit earned for past service. The parties agreed to pay severance pay in these circumstances. There was no ambiguity in the language of the Collective Agreement. The

basic elements of estoppel were not proven, and there was no reason to refer to any extrinsic evidence. There was no evidence that Union representatives had consented to the Employer's interpretation of Article 37.14. The parties did not agree on the interpretation. The Union grieved at the first opportunity. There was no detrimental reliance by the Employer. The Union was not bound by the fact that individual employees may not have filed a grievance on prior occasions. The case of *CAW-Canada, Local 35 v. Siemens VDO Automotive Inc.* (2007) 162 L.A.C. (4th) 43 (Etherington) (the "*Siemens*" case), submitted by the Employer, was based on different collective agreement language. The parties could have used the same language used in the collective agreement between the Employer and CATCA, had they wished to state clearly the interpretation the Employer was seeking. The Union requested that the Arbitrator allow the grievance, issue a declaration that the Grievor was entitled to severance pay and retain jurisdiction to settle the amount of compensation.

Employer Submission

The Employer submitted that severance pay was not payable, because the Grievor had voluntarily resigned. The Union was attempting to expand the circumstances in which severance pay was payable. Any expansion should be the subject of collective bargaining. There was a presumption against an entitlement to a monetary benefit unless there was clear language to provide for the benefit in the Collective Agreement. There was a presumption that employees would not receive severance pay upon resignation or discharge for cause. Article 37.14 should be interpreted within the context of Article 37 as a whole, in particular, Articles 37.07 and 37.08 which applied to employees who were laid off. Article 37.14 applied to all employees who were "eligible", which meant laid off under Article 37. The Union's interpretation, based on Article 46, could lead to the absurd result of an employee who was discharged for cause being entitled to severance pay. If the parties had intended that termination of employment would have the same meaning throughout the Collective Agreement, then the parties could have stated a definition of "termination" in Article 2, the "Interpretation and Definitions" article, but they did not do so. The Arbitrator was asked to consider the context in which the Collective Agreement was negotiated. The *Canada Labour Code* provided for termination pay in circumstances where employees were laid off. The Employer referred to the *Siemens* case which stated there was a presumption against employees who resigned being entitled to severance pay. Estoppel applied against the Union. There was a representation by words or conduct. The Employer's consistent practice since 1998 was not to pay severance pay to an employee who resigned. The Employer's interpretation had been discussed with Union

representatives. The Union made a proposal in collective bargaining in 2002 regarding payment of severance pay, but there was no substantive change in the wording of Article 37.14. The Employer relied on its interpretation when it submitted a bid in 2002 to the Government of Canada for a new contract. The language in the CATCA Collective Agreement showed that the Employer adopted a consistent approach to payment of severance pay. The Employer requested that the grievance be denied.

Considerations

The Grievor, Germaine McLean, resigned from her position at Serco by letter dated April 4, 2008. She had been employed by Serco for about 7 ½ years. She requested severance pay and the Employer denied her request. The Union filed a grievance under Articles 37, 46 and other relevant Articles of the Collective Agreement.

The grievance concerns the interpretation of the Collective Agreement. The Employer's interpretation is that severance pay is payable in the event of layoff by the Employer, under certain circumstances, and is not payable to an employee who resigns from employment. The Union's interpretation is that severance pay is payable to an employee upon termination of employment, including an employee who resigns.

The Employer also raised an estoppel argument against the Union. The Employer submitted that, even if the Union's interpretation of the Collective Agreement is correct, the Union is estopped from disputing the Employer's interpretation. The Employer submitted that Union representatives knew about the Employer's interpretation, and made proposals in collective bargaining and statements at other times that led the Employer to believe the Union did not dispute the Employer's interpretation. The Union submitted that the Arbitrator should not admit any extrinsic evidence of prior statements by the Union representatives or proposals made in bargaining. The Union also submitted that, in any event, it never accepted the Employer's interpretation and that it filed a grievance on the issue at the first opportunity.

At the hearing, the procedure followed by the Arbitrator was to admit the extrinsic evidence presented by the Employer while indicating to the parties that the Arbitrator would only consider the evidence in the Award upon finding there was a proper basis for doing so. The evidence was potentially relevant to an issue before the Arbitrator, because the Employer was presenting an

estoppel argument and evidence of negotiating history and other extrinsic evidence may be admitted to establish an estoppel (Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, at paragraph 3:4420). Whether or not the extrinsic evidence will be considered by the Arbitrator will be addressed later in the Award.

The Arbitrator will first review the Collective Agreement and consider the interpretation of the relevant articles. The Arbitrator refers to the principles of interpretation discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, in particular, that the object of construction is to determine the intention of the parties from the express provisions of the collective agreement (paragraph 4:2100), that the language should be viewed in its normal or ordinary sense (paragraph 4:2110), that it should be presumed that all the words used were intended to have some meaning (paragraph 4:2120), that headings may be referred to in order to explain the sections that follow under them (paragraph 4:2130), and that the language is to be interpreted within the context of the collective agreement as a whole (paragraph 4:2150).

The collective bargaining context is also a significant factor to consider when interpreting the Collective Agreement. The context in which collective agreements are negotiated is discussed in Brown & Beatty at paragraph 4:2300 as follows:

In construing collective agreements, arbitrators look to the purpose of the particular provision in the collective agreement as an aid to determining the meaning intended by the parties. In this regard, they have recognized that collective agreements are not negotiated in a vacuum, but rather are settled in the context of general industrial relations practices, within a specific negotiating context and against a vast history of judicial and arbitral jurisprudence which will affect the parties' expectations and understandings. In the result, arbitrators give effect to this general contextual climate by requiring clear statements to alter such general expectations.

Prior collective agreements may be considered as part of the collective bargaining context, as discussed in Brown & Beatty at paragraph 4:2240:

The history of an agreement, that is, the preceding collective agreements, . . . are accepted into evidence so as to determine the intention of the parties with regard to any changes made. Thus, preceding agreements are utilized to assist in determining the nature of and reason for the change so as to reveal more clearly the parties' intentions.

Prior arbitration awards have addressed the issue of severance pay. Entitlement to severance pay is discussed in *Brown & Beatty* at paragraph 8:3800 as follows:

Severance pay is generally understood as a benefit that is earned for past service, intended to compensate employees for the investment they have in their employer's business (e.g., their seniority) that is lost when the employment relationship is terminated. Some minimum guarantee of severance pay is usually mandated by employment standards legislation which, in the absence of more generous provisions in an agreement, can be incorporated into it and enforced at arbitration.

Whether it is grounded in legislation or a collective agreement, severance pay is typically payable when a person's employment is terminated because he or she has become redundant or because of a permanent cessation of operations by the employer. In many agreements, entitlement depends on the fulfilment of a variety of other conditions. On the premise that severance pay is to compensate for the loss of employment status and seniority rights in particular, it has been held that employees on layoff or on strike who remain employees of the company cannot make a claim for severance benefits. On the same logic, where an employer sells its business, employees who continue to work for the successor employer would generally not be entitled to severance pay. Nor, unless the agreement provided otherwise, would employees be eligible for it if they resigned or were discharged for misconduct, which may include off duty activities.

As noted in the *Brown & Beatty* text, severance pay is typically payable when employment is terminated by an employer, in the event of a redundancy or permanent layoff. Severance pay is not usually payable to an employee who resigns from employment, unless the collective agreement provides otherwise. The parties to a collective agreement may make provision for the payment of severance pay to an employee who resigns. Whether or not the parties have made such provision needs to be examined by interpretation of the collective agreement.

The arbitral jurisprudence on severance pay is discussed in *CAW Canada, Local 35 v. Siemens VDO Automotive Inc.* (2007) 162 L.A.C. (4th) 43 (Etherington) (the "*Siemens*" case), where the arbitrator stated at paragraph 30 as follows:

Second, the general arbitral jurisprudence interpreting the relationship between entitlement to severance pay and voluntary resignation under the ESA [*Employment Standards Act*] and collective agreements, would seem to indicate that these are two mutually exclusive forms of termination of the employment relationship such that voluntary resignation will exclude an employee from entitlement to severance

payments unless the union can prove the employee fits within an express exemption under the ESA or the collective agreement. This general arbitral viewpoint on the meaning of severance and resignation and the fact that resignation will preclude entitlement to severance payments is expressed in all four cases submitted by the employer, but perhaps most forcefully in *Mathews Conveyer Co. of Canada* [(2000) 88 L.A.C. (4th) 170] and *Wright Lithographing Co.* [(2000) 91 L.A.C. (4th) 129]. Mr. Jenner attempted to distinguish these cases on the basis that they dealt with entitlement to severance pay under the ESA and not under a collective agreement whereas in the case before me the union is relying solely on the collective agreement as providing a greater benefit. However, it is noteworthy that the decision of Arbitrator Howe in *Wright Lithographing Co.* also dealt with a claim to entitlement under the collective agreement provisions for severance pay only, and not the ESA, because the statutory criteria for severance pay in terms of size of payroll or number of employees severed were not met. Nevertheless Arbitrator Howe held that an employee who had voluntarily resigned to take another job, after learning that his division of the employer's operations was to be closed down in the coming weeks was not entitled to severance pay under the collective agreement. His employment could not be held to severed when he had resigned prior to receiving individual notice of his final date of termination.

The collective agreement language considered in the *Seimens* case and in other prior awards is not identical to the language used by the parties in the Collective Agreement. The decision in each case is subject to the interpretation of language used by the parties. It is therefore necessary to examine the language used in this case.

I have considered the interpretation of Articles 37.13 and 37.14 within the context of Article 37 and the Collective Agreement as a whole. The entitlement to severance pay is stated in Article 37.14. Article 37.13 refers to the calculation of severance pay, and states that it is based on the employee's weekly rate of pay on the last day of work. Article 37.14 also refers to the calculation and states that the amount of severance pay is two weeks pay for the first year plus one week's pay for each additional year of service with Serco. With respect to entitlement, Article 37.14 states "upon termination, eligible full time and part time employees, including seasonal employees, shall be entitled". Severance pay is payable "upon termination" and it is paid to "eligible" employees. It is necessary to consider the meaning of "termination" and "eligible". The heading of Article 37 is "Layoffs/Recall and Severance". Article 37 states that job security increases with the length of service. Article 37 deals with layoff and recall generally, including notice of layoff and alternatives to layoff. There is reference to "severance" in Articles 37.07, 37.08 and 37.12, in addition to Article

37.13. Article 37.07 refers to an employee who is “permanently laid off and elects to take severance as herein provided”. The reference to “severance as herein provided” refers to payment of severance pay as provided in Article 37. Article 37.08 refers to “employees subject to layoff for an indefinite period”. Employees in that situation have the option of accepting layoff and retaining the right of recall for up to one year, or accepting termination and waiving the right to recall by “accepting severance pay outlined below”. The reference to “severance pay outlined below” also refers to payment of severance pay as provided in Article 37. Thus, employees who are permanently laid off and employees who are laid off indefinitely and accept termination without right of recall, are entitled to severance pay. Article 37.12 is headed “Recall” and states that employees who have been laid off and have not accepted severance pay shall be entitled to recall. Thus, severance pay may be accepted as an alternative to the right of recall for employees who are laid off. Within the context of Article 37, the reference to “upon termination” in Article 37.14, refers to layoff. In order to be “eligible” for severance pay, under Article 37.14, employees are required to be laid off and meet the eligibility requirements of Article 37.

Article 37.14 refers to seasonal employees. There are provisions with respect to seasonal employees in Article 44. Article 44.04 (c) provides for recall and severance for seasonal employees. Seasonal employees have a right of recall in order of seniority. A seasonal employee is entitled to severance pay “as per Article 37.13” where the seasonal employee is not recalled and surrenders recall rights. The fact that seasonal employees are eligible for severance pay when they are laid off and surrender recall rights is consistent with a finding that employees are “eligible” for severance pay under Article 37.14 when the employees are either laid off permanently or laid off indefinitely and accept termination without right of recall.

Having regard to Articles 37 and 44, an employee is “eligible” for severance pay when the employee is laid off permanently or laid off indefinitely and does not have recall rights, as discussed above.

The Union referred to Article 46, and the dictionary definition of “termination”, in support of its position. Article 46 states that termination of employment occurs when an employee resigns or retires, in 46.01 (a), is laid off and receives severance pay, in 46.01 (b), is discharged for cause, in 46.01 (c), and abandons his/her position, in 46.01 (d). The Union argues that “termination” in Article 37.14 has the same meaning as “termination” in Article 46. However, as stated above, it is consistent with principles of interpretation to interpret “termination” in Article 37.14 within the context of Article 37, which deals with layoff and recall. Also, Article 46 does not state expressly

or by implication that severance pay is payable to an employee who resigns or is terminated for reason other than layoff. The Union's interpretation would have the effect that severance pay would be payable to an employee in all the circumstances listed in Article 46, including an employee who was discharged for cause. It is unlikely the parties would have intended this result without language to that effect. Therefore, a review of Article 46, and the dictionary definition of "termination", does not alter the finding that severance pay is payable an employee who is laid off, as discussed above, and not payable to an employee who resigns. Further, even if the Union's position on the meaning of "termination" is accepted, severance pay is only payable to "eligible" employees which, as discussed above, do not include employees who resign.

I have given consideration to the wording of Article 37.13 in the previous collective agreement. It is part of the context within which the current Collective Agreement was negotiated. However, there was no substantive change in wording between the prior and current language. The former Article 37.13 was divided into the current Articles 37.13 and 37.14, but there was no significant change in the meaning of the language .

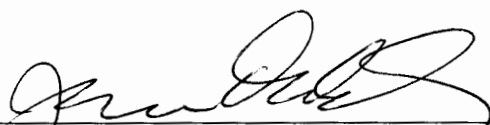
The eligibility for severance pay may be decided based upon the interpretation of the Collective Agreement. It is therefore unnecessary to give consideration to the Employer's argument of estoppel. Accordingly, the Arbitrator will not consider extrinsic evidence, such as evidence of statements made by Union representatives, or proposals made in collective bargaining.

Severance pay is payable under Article 37.14 to "eligible" employees "upon termination". Having regard to Article 37 and the Collective Agreement as a whole, and the principles of interpretation discussed in the Award, an employee who resigns from employment is not entitled to severance pay.

Decision

The grievance is denied. The Grievor resigned from employment and is not entitled to severance pay under the Collective Agreement.

DATED this 21st day of July, 2009.


James C. Oakley
Arbitration