

ARBITRATION AWARD

BETWEEN:

TRANSPORT AND ALLIED WORKERS UNION, TEAMSTERS LOCAL 855
(hereinafter called the "Union")

AND:

ARGENTIA FREEZERS & TERMINALS LTD.
(hereinafter called the "Employer" or the "Company")

GRIEVORS: David Bailey and Gerard McGrath

COUNSEL: For the Union

Stuart A. Morris

For the Employer

Harold M. Smith, Q.C.

ARBITRATOR: James C. Oakley

The arbitration hearing was held at St. John's on October 13, 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 sixty (60) days following publication of the Award in the event there is a question of interpretation or compensation arising from the Award.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Transport & Allied Worker's Union Teamsters Local 855 and Argentia Freezers & Terminals Ltd., June 24, 2007 to June 23, 2011
- Consent 2 - Grievance Forms dated February 13, March 9, March 24, April 8, April 15, April 24, April 28, May 1, June 15, July 9, July 15, and July 22, 2009
- Consent 3 - Collective Agreement between Transport & Allied Workers Union Teamsters Local 855 and Argentia Freezers & Terminals Ltd., dated 2003 to 2007
- Consent 4 - Memorandum dated December 23, 2008 to regular and casual staff from Jerome McGrath re Notification of Implementation of Periodic Supervisory Plant
- Consent 5 - AFT-Power Engineers employment history, January, 2008 to September, 2009
- Consent 6 - David Bailey - 2009 record of hours
- Consent 7 - Gerard McGrath - 2009 record of hours
- Consent 8 - Seniority list dated October 6, 2009
- Consent 9 - List of shifts when Allister Brown called in to replace absent employee
- Consent 10 - Engineers regular 8 hour shift schedule - 2009
- DB - 1 Pay stub of David Bailey, week ending September 26, 2009
- DP - 1 Company and Union bargaining proposals, December, 2007 and January, 2008

Nature of the Grievance

The Union grieves the loss of opportunity to work overtime hours on behalf of the Grievors, David Bailey and Gerard McGrath. The Union alleges that a Letter of Understanding attached to the Collective Agreement entitles the Grievors to the first opportunity to be called in for overtime work, and that the Employer violated the Letter on several occasions. The Employer submits that it complied with the Letter of Understanding and there is no violation of the Collective Agreement.

Collective Agreement

The relevant Articles of the Collective Agreement are as follows:

Article 9 Management Rights

The Union acknowledges and agrees that it is the exclusive function of the Company to:

...

9:04 Generally, to manage the business or businesses in which the Company is engaged and without restricting the generality of the foregoing to determine the services to be rendered, the methods of operating, schedules of production or services, kinds and locations of machines and tools to be used and to direct the working forces in all respect, provided that such actions are not inconsistent with the terms of this agreement.

...

Article 15 Statutory Holidays

...

15:02 The scheduling of employment for Power/refrigeration engineers will continue to be such that compensation for Statutory Holidays shall be included in their annual compensation package. When the Company implements a Periodic Supervisory Plant, the Power Engineers shall convert to an eight (8) hour shift. All other terms and conditions of the collective agreement shall apply.

...

Article 18 Hours of Work and Overtime

18.01 Except as otherwise provided in this Article, all work performed after eight (8) hours per day and forty (40) hours per week will be paid for at the rate of one and one-half (1 ½) times the straight time rate.

...

18:03 For all power/refrigeration engineers, hours of work and overtime are in accordance with their regular scheduling which will include compensation for overtime. When the Company implements a Periodic Supervisory Plant, the Power Engineers shall convert to an eight (8) hour shift. All other terms and conditions of the collective agreement shall apply.

...

Article 28 Call-Out and Working Arrangements

28:01 Except for those employees designated as permanent, work assignments for all other Employees will depend on availability of work, and will be scheduled on the basis of seniority in accordance with 28:07.

...

28.03 (a) For power/refrigeration engineers, scheduling will continue to be on the basis of three (3) consecutive twelve (12) hour periods and each period shall be a work assignment for one power/refrigeration engineer. When the Company implements a Periodic Supervisory Plant, the Power Engineers shall convert to an eight (8) hour shift. All other terms and conditions of the collective agreement shall apply.

...

Letter of Understanding

Re: Power Engineers' transition to eight hour shift

The parties agree that upon the implementation of the Periodic Supervisory Plant, the Power Engineers shall convert to an eight hour shift system. The following understanding shall cover the scheduling of work for eight hour shifts.

1. Overtime shall be calculated as per Article 18.01.
2. For the full-time Power Engineers employed at the date of signing of the collective agreement, an overtime guarantee shall apply based on one hundred and four (104) hours per year but not including overtime for statutory holidays. For greater certainty; in December of each year the actual overtime hours worked per individual shall be calculated. The Company shall make a payment of the difference of 104 hours but not including overtime for statutory holidays, less actual overtime hours worked. In the event that actual hours worked exceeds 104 hours not including overtime for statutory holidays there shall not be a requirement for this payment.
3. This Letter of Understanding does not apply to any full-time Power Engineers hired after the date of signing of this agreement.

4. In the event that the company implements the Periodic Supervisory Plant and as a result Ray Roche is given a permanent lay-off, and removed from seniority list, the company shall pay in lieu of notice to Mr. Roche in the amount of twenty-two (22) weeks pay. (Ie. forty hours, hourly rate at time of notice 22 weeks). However, in the event Ray Roche leaves the employ of Argentia voluntarily, then he shall not be eligible for the twenty-two weeks pay.
5. In the event the company implements the periodic Supervisory Plant, the chief engineer and two (2) remaining Power Engineers shall have first opportunity to Power Engineering work.

Evidence

The witnesses called by the Union were David Bailey, power engineer; Gerard McGrath, power engineer; and David Pearce, Union representative. The witness called by the Employer was Fabian Connors, human resources manager.

Argentia Freezers, a division of A. Harvey & Company Limited, operates a facility in Argentia which includes a yard area, a dock facility and a warehouse. The warehouse has storage compartments for frozen food. The Company's operation of refrigeration equipment is subject to Provincial Government regulation. Prior to 2009, the plant required 24 hour per day coverage by an employee with power engineer or refrigeration certification. The coverage was provided by four employees, a chief engineer and 3 power engineers, working on a 12 hour shift schedule.

The Company decided, prior to the last round of collective bargaining, that it would seek approval from Provincial regulators to implement a periodic guarded plant. To obtain approval, the Company needed to modify the plant and install sensors. Upon implementation of a periodic guarded plant, a power engineer is required only when persons are present in the plant and there is work in operation. Periodic guarded plant status would mean fewer hours of work available for power engineers. The Company planned to transition to an 8 hour shift schedule from a 12 hour shift schedule upon attaining periodic guarded status. It was anticipated that the most junior power engineer would be either laid off, or have his status changed from full time to casual.

During collective bargaining in December, 2007 and January, 2008, the parties negotiated a Letter of Understanding to address issues related to the anticipated change to an 8 hour shift schedule. The

Arbitrator allowed the parties to present evidence of negotiating history, including the written proposals exchanged between the parties. The evidence was received on the understanding that it was extrinsic evidence, and it would be considered by the Arbitrator in the event that the language of the Collective Agreement was found to be ambiguous. In that event, the evidence of bargaining history could be used as an aid to interpretation of the Collective Agreement.

On December 11, 2007, the Company proposed a Letter of Understanding to cover the scheduling of work for 8 hour shifts, including an overtime guarantee based on 104 hours per year, and a condition that the Letter would not apply to any full time power engineer hired after the date of the signing of the Collective Agreement. David Pearce, chief negotiator for the Union, testified that the Union wanted a severance package for Ray Roche, who was the junior power engineer, in the event he was laid off. The parties agreed to the terms of a severance package for Ray Roche, following further exchange of proposals.

At the time of the negotiations, the chief engineer was Allister Brown. The chief engineer position is outside the bargaining unit. In addition to Ray Roche, the other 2 permanent full time power engineers were David Bailey and Gerard McGrath. There were also casual power engineers. The Union's proposal on December 11, 2007 stated, in part, "three present power engineers will be guaranteed the work". In response, the Company proposal # 7 on January 8, 2008 stated that the chief engineer and 2 remaining power engineers shall "have the first opportunity to power engineering work, subject to business needs and operational requirements". The Company proposal # 7 also repeated that for the full time power engineers employed at the date of signing of the Collective Agreement, the overtime guarantee shall be based on 104 hours per year. The Union's response on the same date was to agree with the Company proposal, subject to excluding overtime for statutory holidays from the calculation of 104 hours per year, and deleting the words "subject to business needs and operational requirements" in reference to the first opportunity for power engineering work. The Company agreed with those changes and the Letter of Understanding was settled. Negotiations concluded with the signing of the Collective Agreement on January 31, 2008.

David Pearce testified that, during collective bargaining, the Union was concerned about the Employer hiring casual power engineers. The Union wanted work protected for the 3 full time power engineers. The Union wanted a guarantee of a 40 hour shift schedule for David Bailey and Gerard McGrath. If the Union had been informed that overtime work would not be offered first to the full time power engineers, then the Union would have sought an opportunity to address the issue.

Prior to collective bargaining, the Union was concerned that 3 casual employees were receiving most of the calls for shifts, with the effect that overtime opportunities for the full time power engineers were reduced. The Union believed that first opportunity for work meant the guarantee of extra work. The Union's interpretation of the Letter of Understanding was that David Bailey and Gerard McGrath would have the first opportunity to be assigned overtime work. Mr. Pearce testified that 104 hours represented the difference on an annual basis between the hours of work under the 12 hour shift schedule and the anticipated hours of work under the 8 hour shift schedule. It was anticipated employees would lose 2 hours per week after the scheduled hours were reduced from 42 hours to 40 hours per week. The loss of 2 hours per week was equivalent to 104 hours per year.

In his testimony, Fabian Connors agreed that the guarantee of 104 hours per year represented the difference between the hours of work per week under a 12 hour shift schedule and an 8 hour shift schedule. The parties agreed that the guarantee of work would not apply to new hires. Mr. Connors testified that the intent of paragraph 5 of the Letter of Understanding was to guarantee an 8 hour shift schedule for the chief engineer, Allister Brown, and the two power engineers, David Bailey and Gerard McGrath. Mr. Connors said that paragraph 5 meant that Mr. Bailey and Mr. McGrath were to have the first opportunity for 8 hour shifts. Mr. Connors testified that paragraph 5 did not apply to overtime opportunities, which were outside the regular 8 hour work schedule. Mr. Connors agreed that concerns were raised by the Union in collective bargaining about the loss of overtime opportunities for the full time power engineers in 2007, but this was not an issue that dominated bargaining.

There were a total of 12 grievances submitted to arbitration. Of those grievances, one grievance was filed by Gerard McGrath and 11 grievances were filed by David Bailey. Mr. Bailey's seniority date is May 7, 1979 and Mr. McGrath's seniority date is September 2, 1982.

David Bailey testified that in 2007 there were 3 casual power engineers assigned to work replacement shifts. Overtime work was almost eliminated for full time power engineers. The casual power engineers who worked shifts in 2007 were no longer called in as casuals in 2009. Ray Roche resigned as a full time power engineer on May 12, 2008. Gerard Dray was a casual power engineer in the Summer of 2008, and was hired as a full time power engineer on September 28, 2008. At the end of 2008 there was a chief power engineer, Allister Brown, and 3 full time power engineers, David Bailey, Gerard McGrath and Gerard Dray. Allister Brown retired as chief engineer on December 31, 2008. Up to the date of the hearing, the position of chief engineer was vacant.

The Company completed the work to modify the plant, and obtained approval for a periodic guarded plant. By memorandum dated December 23, 2008 from Jerome McGrath, vice president, regular and casual staff were informed as follows:

Re: Notification of Implementation of Periodic Supervisory Plant

During the last round of Collective Bargaining the Company and Union agreed to implement a revised shift system for power engineers once the status of a Periodic Supervisory Plant is obtained. Article 28:03(a) reads as follows: . . . [Article omitted]

The company has completed various facility upgrades recently and has secured the status of a Periodic Supervised Plant. Therefore, effective Monday, January 5th, 2009 the company shall implement the revised shift system for power engineering duties under article 28:03 (a).

The Company implemented an 8 hour shift schedule effective January 5, 2009. The hours of work were assigned equally on a rotating schedule to 3 full time power engineers, David Bailey, Gerard McGrath and Gerard Dray. There were 2 shifts, a day shift from 8 a.m. to 4 p.m. and a night shift from 8 p.m. to 4 a.m. In the event a power engineer was off work due to sickness, vacation or other reason, then the replacement employee called in was either a casual power engineer or one of the 3 full time power engineers. After he retired as chief engineer, Allister Brown was hired as a casual power engineer. Mr. Brown was the casual employee called in to work the replacement shifts that were the subject of the grievances.

David Bailey testified that he was called in for a couple of overtime shifts early in 2009 to replace an absent employee. He said that, starting in February, 2009, management called Allister Brown to work shifts that Mr. Bailey felt he should have been called in to work. Mr. Bailey testified that he did not grieve all the occasions when Allister Brown was called in to work. He did not grieve the occasions when he would not have accepted an offer to work overtime, such as when he was working another shift the same day, or when he did not want to work extra shifts during the Summer months of July and August. Some of the grievances claimed a loss of overtime opportunity of 4 hours and not a full 8 hour shift. In those instances, Mr. Bailey had worked another shift the same day and would be available to work 4 hours but not 8 hours. Mr. Bailey believed that where there were additional shifts to be worked, employees should be called in order of seniority, which meant that the order of employees would be David Bailey, Gerard McGrath, Gerard Dray and Allister Brown.

The Company records for January 1 to September 25, 2009, showed that David Bailey had 181.5 overtime hours, including statutory holiday overtime. Mr. Bailey's pay stub for the week ending September 26, 2009 stated that he had 199.5 overtime hours for the year to date. Mr. Bailey did not believe that he had received 104 overtime hours as guaranteed by the Letter of Understanding.

Gerard McGrath testified that he filed the grievance dated April 28, 2009. On that occasion, David Bailey was absent from his shift to attend a first aid course and Allister Brown was called in. Mr. McGrath felt he should have been called in to work the shift at the overtime rate. He was told at the time by John O'Reilly, supervisor, that casual employees would be called first.

David Pearce testified that, to his knowledge, the Union did not grieve the fact that Gerard Dray was assigned a 40 hour shift schedule. The Union expected that extra work would be assigned first to David Bailey and Gerard McGrath, because they were supposed to have the first opportunity to work, according to paragraph 5 of the Letter of Understanding. The Union expected that overtime opportunities would be assigned on the basis of seniority.

Fabian Connors testified that the terms of the Letter of Understanding were followed when the periodic guarded plant was implemented by the Company. Allister Brown had retired as chief engineer, and he was not assigned scheduled hours of work. When Mr. Brown was called in as a casual power engineer there was no violation of the Letter of Understanding. Mr. Brown was paid at regular rates and not overtime rates.

Union Submission

The Union submitted that pursuant to the Letter of Understanding, the Grievors, David Bailey and Gerard McGrath, were entitled to the first opportunity to work overtime shifts. Paragraph 5 of the Letter provided for the first opportunity to do power engineering work, which included overtime assignments. The reference to "work" should be given a broad interpretation and not limited to 8 hour shifts. The "first opportunity" meant that the Grievors must first be offered the overtime work. Paragraph 5 could not be restricted in its meaning to the 8 hour shifts, because the regular 8 hour shifts were already assigned to the two Grievors. The Union submitted that its interpretation was most consistent with the intention of the parties and the principles of interpretation outlined in text authorities. The interpretation should not lead to an absurdity or inconsistency with the rest of the

Collective Agreement. The heading of the Letter of Understanding was “transition to eight hour shifts”. Not all provisions of the Letter were related to the scheduling of 8 hour shifts. Paragraphs 1, 2 and 4 were not limited to scheduling 8 hour shifts. Paragraph 1 referred to overtime which was work outside the 8 hour shifts. Paragraph 2 referred to the overtime guarantee of 104 hours per year which applied only to Mr. Bailey and Mr. McGrath. Paragraph 4 set out the severance pay for Ray Roche. The Articles of the Collective Agreement referred to by the Employer were not applicable. The Letter of Understanding provides a specific provision that overrides any general provision in the Collective Agreement. The management right to schedule employees was irrelevant to the grievance. Upon considering the extrinsic evidence of bargaining history, it was evident that one of the issues on the table in bargaining was the Union’s complaint that casual employees were being called in for an excessive number of shifts. The Employer admitted that it called casual employees in priority to the Grievors. The Grievors were not given the right of first refusal of the overtime opportunities. Compensation was the appropriate redress for the lost overtime opportunity. The Union requested that the Employer be directed to comply with the Letter of Understanding, offer the Grievors the right of first refusal of overtime opportunities, and pay compensation for lost opportunities.

Employer Submission

The Employer referred to the change from a 12 hour shift schedule to an 8 hour shift schedule upon implementation of the periodic guarded plant. Reference to the change was set out in Articles 15, 18 and 28 of the Collective Agreement. These Articles stated that other terms and conditions of the Collective Agreement would continue to apply. The prior Collective Agreement did not contain any restriction on the assignment of shifts to casual employees. The Collective Agreement was not modified in any way to address the issue. Under Article 9, the Employer could exercise its management rights to assign casual employees to work shifts as required. There was no requirement to schedule overtime by seniority for all power engineers. The Collective Agreement should be interpreted to be internally consistent. The first paragraph of the Letter of Understanding stated that it applied to “the scheduling of work for 8 hour shifts”. Paragraph 5 applied to the scheduling of 8 hour shifts and had the effect that the chief engineer and the 2 remaining power engineers, Mr. Bailey and Mr. McGrath, had the first opportunity for scheduled shifts. The “first opportunity” applied to the new 8 hour shifts, as stated in the opening paragraph of the Letter. Paragraph 5 referred to the “first” opportunity and did not refer to “every” opportunity. The obligation of paragraph 5 was met when Mr. Bailey and Mr. McGrath were assigned to the 8 hour shift schedule.

The Union's interpretation would have the effect that Mr. Bailey and Mr. McGrath were entitled to be offered all the hours of work of the third full time power engineer, Gerard Dray. Mr. Dray is not one of the employees protected by paragraph 5. The other paragraphs of the Letter were related to 8 hour shift schedules. Paragraphs 1 and 2 refer to overtime and were triggered by the change to 8 hour shifts. The overtime guarantee of 104 hours per year was meant to compensate full time employees whose scheduled hours were reduced from 42 to 40 hours per week. Paragraph 4 provided for a severance package for Ray Roche, based on anticipation that the chief engineer would be assigned to work an 8 hour shift schedule, and there would be a reduction of hours resulting in a layoff. The Letter could be interpreted without the need to refer to extrinsic evidence. The Grievors were not entitled to any redress, but in the alternative in the event any redress was ordered by the Arbitrator, then it should be limited to a direction to assign the opportunity to work overtime in future to the Grievors. The Employer requested that the grievances be denied.

Considerations

The Union submits that the Grievors, David Bailey and Gerard McGrath, are entitled to the first opportunity to be called in for overtime work, in priority to casual employees. The grievances are based on a Letter of Understanding, in particular paragraph 5, which states that the chief engineer and the two remaining power engineers shall have the first opportunity to do power engineering work. The grievances relate to several occasions in 2009 when casual employees were called in to work replacement shifts, and the Employer did not offer the first opportunity to the Grievors to work the shifts.

The issue before the Arbitrator concerns the interpretation of the Letter of Understanding. The Arbitrator will address this issue by applying principles of interpretation of collective agreements. The Union has relied, in part, upon evidence of bargaining history, and has referred to the exchange of proposals made during the last round of collective bargaining. The evidence of bargaining history was received at the hearing on the basis that it was extrinsic evidence and subject to the decision of the Arbitrator as to whether or not the evidence would be considered as an aid to the interpretation of the Collective Agreement.

The principles of interpretation are discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition. The authors state 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 preceding collective agreements may be used as an aid to determine the intention of the parties with respect to any changes made (4:2240), and that the language is to be interpreted within the context of the collective agreement as a whole (paragraph 4:2150) and the industrial relations practices of the parties (paragraph 4:2300).

When interpreting the Letter of Understanding within the context of the Collective Agreement as a whole, and the industrial relations practices of the parties, it is relevant to consider the factual background to the dispute. Under the prior collective agreement, the full time power engineers were scheduled on the basis of 12 hour shifts, and the plant operated 24 hours per day, 7 days per week. The Company planned to seek regulatory approval to change the operation to a periodic guarded plant, meaning that power engineers would be required on a reduced schedule when the plant was in operation. It was anticipated that the full time power engineers would convert from a 12 hour shift to an 8 hour shift. As a result, the weekly scheduled hours of work would be reduced from 42 hours to 40 hours, a loss of 2 hours per week. The Letter of Understanding addresses issues arising from the transition to 8 hour shifts such as the loss of 2 hours per week. The heading of the Letter is “Power Engineers transition to eight hour shifts”. As a result of the transition, certain events would occur. The most junior power engineer, Ray Roche, would be laid off, in the event of a reduction in the total number of full time power engineers. The Letter contains a severance package for Mr. Roche, payable in the event of his layoff, as stated in paragraph 4. The Letter also addresses the assignment of work to the chief engineer and 2 remaining power engineers in paragraph 5. The position of chief engineer is outside the bargaining unit. The 2 remaining power engineers were the most senior power engineers, David Bailey and Gerard McGrath, the Grievors in this case. The effect of paragraph 5 was that the chief engineer and the 2 Grievors were assigned the “first opportunity to do power engineering work”. At issue is whether the “first opportunity” means placement on the 8 hour shift schedule, or includes overtime work opportunities.

The normal or ordinary meaning of “power engineering work” is the work performed by power engineers for the Company. The full time power engineers perform work on scheduled shifts, and also perform work at overtime rates when requested to work in addition to scheduled shifts. Paragraph 5 of the Letter of Understanding does not state expressly whether power engineering

work means all work, or means scheduled shifts. While it is helpful to consider the normal or ordinary meaning of “power engineering work”, it is also important to consider other principles of interpretation.

The Arbitrator has considered the meaning of “first opportunity to do power engineering work” within the context of paragraph 5, the Letter of Understanding as a whole and the Collective Agreement as a whole. Within the context of paragraph 5 of the Letter of Understanding, it is noted that the “first opportunity” applies only “in the event the Company implements the periodic supervisory plant”. In other words, if the Company does not implement the periodic supervisory plant, then the issue of “first opportunity” does not arise. Also, it was known that there would be a reduction in number of scheduled hours available per week under a periodic guarded plant meaning that there would not likely be sufficient scheduled hours available for all the full time power engineers. Within the context of a reduction in scheduled hours of work it is consistent to find that the “first opportunity” applies to scheduled work. The Union submits that paragraph 5 is not limited to scheduled shifts, because the Grievors were already scheduled. The Union further submits that to apply the principle of interpretation that every word should be given some meaning, then paragraph 5 applies to overtime work, not just scheduled shifts. However, paragraph 5 may be given meaning if the words apply to scheduled shifts, by the fact that it gives the first opportunity to the chief engineer, together with two power engineers, Mr. Bailey and Mr. McGrath, to do the work available under the new 8 hour shift schedule.

It is also important to consider the meaning of paragraph 5 of the Letter within the context of the heading, the opening paragraph and the Letter as a whole. The heading refers to “Power engineers transition to eight hour shifts”. The opening paragraph states “The following understanding shall cover the scheduling of work for eight hour shifts”. The Letter addresses various events related to the transition from a 12 hour shift schedule to an 8 hour shift schedule. Overtime is addressed in paragraphs 1 and 2. Paragraph 1 refers to the overtime rate under Article 18.01, and states that the overtime rate continues to apply after 8 hours per day and 40 hours per week. Paragraph 2 sets out a guarantee of 104 overtime hours. The guarantee of 104 hours may be given meaning within the context of the transition to the 8 hour shift schedule, because it addresses the loss of 2 hours per week from the scheduled hours of work. There is no reference in paragraphs 1 or 2 to any right of a full time power engineer to be assigned overtime hours in priority to casual employees. Within the context of the Letter as a whole, power engineering work in paragraph 5 means the scheduling of work for 8 hour shifts.

The Arbitrator has also considered the Collective Agreement as a whole. The Collective Agreement does not contain express language stating that full time power engineers have the right to be assigned overtime in order of seniority in priority to casual employees. The prior collective agreement did not contain any such language. Articles 15, 18 and 28 of the Collective Agreement state that all other terms and conditions of the Collective Agreement shall apply upon implementation of a periodic guarded plant. Whether or not to assign overtime to full time power engineers is a matter within the exercise of management rights in Article 9, subject to any applicable provision of the Collective Agreement. Had the parties intended to address the issue of assignment of overtime opportunities on the basis of seniority, with full time power engineers having priority over casual employees, then the parties could have added collective agreement language having that effect. Paragraph 5 of the Letter of Understanding does not contain such language. To interpret the Letter of Understanding as proposed by the Union would have the effect of adding language to the Collective Agreement that was not agreed by the parties. The Arbitrator does not have authority to add language to the Collective Agreement.

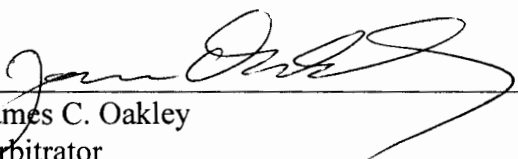
The Collective Agreement may be interpreted without the need to consider extrinsic evidence of the exchange of proposals during collective bargaining. The Arbitrator will not consider extrinsic evidence.

Having regard to the principles of interpretation, and in particular by interpreting the language in the Letter of Understanding within its context, the Letter of Understanding does not extend to the Grievors the right to be assigned overtime work in priority to casual employees.

Decision

The Employer did not violate the Letter of Understanding in the Collective Agreement when it called in casual employees and did not assign overtime work to the Grievors. The grievances are denied.

DATED this 25th day of January, 2010.


James C. Oakley
Arbitrator