

The Arbitration hearing convened at the Comfort Inn Airport in St. John's, Newfoundland and Labrador, on November 9, 2010, and concluded on December 8, 2010. At the commencement of the hearing, the parties agreed as follows:

1. That the sole Arbitrator was acceptable to the parties and had jurisdiction to deal with the dispute.
2. That the Arbitrator would take written notes and in the event of conflict, these notes would prevail.
3. That the grievance procedure had been properly followed.
4. That the Arbitrator would remain seized of the matter for a period of sixty (60) days following the date of the Award in the event that any interpretation of the Award or its effect was necessary.
5. That witnesses would be excluded from the hearing.
6. That all parties likely to be affected by the outcome of the arbitration had received adequate notice.
7. That Collective Agreement and statutory time limits for making the Award would be waived.
8. The Employer raised a preliminary objection to be argued with respect to arbitrability.

THE EXHIBITS

The following exhibits were entered by consent:

- C1 The Collective Agreement
- C2 Grievance # 31 – June 17, 2010
- C2A Correspondence – Hollett/Wade – September 3, 2010
- C3 Newfoundland and Labrador Regulation 26/09 – Special Project Order
- C4 E-mails
- RH1 Trade Jurisdiction Assignments: H. J. O’Connell - March 3, 2010
- RH2 Trade Jurisdiction Assignments: Vale Inco – August 28, 2010
- RH3 Trade Jurisdiction Assignments: O’Connell Newfound Partnership - July 26, 2010
- RH4 Trade Jurisdiction Assignments: Mike Kelly & Sons (Penny) - March 20, 2009
- RH5 Trade Jurisdiction Assignments: Green’s Service Station - May 19, 2009
- RH6 Trade Jurisdiction Assignments: Earthworms Plant Site – June 10, 2009
- RH7 Trade Jurisdiction Assignments: Lockerbie/Hole Eastern Inc. – May 4, 2010
- RH8 Trade Jurisdiction Assignments: Newfound Const. – March 20, 2009
- RH9 Trade Jurisdiction Assignments: Crane Supply and Operate – August 10, 2010
- RH10 Trade Jurisdiction Assignments – O’Connell Newfound Partnership – March 26, 2010
- RH11 Various Pictures

NATURE OF THE GRIEVANCE

In a June 17, 2010, grievance, the Resource Development Trades Council / Operating Engineers, Local 904, allege that the Long Harbour Employers’ Association / H. J. O’Connell violated the Collective Agreement and, in particular, Articles 3 and 5* and any other relevant articles by having project work completed outside of the project agreement. The Union is seeking full redress,

* At the commencement of the hearing, the Union made a clarification in reference to the grievance, stating that Article 5 in the Grievance Form should have read Article 15. The Employer made no objection to this amendment.

including all lost wages and benefits. The Employer has denied any violation of the Collective Agreement in this instance.

POSITION OF THE PARTIES

The Union

This is a case which has similarities with contracting out. Long Harbour is a construction site and subject to a Special Project Order which imposes legal obligations on the parties. Because the Collective Agreement is subject to a Special Project Order, it is clear that the work at the site is to be performed by the trade unions. The Collective Agreement establishes that the work on the site is subject to a markup and all component parts of the project are assigned to the various trades. Work is required to be posted and the assignment and completion of that work is subject to trade jurisdiction. Article 15 of the Collective Agreement is comprehensively drafted in that all of the site work is marked up and assigned to the applicable trade union. Once work is marked up, it must remain on the site to be completed.

The nub of this case is that the job in issue could have been completed on site. The Employer, however, determined that it would be more efficient to repair the machinery off site. The Union had agreed to allow the Employer to remove the machinery off the site for a specific repair. However, this concession was limited and specific. Once the specific work was completed off site, the equipment ought to have been brought back on site for further repairs to the bucket. These further repairs should have been completed by the Operating Engineers.

It follows that those members of the bargaining unit who could have undertaken this work should be paid for their loss. This is an early project arbitration, but the case has larger ramifications. If the Employer sends work off site, then the work of the bargaining unit can be adversely affected. The issue is bigger than the remedy sought here.

The evidence is that the trade unions perform work for contractors and subcontractors on the site. Upon the awarding of a contract, each trade is assigned their jurisdictional work and provides the manpower for the job. The applicable markup is applied before the job begins. The work

jurisdiction assignments entered into evidence verify this procedure. For example, if there is warranty work on the site where warranty diagnostic tooling is required, members of the particular trade with jurisdiction is involved and paid.

In this instance, a long stick excavator with a bucket was damaged. The Union had agreed to let the work off site in order to have the ears to the bucket repaired. That was agreed. However, when the bucket returned, the ears had been repaired and also the bucket. There was evidence that the Operating Engineers could have completed the bucket work on site. The e-mail in Consent 4 relates basically what occurred.

Generally, Operating Engineers complete all site repairs and maintenance within their work jurisdiction. Here the critical evidence is that there was a meeting held and a decision made about the specific work which would be completed off site. The Employer went beyond what was intended and after the equipment was taken off site more work than what was allowed was undertaken. There are instances where warranty work has been done off site but this did not involve warranty work.

The larger issue is whether an Employer contractor can take work off site and complete it without the concurrence of the appropriate the trade union, in this instance, the Operating Engineers. The Employer has argued that there is no contracting out clause in the Collective Agreement and, therefore, work assignments outside the site are permitted. The Employer believes that Article 15 deals only with trade jurisdictions. However, those submissions are lacking. This is a legislated special project. Article 3.02 provides the scope clause. Any management rights clause is subject to Article 15. There is no limitation in Article 15 and every word in that Article has meaning. Articles 15.03 and 15.04 indicate the requirements for a mark up. All project work is subject to these Articles of the Collective Agreement.

Contracting out would permit these employers to assign work to a party who is not bound by the Collective Agreement. In this instance there is a Special Project Order and Sections 2 and 3 of that Order declare that the undertaking will occur at Long Harbour. The Special Project Order cannot be ignored. In view of the Special Project designation a contracting out clause would be redundant. This is a unionized site and the Special Project ensures that.

The Union put forward a number of cases in support of its position, including two Ontario Labour Board decisions: Brick and Allied Craft Union v. Bonfield Construction Co. (2007) CarswellOnt. 5536, [2007] O.L.R.B.R. 499, and Ontario Sheet Metal Workers v. Ontario Hydro (1988) CarswellOnt. 1304 [1988] O.L.R.B.R. 1303.

It is the position of the Union that this grievance should be upheld.

The Employer

The Employer advanced a preliminary objection at the commencement of the hearing. The preliminary argument is essentially the same as what the Employer argued in its final submission. The Employer's position is that the Special Project Order, which is made pursuant to Section 70 of the Labour Relations Act, creates a special project in reference to the construction of a nickel processing plant at Long Harbour, Placentia Bay. The geographic area prescribed under the Special Project Order is outlined in red and described in Schedule "A" of Article 4.01(i) of the Collective Agreement. Article 3.02 recognizes the Association as the sole and exclusive bargaining agent for all contractors engaged in construction of the nickel processing plant at the site. Here, because the work in issue was done outside the area designated as the site for the Special Project, there is no jurisdiction to deal with this issue. The circumstances here are not unlike those described in a 1993 decision of Arbitrator Bruce – International Association of Heat and Frost Insulators et al. and Atlas Construction (Maritimes) Limited and L. & A Machine Works Limited.

Furthermore, Article 3.05 of the Collective Agreement prevents side deals inconsistent with the Agreement, whether in writing or oral. Article 3.01 of the Collective Agreement and paragraph 4 of the Special Project Order are relevant. Paragraph 4 of the Special Project Order reflects the Collective Agreement. The geographic site is referenced in Article 3.02 of the Collective Agreement. Contractors not on the site have no obligation under the Collective Agreement for work completed off the site. Work assignments and trade jurisdictions are as stipulated in Article 15 of the Collective Agreement. The language of the Collective Agreement, including Articles 15.04 and 4(e), reference the project which has geographic limits according to the Special Project Order. The language of the Collective Agreement is site specific.

Here the Employer has reserved the right to contract out work unless specific language within the Collective Agreement stipulates otherwise. As was stated by the Manitoba Court of Appeal in the National Automobile Aerospace and General Workers Union and Bristol Aerospace Limited case, when there is no specific language in the Collective Agreement stipulating otherwise, bargaining unit work may be subcontracted to non-employees as long as the sub-contracting is genuine and not done in bad faith.

In short, lacking clear and cogent language to prohibit contracting out, there is nothing in the legislation and nothing in the Collective Agreement to support the Union's position. Further, the cases presented by the Employer, including the Harbour Grace case, all support the Employer's position. The parties to the Agreement can only amend the Agreement according to the requirements of the relevant articles. Nothing in the Collective Agreement suggests that employees have a right to modify the Collective Agreement.

The Employer made reference to a number of cases in its submission, including: National Automobile, Aerospace, Transportation and General Workers Union and Bristol Aerospace Limited (2008) CarswellMan 237, [2008] M.B.C.A. 62; Transport and Allied Workers Union v. Harbour Grace (2003) N.L. S.C. T.D. 133; United Steelworkers of America and Russell Steel Limited (1966) 17 L.A.C. 253 (Arthurs); International Association of Heat and Frost Insulators et al. and Atlas Construction (Maritimes) Limited and L. & A Machine Works Limited (1993) Unreported (Bruce).

Based on the language of the Collective Agreement and the requirements of the Special Project and the relevant case law, it is the position of the Employer that this grievance should be dismissed.

CONSIDERATIONS AND REASONS FOR THE DECISION

This grievance alleges violations of Article 3 and 15 and/or any other article violated by such action within the Collective Agreement. The grievance pertains to work completed outside of the Long Harbour geographic area. Specifically, the Union alleges that welding was completed on a

bucket off site. The Union maintains this welding was site work and should have been undertaken by bargaining unit members. The Union is seeking full redress pertaining to resulting lost wages and benefits. The Employer maintains no violation of the Collective Agreement in the circumstances.

At the commencement of the hearing the Employer made a preliminary objection, challenging the jurisdiction of the arbitrator to deal with work completed outside the geographical area of the Special Project Order. After hearing the submissions of the parties on the preliminary matter I reserved. In the interest of efficiency and to avoid redundancy, after reviewing all of the evidence, I am satisfied that the issues raised in the preliminary objection are addressed in this decision.

Articles relevant to this grievance include:

- 3.02 The Council hereby recognizes the Association as the sole and exclusive bargaining agent for all Contractors engaged in the construction of the Nickel Processing Plant at the Site. All Contractors engaged in construction of the Nickel Processing Plant at the Site and having employees working within the scope of this Agreement shall be required, as a condition of the contract award, to become members of the Association and to observe the terms and conditions of this Agreement. Such a commitment in no way creates bargaining rights or obligations for Contractor employees not on the Site, nor shall such commitment be the basis of support for creation of rights or obligations off the Site.
- 3.05 The Association, the Contractor(s), the Council and employee(s) shall not seek to agree, or agree on any matter within the scope of this Agreement in a manner inconsistent with the terms of this Agreement. No individual agreements, whether in writing or oral are permitted. The Association and the Council may, by written mutual agreement, amend the terms of this Agreement.
- 5.01 The Contractor retains full and exclusive authority for the management of its operation. The rights of management shall be exercised in accordance with this Agreement.
- 15.01 Each Union maintains claims to jurisdiction pursuant to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (commonly called the “Green Book” and referred to hereinafter as the “Plan”). In making work assignments, the Association and/or the Contractor shall assign work according to the Plan unless modified by this Agreement.

15.04 In order to minimize and resolve work jurisdiction disputes, all work to be performed at the project, shall be marked up. The mark up will be in accordance with the following timetable:

Day 1 – The Association or the Contractor will give written notice of a markup meeting and issue initial assignments to the Council and all Unions. A copy of drawings and specifications will be placed in the Council’s St. John’s office. If a composite crew is included in the initial assignments, the composite crew shall meet as per Article 17.04 prior to Day 4. When a composite crew is requested, the Association will endeavor to provide notice of such request prior to Day 1.

Day 4 – The Association and/or the applicable Contractor will convene a markup meeting to outline the scope of work and record claims of Unions on initial assignments. All claims for work shall be finalized at the markup meeting or by prior written notice from the Union except in the case of composite crews.

Day 6 – The Association and/or the applicable Contractor will distribute a record of all claims made at the markup meeting.

Day 8 – Last day for claiming or defending Unions to file evidence in support of their claim or assignment.

Day 11 – The Association or Contractor will notify all Unions of final assignment(s).

Day 13 – Last day for claiming Union to request jurisdictional umpire or relinquish the right to call for an umpire for that particular assignment only.

Day 17 – Last day for the jurisdictional umpire to hold a hearing.

Day 20 – Last day for the jurisdictional umpire to render a decision.

The foregoing timetable may be relaxed by mutual consent from the RDC and the Association.

15.11 The Contractor(s) shall be responsible for performing the work involved in accordance with the mark up, decisions of the umpire, decisions of the Plan or this Agreement.

The work here has been designated as a Special Project pursuant to an Order in Council as provided for under Section 70 of the *Labour Relations Act*, R.S.N.L. (1990) c. L-1, (the “Act”) which states in part:

- 70.(2) The Lieutenant-Governor in Council may, with respect to an order made under subsection (1), prescribe
- (a) the geographic site to which the declaration relates;
 - (b) the employers, employers' organizations, trade unions and councils of trade unions that may be involved in collective bargaining relating to employment on the special project;
 - (c) the bargaining unit for the purpose of the special project;
 - (d) that a collective agreement is the collective agreement for the purpose of the special project; and
 - (e) those conditions and qualifications with respect to any aspect of the special project that the Lieutenant-Governor in Council considers necessary or desirable.

The Order in Council states in part:

1. This Order may be cited as the *Vale Inco Long Harbour Processing Plant Special Project Order*.
2. It is declared that the undertaking with respect to the construction of a nickel processing plant that will occur at Long Harbour, Placentia Bay, is a special project.
3. The parties that may be involved in collective bargaining in relation to employment on the special project are the Long Harbour Employers Association Inc., as the employer's organization acting for and on behalf of all employers, all principal contractors and all subcontractors carrying out work on the special project, and the Resource Development Trades Council of Newfoundland and Labrador, as the council of trade unions acting for and on behalf of all affiliated unions which represent employees employed on the special project.
4. The collective agreement entered into between the Long Harbour Employers' Association Inc. and the Resource Development Trades Council of Newfoundland and Labrador dated March 24, 2009 (the "agreement") is the collective agreement for the purpose of the special project.

Under Section 2(1) of the Act, special projects are defined as:

- 2(1)(u) "special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require

a construction period exceeding 3 years, and include all ancillary work, services and catering within a prescribed geographic site relating to the undertaking or project;

Special projects were introduced into the province in 1968, with the development of the Churchill Falls Project. George Adams, in Canadian Labour Arbitration at 2.1440, states:

2.1440 In 1968 the government introduced an amendment to the *Labour Relations Act* to regulate all aspects of “special projects” and in this case to specifically validate a collective agreement covering all workers at Churchill Falls. . . .

The amendments dealt with all aspect of the bargaining process for special projects: for example, it recognized councils of trade unions, made provisions for the application, effect and revocation of certification, and regulated the composition of the bargaining unit and the duration period of the collective agreement.

The Act was further amended in 1990 in reference to “special projects”. Adams writes:

2.1500 In 1990 sections were changed relating to special projects in the natural resource sector. Designated sites were to be limited by reference to a geographic area. The Lieutenant Governor in Council was given extensive general power to regulate collective bargaining at these projects including the sites, trade unions and employers that were to be involved as well as any conditions and qualifications deemed “necessary and desirable”.

Because the undertaking is subject to a Special Project Order, the Union has submitted that the work in issue is bargaining unit work.

Bargaining unit work is described by Brown and Beatty in Canadian Labour Arbitration at 5:1200:

Bargaining Unit Work

Whether work falls outside the scope of the collective agreement may simply be a matter of applying a definition contained in the collective agreement. More often, however, collective agreements do not explicitly define “bargaining unit work”. In these circumstances, the concept of “bargaining unit work” has generally been understood to mean work customarily performed by a member of the bargaining unit. Thus, supervisory-type functions, unlike manual or production functions, are generally not seen as bargaining

unit work, unless the persons performing such work are specifically encompassed in the bargaining unit by the agreement of the parties, the performance of such work is otherwise restricted by the collective agreement, or it is of insufficient quantity to justify exclusion from the bargaining unit. Experimental work has been treated in a similar fashion. Whether apprentices are performing bargaining unit work has also been the subject of dispute. ...

Where the collective agreement contains job classifications and job descriptions, they may conclusively delineate the scope of bargaining unit work. However, in the absence of such classifications or descriptions, or where they are described in general terms only, evidence of past practice may be required to determine whether the work in question is bargaining unit work. Where there is an overlapping of tasks between two bargaining units, the assignment of work between them can lead to difficult disputes as, for example, where Registered Nurses and Registered Nursing Assistants belong to separate bargaining units.

The Employer submits that there is no prohibition on contracting out work in this Collective Agreement. Brown and Beatty address contracting out in these terms at 5:1310:

Clear language required to prohibit “contracting out”

A determination that certain tasks fall within the class of work normally performed by bargaining unit employees does not imply that the employees have a proprietary right to that work. To the contrary, in the absence of specific language in the collective agreement providing otherwise, it is now universally accepted that bargaining unit work may be subcontracted to non-employees, as long as the subcontracting is genuine and not done in bad faith. Whatever the view may have been in earlier awards, it is now settled that to prohibit subcontracting, the agreement must expressly so provide. As one arbitrator has said:

The wide notoriety given to labour’s protests against this practice, the almost equally wide notoriety, especially amongst experienced labour and management representatives, of the overwhelming trend of decisions, must mean that there was known to these parties at the time they negotiated the collective agreement the strong probability that an arbitrator would not find any implicit limitation on management’s right to contract out. It was one thing to imply such a limitation in the early years of this controversy when one could not speak with any clear certainty about the expectations of the parties; then, one might impose upon them the objective implications of the language of the agreement. It is quite another thing to attribute intentions and undertakings to them today, when they are aware, as a practical matter, of the need to specifically prohibit contracting out if they are to persuade an arbitrator of their intention to do so.

Brown and Beatty have referenced a four-fold test developed to determine a valid contracting out.[†]

Brown and Beatty also reference other requirements at 5:1340:

The requirement of “in good faith and for sound business reasons”

Arbitrators have further circumscribed the employer’s right to contract out certain work by requiring that it be done in good faith and for sound business reasons. However, if the employer’s actions meet this implied requirement of good faith, in the absence of specific language in the agreement to the contrary, subcontracting or franchising will be upheld even to the extent of wholly displacing the bargaining unit. Indeed, even where the agreement expressly limits the ability of an employer to contract out, this may not apply to emergency situations where bargaining unit employees are unavailable to do the work. As well, where there is a change in the business arrangement as, for example, where a retailer has refused to continue purchasing products directly from an employer, this arrangement may not be viewed as an instance of contracting out.

Governed by the foregoing, let’s review the facts. The e-mail entered into evidence as Consent 4 provides some synopsis:

As per our discussion, I have spoken to Brian in order to get the events on the long stick bucket. Brian talked to Roy Hawco about the bucket for the long stick, as the bucket had extensive damage to the ears and the bottom. An understanding between the two was the bucket would be taken off site to have the ears aligned as the machines to perform the alignment are not on site, however the welding on the bottom would be completed on site. The bucket was taken off site and the ears aligned and the bottom plate had to be bent as we are not equipped on site to do such bending. The bottom was cut out of the bucket to size the plate and the side sections were flared out more than anticipated. The only safe manner to complete the bottom installation, was to have the bucket sides pressed and welded at the same time. This would not be able to be safely completed on site because we are not set up with press on site. Brian felt this was the safest way to have the bucket repaired and was no intention to go against the agreement with Roy.

The facts basically reflect this e-mail synopsis. Brian Gill, maintenance superintendent for H. J. O’Connell, informed Roy Hawco, business manager for the Operating Engineers, that the ears for the bucket required repair. There was no objection from the Union to sending the equipment off site to repair the ears. It was recognized that such a repair could not be effected on site. The equipment therefore was sent off site to be repaired by an independent contractor. It was envisaged that this off site repair would be to the bucket ears and not the bucket itself.

[†] See: Brown and Beatty at 5:1330.

During the process of repairing the ears, the bottom of the bucket flared. There was no press on site to repair and shape the bucket. Therefore, maintenance superintendent Brian Gill decided that this repair to the flared bucket could only be safely completed off site. Consequently, both the ears and the bucket were repaired off site. The ear repairs are not in issue; the bucket repairs are.

There was evidence that these bucket repairs could have been completed on site without a press. Fred Hickey, a welder and member of the Operating Engineers, testified to his years of experience in repairing buckets on work sites without a press. I accept Mr. Hickey's evidence on this point which was not refuted. Also, I accept the evidence of Brian Gill, the maintenance superintendent. His experience was that the shaping of the flared bucket could only be safely completed with a press.

In short, it was the Union's contention that the repair to the flared bucket should have been completed on site by the Operating Engineers. The maintenance superintendent took exception to that position, maintaining that safety was a factor and a press was needed to repair the flared bucket. No such press was available on site.

The repairs in issue were not warranty repairs. However, there is evidence that warranty work is completed both on site and off site. If warranty work is completed on site and it pertains to the work of the Operating Engineers, then Operating Engineers would be present on site while the warranty work was undertaken and compensated accordingly. If warranty work was required to be completed off site the Operating Engineers would not be required for that warranty work.

Did the Employer violate the Collective Agreement by repairing the bucket off site? Some collective agreements contain articles which prohibit contracting out. Such "contracting out" provisions employ language forbidding persons whose jobs are not in the bargaining unit from working on any jobs which are included in the bargaining unit. I am satisfied that there is no such language to be found in the Collective Agreement in the instant case. Indeed, the Union is not asserting that the Collective Agreement has an explicit contracting out clause. The Union's submission is that the Declaration of a Special Project, together with the scope and recognition provisions in Article 3 and Article 15 - which provides for work assignment and trade jurisdiction

and markup of all work - effectively prevent contracting out of any project site work which can be completed by members of the bargaining unit.

I have reviewed the Special Project Order and the enabling legislation. There is no condition in the Special Project Order which prohibits contracting out. I have also reviewed the Collective Agreement and examined Articles 3 and 15 in particular. No specific language in these articles, or indeed any articles of the Collective Agreement for that matter, prohibit contracting out. The fact is that there is existing evidence of contracting out. The ears to the bucket in the instant case could not be repaired on site as there was no equipment on site to effect this work. That work was contracted out. There were other examples in the evidence of contracting out for warranty work. Clearly, some work has been contracted out. This is not to state that the Employer has an unfettered right under Article 5.01 – the Management Rights clause – to contract out any work under this Collective Agreement.

The Union is correct in its assertion that the parties have obligations under the Special Project Order. The Special Project Order provides for an employer's organization to act for and on behalf of all employers, contractors and sub-contractors carrying out work on the site and for one council of trade unions acting for and on behalf of all affiliated unions. Implicit in this Order is that only employers who constitute the employers' organization and only unions who are members of the Resource Development Trades Council may be involved in collective bargaining in relation to the Special Project. The Collective Agreement is consistent with the requirements of the Special Project Order. The unions which comprise the Resource Development Trades Council have the benefit of the Collective Agreement in its entirety, and Article 15 in particular, which pertains to work assignment and trade jurisdiction. These provisions ensure that all work performed at the Project shall be marked up. Further, the Collective Agreement requires a jurisdictional umpire with terms of reference to resolve work assignment disputes within the Building Trades. It would be inconsistent with all of the above if the Employer commenced to contract out any work which would normally be undertaken by the Building Trades at the project site. Management rights to contract out work are therefore circumscribed.

This case is limited to the facts cited previously. There is evidence that some work may be contracted out of necessity. One such necessity was the repairs to the bucket ears in the instant

case. This work could not have been completed on site due to the lack of equipment there to effect such repairs. When the work on the ears was undertaken a flare developed in the bucket. This all occurred off site and there was no press on site. It was the honestly held belief of the maintenance superintendent that such a press was required to repair the flared bucket. I am satisfied that the maintenance superintendent acted in good faith and for sound business reasons and did not intend to undermine the work of the bargaining unit in contracting out these repairs to the bucket.[‡] There is no article in the Collective Agreement preventing any contracting out; the Employer could rely upon the management rights provisions in Article 5.01 in these circumstances. Consequently, there was no violation of the Collective Agreement.

DECISION

In conclusion, having carefully considered the relevant articles of the Collective Agreement, the relevant legislation and the Special Project order, and all of the evidence and arbitral jurisprudence relating to this matter, I find that the Employer has not violated Article 3 or 15 or any other relevant article of the Collective Agreement in these circumstances. It follows that this grievance is denied.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 22nd day of February, 2011.

Dennis Browne, Q.C.
Arbitrator / Mediator

[‡] I hasten to add that if there is a safety concern in reference to any of these matters, the same should be referred to the appropriate authority.