

ARBITRATION AWARD

BETWEEN:

NEWFOUNDLAND AND LABRADOR ASSOCIATION
OF PUBLIC AND PRIVATE EMPLOYEES
(hereinafter called the "Union")

AND:

GOVERNMENT OF NEWFOUNDLAND AND LABRADOR,
DEPARTMENT OF TRANSPORTATION AND WORKS
(MARINE SERVICES), represented by Public Service Secretariat
(hereinafter called the "Employer")

GRIEVANCE: Group grievances re callback

COUNSEL: For the Union

Elaine Price

For the Employer

Don Saturley

ARBITRATOR: James C. Oakley

The arbitration hearing was held at St. John's on October 26, 2010. 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 - Grievance Form dated April 27, 2010, No. C-MS-431-10

Consent 2 - Grievance Form dated May 1, 2010, No. C-MS-434-10

Consent 3 - Marine Services Division Collective Agreement between Her Majesty the Queen in Right of Newfoundland and Labrador, represented herein by Treasury Board and Newfoundland and Labrador Association of Public and Private Employees, signed February 13, 2009, expires March 21, 2012

Consent 4 - Bell Island-Portugal Cove Ferry Service Yearly Schedule

HD - 1 Memo dated April 23, 2010 from Captain B.A. Hammett to Nonia, Flanders and Beaumont Hamel Crews

BH - 1 Aerial photograph of Bell Island Ferry Service loading docks

BH - 2 Schedule for duration of Bell Island ramp repairs, 15 April 2010

Nature of the Grievance

Two group grievances were filed on behalf of crew members on the M/V Flanders, a vessel operating on the Bell Island-Portugal Cove ferry service. For the duration of ramp repairs on Bell Island, the crew members were requested to report to work 15 minutes early to move the Flanders from one dock to another, prior to the first sailing from Bell Island to Portugal Cove. The crew were paid 15 minutes at overtime rates. The Union claims that crew members were entitled to a minimum of three

hours callback at overtime rates. The Employer submits that there was no violation of the Collective Agreement.

Collective Agreement

The relevant Articles of the Collective Agreement are as follows:

Article 1 - Purpose of Agreement

1.01 The purpose of this Agreement is to maintain harmonious and mutually beneficial relationships between the Employer, the employees and the Association, to set forth certain terms and conditions of employment relating to remuneration, hours of work, safety, employee benefits and general working conditions affecting employees covered by this agreement.

...

Article 2 - Definitions

*2.01 For the purpose of this Agreement

...

(p) "overtime" means work performed by an employee in excess of the established daily sailing schedule at the request of the permanent head.

...

Article 9 - Arbitration

...

9.02 Notwithstanding any other provisions of this Article, the parties may mutually agree to the substitution of a single arbitrator for an arbitration board, in which event, the foregoing provisions of this Article shall apply equally to a single arbitrator when reference is made to an arbitration board. Furthermore, the parties shall endeavour to utilize a sole arbitrator for the majority of arbitration hearings and reserve the use of arbitration boards for cases where a party feels it is absolutely necessary.

...

9.16 An arbitration board may not alter, modify or amend any provisions to this Agreement but shall have the power to dispose of a grievance by any arrangement which it deems just and equitable.

...

Article 10 - Hours of Work

10.01 (a) The hours of work for employees shall be in accordance with the established daily sailing schedule.

- (b) The scheduled work day shall commence one half (1/2) hour before the printed schedule and end fifteen (15) minutes after the printed schedule.
- (c) The shift rotation for the Marine Services, except Bell Island run, shall be fourteen (14) days on and fourteen (14) days off. Bell Island shall be seven (7) days on and seven (7) days off.

...

10.03 The Employer will endeavour to provide at least forty-eight (48) hours notice to the Union of anticipated unscheduled changes in the established daily sailing schedule in each affected service.

Article 11 - Callback

- 11.01 (a) An employee who is called back to work after he has completed his normal daily schedule and has left his place of work, shall be compensated for a minimum of three (3) hours at the applicable overtime rate referred to in Clause 12.04.
- (b) (i) Where the callback in 11.01 (a) exceeds the three (3) hour minimum, the employee will receive additional compensation at the overtime rate for each additional hour worked in excess of the three hour minimum referred to in 11.01 (a).
 - (ii) Any additional trips which are scheduled outside of the established sailing schedule will be considered a call back. This provision does not apply to the Bell Island 10:30 p.m. trip where the current practise will continue.

Article 12 - Overtime

- 12.01 (a) This Article shall apply to all employees covered by this Collective Agreement.
- (b) All overtime shall be authorized by the Permanent Head or his designated representative.
- 12.02 (a) Subject to the provisions of 11.01, 11.02, 12.03 and 12.04, overtime rates of pay will not apply in situations where employees are required to perform overtime duties in connection with the extending or prolonging of the established daily sailing schedule.

- (b) Overtime rates will apply only in situations where extra trips are necessary beyond the established daily sailing schedule. No overtime compensation will be applicable for extra trips that occur during the established daily sailing schedule.

*12.03 In consideration of the hours worked by employees in excess of the hours contained in the established sailing schedule for their respective service and being available for call back to work for the duration of their weekly/ biweekly shifts, employees will receive in lieu of any overtime pay the sum of:

| <u>Effective Date</u> | <u>Rate</u> |
|-----------------------|-------------------|
| 2008 04 01 | \$2 484 per annum |
| 2009 04 01 | \$2 583 per annum |
| 2010 04 01 | \$2 686 per annum |
| 2011 04 01 | \$2 794 per annum |

12.04 Where an employee is required by the Employer to work on his scheduled day of rest, he will receive time and one half (1 ½) hours at the regular hourly rate for all time worked. The regular hourly rate is determined by dividing the employee's annual salary by 2,080.

...

12.07 For the purpose of this Article, overtime shall be calculated in fifteen (15) minute units.

...

L. #8 Hours of Work

Notwithstanding the bonus provision for the hours of work and the requirement for employees to be available for call back as contained in Article 12, Clause 12.03, the parties to this Agreement agree that due to the abnormal nature of the hours of work of Marine Services employees, the following principles of remuneration are agreed to for payroll purposes:

1. Employees shall be paid at straight time rates for all hours worked in accordance with the established daily sailing schedule. The straight time rate is calculated, as per Clause 12.04, by dividing the employee's annual salary, per Schedule "A", by 2080 hours.
2. Employees will be paid on the basis of a twelve (12) hour day. Following from this:

- a 14 day shift is 168 hours
 - a 7 day shift is 84 hours
 - annual hours are 2,184 hours
3. Where the actual hours worked in accordance with the established daily sailing schedule are above 2,184 on an annual basis, the employee will be compensated for such hours on a lump sum on the last pay period of the fiscal year.

Example:

The sailing schedule for the Little Bay Islands service calls for an employee to work 2,314 hours per year. An employee who works the full year would be paid on a bi-weekly basis for 12 hours per day - 168 hours per shift for a total of 2,184 hours. However, on the last pay period of each fiscal year he would be entitled to compensation for the extra 130 hours (2,314 - 2,184) at straight time rates.

4. The above notwithstanding, temporary employees will be compensated weekly/bi-weekly on the basis of the hours worked in accordance with the established schedule for their respective service.
5. The Bell Island scheduled 10:30 p.m. trip will not be affected by this Clause, but will be reimbursed as per past practice.

Evidence

There are two vessels operating on the Bell Island-Portugal Cove ferry service, the M/V Flanders and the M/V Beaumont Hamel. There are two loading docks on Bell Island. The Flanders uses a dock with an adjustable mechanical ramp. The ramp was taken out of service from about May 1 to June 15, 2010 for the purpose of repairs and upgrades. While its loading dock was out of service, the Flanders used the Beaumont Hamel loading dock on Bell Island to load vehicles and passengers.

For the duration of the period of the Bell Island ramp repairs, adjustments were made to the daily sailing schedule and the positioning of the vessels at the end of the day. By memo dated April 23, 2010 from Captain Ben Hammett, Marine Manager, the vessel crews were advised as follows:

Subject: 48 notice of new schedule

This notice serves as your 48 hour notice, per your respective Collective Agreements, that the attached schedule; is to be adopted for the Bell Island run, as soon as the second vessel (anticipated to be the Nonia, today); becomes operational.

This new schedule provides for one call out for the Nonia/Beaumont Hamel at 06:50 from Portugal Cove from Monday to Friday to engage the usual first departure out of Bell Island at 7:20.

Flanders to overnight on the Bell Island side and allows for a 15 minute repositioning at O.T. rate for the vessel each morning.

The following schedule was attached to the memo (changes to the schedule emphasized):

Schedule for duration of Bell Island ramp repairs, 15th April 2010

| Dep. B.I. | | Dep. P.C. | |
|-----------|--------------|---------------------------|-----------------|
| F | 5:55 | Monday to Friday | 6:20 F |
| | | Monday to Friday | 6:50 BH |
| F | 6:50 | Monday to <u>Saturday</u> | 7:20 F |
| BH | 7:20----- | Monday to Friday----- | 7:50 BH |
| F | 7:50 | Daily | 8:20 F |
| BH | 8:20----- | Monday to Friday | |
| F | 8:50 | Daily | 9:30 F (gas) |
| F | 9:50 | Daily | 10:40 F |
| | | Monday to Friday | 11:30 BH |
| F | 11:20 (gas) | Daily | 12:00 F |
| BH | 12:00 | Monday to Friday | |
| F | 12:30 | Daily | 12:40 BH |
| BH | 1:20 | Daily | 2:00 BH |
| | | Daily | 2:40 F |
| BH | 2:40 | Daily | 3:30 BH |
| F | 3:30 | Daily | 4:10 F |
| BH | 4:10 | Daily | 4:50 BH |
| F | 4:50 | Daily | 5:30 F |
| BH | 5:30 | Daily | 6:10 BH |
| F | 6:05 | Daily | 6:40 F |
| BH | 6:50 | Daily | 7:30 BH |
| BH | 8:00 | Daily | 8:30 BH |
| BH | 10:10 | Daily | 10:40 BH |
| BH | 11:10 | Daily | |
| BH | 12:10 | Saturday Only | 11:40 BH |

Note: Gas trip : Tuesdays (weather permitting)

Daily = means every day of the week, including Sunday

Dial 895-6931 and press: 1 - for current operating conditions and updates

Captain Hammett testified that the schedule added a trip for the Beaumont Hamel departing Portugal Cove at 6:50 a.m. The Beaumont Hamel could not stay overnight on the Bell Island side because the Flanders needed to use the Beaumont Hamel dock to load passengers and vehicles for the 5:55 a.m. departure. The additional 6:50 a.m. departure of the Beaumont Hamel from Portugal Cove was listed as a trip on the public ferry schedule. The crew on the Beaumont Hamel were paid a three hour callback for the extra 6:50 a.m. trip. The Flanders was docked overnight on Bell Island at the Flanders dock. It was necessary to move the Flanders in the morning to the Beaumont Hamel dock for the 5:55 a.m. departure. Pursuant to the Collective Agreement, the normal starting time for crew members is one half hour prior to the first departure. The Flanders crew were advised to report to work 15 minutes earlier than their normal starting time in order to move the vessel from one dock to the other. There were no passengers or vehicles on the vessel for the repositioning manoeuvre. Captain Hammett testified that the crew were paid 15 minutes at overtime rates. He estimated that it would take about 5 minutes to move the vessel. It takes about 20 minutes to make the crossing between Bell Island and Portugal Cove, a distance of 2.7 miles. Captain Hammett testified that to move the vessel from one dock to the other was not a trip, and it was not on the schedule. There continued to be 10 round trips for the Flanders on the schedule. The last trip of the day for the Flanders from Portugal Cove to Bell Island was listed on the schedule as departing at 6:40 p.m., a revision from the normal scheduled departing time at 6:50 p.m. The earlier departure from Portugal Cove allowed time for the repositioning manoeuvre from one dock to the other at Bell Island at the end of the day.

Howard Dodge, Second Engineer on the Flanders, testified that the Flanders normally is docked overnight on Bell Island. He is available for callback for emergencies. He referred to the notice of the change of schedule necessitated by the ramp repairs on Bell Island. He was requested to report to work at 5:10 a.m. in place of his usual reporting time of 5:25 a.m. He testified that being asked to start 15 minutes earlier than the normal starting time of 5:25 a.m., amounted to a callback under the Collective Agreement. He believed that the repositioning movement of the vessel from one dock out into the bay and back to the other dock was a trip under the Collective Agreement.

Union Submission

The Union submitted that the crew members on the M/V Flanders were entitled to callback under Article 11 with a minimum three hours pay at overtime rates. The established daily sailing schedule sets the regular hours of work for the ferry service. The scheduled work day starts 30 minutes before

the first sailing and ends 15 minutes after the last sailing, according to Article 10.01 (b). During the ramp repairs, the crew members were asked to report to work 15 minutes early to move the Flanders from its overnight position to the loading dock for the first ferry crossing. The Employer paid the Flanders' crew members 15 minutes at the overtime rate of time and one half. Callback applied under both Articles 11.01 (a) and 11.01 (b) (ii). Under Article 11.01 (a), the employees were called back to work after they had completed their normal daily schedule and had left the place of work. Some employees left the vessel, and other employees left the place of work, but remained on the vessel. Asking employees to report to work 15 minutes earlier than the scheduled reporting time amounted to callback under Article 11.01 (a). Overtime work could be scheduled and still amount to callback. It was not necessary that employees go home and leave the vessel in order for callback to apply under Article 11.01 (a). The movement of the vessel from one dock to another, prior to the first daily sailing from Bell Island to Portugal Cove, was an "additional trip" scheduled outside the established daily sailing schedule, and amounted to callback, under Article 11.01 (b)(ii). A trip is any movement of a vessel from point A to point B. The Union referred to *Her Majesty the Queen in Right of the Province of Newfoundland (Department of Work Services and Transportation) and Newfoundland Association of Public Employees*, unreported, June 19, 1998 (Montgomery) (the "Fogo" award). In that case a ferry sailed from Fogo to Farewell on one day, and returned to Fogo the next day for the purpose of performing maintenance on the thrusters on the ferry. The sailing amounted to an extra trip each day that was outside the daily sailing schedule. It was held that a trip did not have to be on an established scheduled ferry route and did not have to be a passenger and vehicle carrying voyage. All work outside the established daily sailing schedule on an employee's day of work was considered callback. The *Fogo* award set out a matrix with guidelines for various scenarios. The matrix established that the crew members in this case were entitled to callback. The Union also referred to two arbitration awards between the parties establishing that the Employer does not have the right to change the scheduled hours of work. The addition of a sailing before the first scheduled sailing, or after the last scheduled sailing, amounts to callback (*Her Majesty the Queen in Right of Newfoundland, represented by Treasury Board, on behalf of the Department of Transportation and Works and Newfoundland Association of Public and Private Employees*, unreported, May 16, 2006 (Scott) and *Newfoundland and Labrador Association of Public and Private Employees and Government of Newfoundland and Labrador, Department of Transportation and Works, Marine Services*, unreported, November 25, 2009 (Oakley)). In the latter case, the employees were found entitled to compensation at overtime rates, according to the callback provisions, for early and late sailings outside the established daily sailing schedule. The Union disputed the Employer's submission that the work was related to extending or prolonging the

established daily sailing schedule, within the meaning of Article 12.02 (a). The Employer's submission that overtime rates were paid in error and therefore there had been an overpayment, was not an appropriate way to give notice of an overpayment. Article 12.02 was subject to the callback provisions in Article 11.01. According to the *Fogo* award, overtime could be scheduled and still amount to callback. The Union requested that the grievance be upheld and the crew be compensated for three hours callback each day at the overtime rate of time and one half.

Employer Submission

The Employer submitted that callback did not apply. Under the overtime provisions in Article 12, the employees were paid the annual stipend set out in Article 12.03 for extra hours of work required to extend or prolong the established daily sailing schedule and for being available for callback. When the employees were asked to report to work 15 minutes early, their duties were in connection with the extending or prolonging of the established daily sailing schedule, under Article 12.02 (a) and therefore no overtime was payable. The revised starting time was scheduled from early May to mid June. Callback was rarely a scheduled event, as discussed in the *Fogo* award. An employee required to work on a day of rest shall be paid overtime according to Article 12.04. According to the *Fogo* award, when callback did not apply, overtime occurred only on those occasions when an employee was called to work on his or her scheduled day of rest. Callback did not apply under Article 11.01 (a) because the situation continued for several weeks and it was scheduled. The Employer submitted that moving the vessel from one dock to another was not a trip and callback under Article 11.01 (b)(ii) did not apply. In the *Fogo* award, travel from one port to another, to test the bow thrusters, was found to be an additional trip. The *Fogo* award found that a trip under the Collective Agreement did not have to be a passenger and vehicle carrying trip between two points on the ferry service. However, it was incredulous to compare a five minute movement of the vessel from one dock to another on Bell Island to the voyage from Fogo to Farewell, an established ferry route. In order to be a trip it must have characteristics similar to other trips. On the facts of this case, an additional trip was scheduled for the Beaumont Hamel in the morning. The crew members on the Beaumont Hamel were entitled to callback for the additional trip. The *Fogo* award stated that overtime under Article 12 only applied on a scheduled day of rest. The Employer paid overtime to the Flanders crew members in error. The Employer was entitled to recover the overpayment, based on the authority in *College of the North Atlantic v. Newfoundland and Labrador Association of Public and Private Employees (Barron)* (2009) 184 L.A.C. (4th) 25 (Oakley). The Employer was not seeking a repayment of overtime in this case, but was giving notice to the Union that it would revert

to the strict terms of the Collective Agreement in future situations. The Employer also submitted that the grievances did not correctly identify which Article of the Collective Agreement was the subject of the grievances. The Employer requested that the grievances be denied.

Considerations

For the duration of ramp repairs to the dock on Bell Island from about early May to mid June, 2010, crew members on the M/V Flanders were required to report to work 15 minutes early. The crew had to move the Flanders from its overnight position at its own dock, proceed out into the bay, and return to the other dock. The movement to the other dock was necessary before the Flanders could load passengers and vehicles for the first sailing of the day from Bell Island to Portugal Cove. The movement of the Flanders from one dock to another was estimated to take about five minutes. The crew members were requested to report to work at 5:10 a.m., 15 minutes earlier than the normal starting time of 5:25 a.m. Pursuant to Article 10.01 (b), the normal starting time was established to be one half hour before the printed sailing schedule, which showed the first departure from Bell Island at 5:55 a.m.

The crew members on the Flanders were paid 15 minutes overtime at the rate of time and one half. However, at the arbitration hearing, the Employer submitted that the payment of overtime was made in error, because the extra 15 minutes of work before the normal starting time was in connection with extending or prolonging the established daily sailing schedule, for which no overtime was payable under Article 12.02 (a). The Employer also submitted that overtime was only payable for work on a day of rest, except in situations of callback. Therefore, in the Employer's submission, the crew were compensated for the extra time by the annual stipend set out in Article 12.03.

The Union submits that callback applies under both Article 11.01 (a) and Article 11.01 (b)(ii). The Employer submitted that the grievance forms do not correctly identify which article is the subject of the grievance. The grievance form dated April 27, 2010 refers to "Article 12 and all other pertinent articles". The grievance form dated May 1, 2010 refers to "any and all articles of the Marine Services Collective Agreement". I am satisfied that the general reference to articles of the Collective Agreement incorporates Articles 11 and 12 and any other relevant Articles, and the form of the grievances is acceptable.

The Arbitrator will first examine the callback provisions in Articles 11.01 (a) and 11.01 (b)(ii) of the Collective Agreement to determine if either one of them applies on the facts of this case. The parties referred to several prior arbitration awards between the parties. In the *Fogo* award, the arbitrator determined that a trip for the purpose of callback included travel from point A to point B that was not a passenger and vessel carrying trip or an extension of the daily sailing schedule. On the facts of that case, the vessel travelled from Fogo to Farewell one day, and returned the next day, for the purpose of testing and performing maintenance on the bow thrusters of the vessel. The arbitrator described the issue at page 10 as follows:

It is sufficient to say that a difference exists between the parties with respect to what constitutes a “trip” under Articles 11 and 12 of the Collective Agreement. The Union contends basically that any excursion over the water from Point A to Point B by the ferry in question is a “trip”. The Employer’s definition of what makes up a “trip” is more specific and contains the following elements: it must be the established sailing schedule route; it must be passenger/vehicle carrying; and it must be a round trip. The parties are asking this Arbitrator for her interpretation of the definition of the word because of the implications such a definition will have to determine whether callback or straight overtime applies in extra sailing situations over and above the normal established daily sailing schedule for a particular ferry.

The arbitrator considered that the callback provisions in Article 11 took precedence over the overtime provisions in Article 12. The arbitrator stated at page 20 as follows:

In this case, the Employer determined that the extra trips worked by the Grievor on March 18 & 19, 1997 constituted overtime work and paid him for such. However, as we have seen from our review above, while according to Article 12.02 (b) overtime rates apply “only in situations where extra trips are necessary beyond the established daily sailing schedule”, those “trips” are automatically deemed by virtue of Article 11.01 to be callback. In this case, Article 11.01 takes precedence over the overtime article, Article 12, because it both comes before it and it is a specific provision, with respect to a particular type or kind of overtime - call back. Thus, while Article 12.02, from the Employer’s point of view, sets the conditions under which overtime shall be paid, it is in fact Article 11.01 which is deterministic in the matter instant.

The *Fogo* award decided that the movement of the vessel in that case was a trip, and callback applied under Article 11.01(b) (ii). The *Fogo* award also sets out a callback/overtime matrix, in which the

arbitrator describes various scenarios and states whether overtime or callback would apply. With respect to the scenario of “employee has gone home but is asked to work before the start of the established daily sailing schedule but not on a trip”, the arbitrator stated that callback, three hours minimum, applied under Article 11.01 (a). With respect to the scenario “employee has gone home but is asked to work before the start of the established daily sailing schedule on an additional trip”, the arbitrator stated that callback, three hours minimum, applied under Article 11.01 (b)(ii).

On the facts of this case, the crew members had gone off duty at the end of their shift, after the *Flanders* was docked overnight on Bell Island. Some crew members remained on the vessel and some went home. However, the operative language of Article 11.01 (a) is not whether an employee has “gone home”, but whether the employee has “left his place of work”. The crew members had left the place of work at the end of the work day and were not scheduled to return to the place of work until the next day at their normal starting time of 5:25 a.m. The employees were requested to report to work at 5:10 a.m., 15 minutes earlier than the normal reporting time for the purpose of moving the *Flanders* from one dock to the other before the first scheduled sailing. I find that the employees were called back to work within the meaning of Article 11.01 (a). It follows that the employees are entitled to callback and a minimum of three hours pay at the overtime rate. The Employer submits that callback does not apply on the facts of this case because it was a scheduled event. The requirement to report to work 15 minutes early was planned in advance and continued from early May to mid June. I find that the Collective Agreement does not contain any language that would exclude the application of callback when the event was planned in advance and continued for several weeks. To place such a limit on the meaning of callback would have the effect of adding words to the Collective Agreement which the Arbitrator is not permitted to do by Article 9.16.

The Union also claims that the employees were asked to work before the start of the sailing schedule on an additional trip and are entitled to callback under Article 11.01 (b)(ii). To determine whether or not there was a “trip” requires consideration of whether movement of the vessel from one dock to another on Bell Island amounts to a “trip”. In view of the Arbitrator’s finding that callback applies under Article 11.01 (a), it is unnecessary to determine whether or not the movement of the vessel was a trip amounting to callback under Article 11.01 (b)(ii).

The Employer submits that overtime is not payable in any event because the work performed by the crew members was part of extending or prolonging the established daily sailing schedule under Article 12.02 (a) and it is therefore compensated by the stipend in Article 12.03. I find that the early

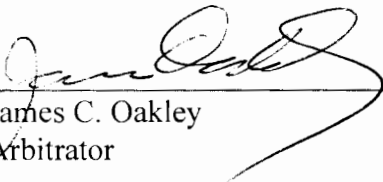
reporting to work to move the vessel from one dock to another, was not a situation of extending or prolonging the established daily sailing schedule. Extending or prolonging the schedule occurs when events cause the scheduled trips to take longer than the printed sailing schedule. For example in *Marine Services as represented by Treasury Board and Newfoundland Association of Public Employees*, unreported, January 19, 1993 (Browne), due to a mechanical problem the ferry did not complete its scheduled three runs within the time allocated on the printed sailing schedule, but took 90 minutes longer. The Union claimed that the last trip constituted an additional trip because it started after the end of the last scheduled trip on the daily sailing schedule. However, it was determined by the arbitrator that the last trip was not an additional trip. There were three trips scheduled and three trips completed. The mechanical problem caused a situation that extended or prolonged the schedule under Article 12.02 (a). Therefore overtime was not payable. I find that Article 12.02 (a) does not apply in this case. The scheduled trips of the *Flanders* did not take longer for the duration of the ramp repairs. The first sailing of the day continued to depart from Bell Island at 5:55 a.m. The scheduled sailings were not extended or prolonged. The payment of the annual stipend to the crew members under Article 12.03 does not apply to the extra time worked in this situation.

The grievances will be allowed. The crew members on the *Flanders* were called back to work before their scheduled starting time, and are entitled to compensation for a minimum of three hours at the applicable overtime rate pursuant to Article 11.01 (a).

Decision

The grievances are allowed. The crew members on the M/V *Flanders* are entitled to callback under Article 11.01 (a) and a minimum of three hours pay at the overtime rate. It is unnecessary to decide whether callback applies under Article 11.01 (b) (ii). Requesting the crew members to report to work early, in these circumstances, was not a situation of extending or prolonging the established daily sailing schedule under Article 12.02 (a). The crew members on the M/V *Flanders* are entitled to compensation in an amount to be determined.

DATED this 23rd day of February, 2011.


James C. Oakley
Arbitrator