

The Arbitration hearing convened at the Comfort Inn Airport in St. John's, Newfoundland and Labrador, on April 6, 2011. 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. There were no preliminary objections raised with respect to arbitrability.

THE EXHIBITS

The following exhibits were entered by consent:

- C1 The Collective Agreement
- C2 Grievance # 41 – October 1, 2010
- C3 Mark Up Provisions – Lockerbie & Hole - Site Services
- C4 Correspondence – Davey/Adams – September 17, 2010
- C5 Correspondence – Adams/McCormick – September 28, 2010
- C6 Correspondence – Adams/Doyle – September 28, 2010
- C7 Correspondence – Adams/Slaney – September 27, 2010
- C8 Correspondence – Adams/Pearce – September 28, 2010
- C9 Correspondence – Adams/Dalton – September 28, 2010
- C10 Correspondence – Adams/Hawco – September 28, 2010
- C11 Correspondence – Adams/Staples – October 5, 2010
- C12 Correspondence – Adams/Bailey – October 5, 2010

The relevant Articles of the Collective Agreement are appended.

NATURE OF THE GRIEVANCE

In a grievance dated October 1, 2010, the Union alleges a violation of Articles 1, 5, 20, 24, and/or any other articles violated in the circumstances. The grievance alleges that contractors on the Vale Inco Long Harbour Processing Plant site (the “Project”) are not paying board allowance as per the Collective Agreement. The Union is requesting that contractors comply with the Collective Agreement and pay for all lost board to date.

The Employer maintains that the language in the Collective Agreement is clear and that board is being paid in accordance with the Collective Agreement. On November 2, 2010, the Employer denied the grievance.

POSITION OF THE PARTIES

The Union

This is a compact grievance, as the issue is clearly defined. The decision will require an interpretation of one or more sections of the Collective Agreement. The sub-contractor employer, Lockerbie & Hole Eastern Inc., (“the Employer”) provides site services to the project. When the Employer took over the site in April 2010 from a predecessor contractor, the shift rotation schedule consisted of seven (7) days on and seven (7) days off, pertaining to two teams of employees. The seven days would commence on a Wednesday and end on a Tuesday, with the second shift taking over at that time. In October 2010, the Employer changed the shift to commence on a Monday. For the purposes of this arbitration, the Union accepts the Employer’s position that the traditional work week begins on Monday with this change in shift.

For a five (5) month period, commencing in April, the teams of employees were receiving fourteen (14) days board allowance. After the Employer changed the schedule in October 2010 and moved the shift commencement day from Wednesday to Monday, the entitlement of these employees changed so that they no longer received fourteen (14) days board allowance but only seven (7) days board allowance. These employees are therefore earning less. That is the issue.

It is the Union’s position that Article 20.06 applies. When the Employer changed the shift schedule the board allowance for affected employees should have been maintained the way it was prior to the shift change. Article 25.06(d) supports the Union’s position as the payment of wages under that article also includes the amount of premiums and allowances. When Article 25.06 and Article 20.06 are considered, there is a reasonable interpretation that earnings include board allowances. Earnings are not defined under this Collective Agreement. Further, the evidence supports the Union’s interpretation.

There is no dispute pertaining to Article 24.03(c). In that there is no controversy. Rather, it is the application of the Article and the inconsistency with the Employer’s application that causes difficulty here. The Employer is required to provide \$68.00 per day board allowance, or \$476 per week, each week, based on that \$68.00 figure. When the Employer changed the rotation the

employees only received half that amount. The Union takes no issue with Article 20.01, but 20.06 favours the Union's case. When the shift changes, there can be no loss of regular weekly earnings. Article 20.06 is clear language. Here there was a shift schedule change from a Wednesday commencement to a Monday commencement. There cannot be any loss of earnings in the result. Prior to the shift change, employees received fourteen (14) days board allowance compensation. Now these employees receive only seven (7) days board allowance compensation. Their earnings have been affected.

The Union is relying on Article 20.06 and the definition of earnings. The Union can also rely upon Article 25.06 which specifies that the payment of wages is to be accompanied by a statement showing premiums and allowances. Allowances are included in earnings in the pay stub, as is vacation pay and holiday pay. The board allowance is something paid. Board allowances are earnings.

In summary, the Employer caused a shift change. Some employees were prejudiced and lost board allowance in the result. This board allowance was a part of their earnings. Article 20.06 applies and the reference to earnings favours the Union's case.

The Union presented cases in support of its position, including: Re: Greyhound (1974) Lines of Canada and Amalgamated Transit Union 5 L.A.C. (2d) 1 (Forsyth); and Re: Bedford Furniture Industries v. U.S.W.A. (2002) 113 L.A.C. (4th) 145 (Stocknick).

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

The Employer

The facts are basically not in dispute. When the shift was changed in October 2010 the work week commenced on a Monday instead of a Wednesday. Article 24.03(c) is clear in that there is an entitlement for board allowance for \$68.00 a day when an employee is scheduled to work for seven (7) days a week.

The Union has focused on Article 20.06 but the evidence is that 20.06 pertains to a shift change, that is, when a shift moves from a day shift to a night shift. Article 20.06 is there to ensure that there would be no loss of earnings during such a change. There is no guarantee of work in construction. Article 19.04 reflects that fact. In this instance, the seven (7) day work week started on Monday. The employees were entitled to \$68.00 per day and received \$68.00 per day for each day worked in that week.

The Union is urging that “earnings”, as found in the language of Article 20.06, be given a broad meaning but Article 24.03(c) provides only an allowance. It is a reimbursement for the cost of living for the scheduled work week. It has nothing to do with earnings. The words of the Collective Agreement should be interpreted according to their plain meaning. Article 20 in its entirety, should be considered based on the evidence of the two witnesses. The Article provides that earnings cannot be reduced for a change of shift from a night shift to a day shift. That would be clearly wrong. However, Article 20.06 cannot be expanded to include what the Union is seeking here. That is not the purpose of that article.

The Union is seeking an interpretation of Article 20.06 which is not there. Article 20.06 does not confer broad benefits on employees. It has a specific function pertaining to shift changes from day shift to night shift. The Article should not be expanded. Based on arbitral jurisprudence, the Union’s case fails.

The Employer made reference to a number of cases in its submission, including: Cardinal Transportation B.C. Inc. and Canadian Union of Public Employees, Loc. 561 (1997)] 62 L.A.C. (4th) 230 (Devine); and Canada Post Corporation and Canadian Union of Postal Workers ([1993]) 39 L.A.C. (4th) 6 (Bird). The Employer also made reference to applicable sections of Brown and Beatty’s Canadian Labour Arbitration. It is the Employer’s position that this grievance should be denied.

CONSIDERATIONS AND REASONS FOR THE DECISION

Articles relevant to this grievance include:

- 1.03 The purpose of this Agreement is to establish certain terms and conditions of employment of construction workers employed by Contractors on the Nickel Processing Plant. The Agreement shall apply to, among other things, rates of pay, benefits, hours of work and other working conditions so as to promote orderly and productive relations and achieve uninterrupted completion of the project, on time, within budget while maintaining an exemplary safety record.
- 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.
- 19.04 The hours set forth in this Agreement do not constitute a guarantee of hours of work per day or work per week.
- 20.01 The scheduling of the number of days of work in a week, the number of shifts in a day and the number of hours in a shift shall be at the sole discretion of the Contractor.
- 20.02 The Contractor shall advise the Council in respect to the matters referred to in Article 20.01.
- 20.03 A shift premium of \$3.00 per hour shall be paid for all hours worked on other than the day shift.
- 20.04 Day shift shall be defined as any shift commencing between the hours of 6:00 a.m. and 9:00 a.m.
- 20.05 No employee shall work more than one (1) straight time shift in each consecutive twenty-four (24) hour period. However, if an employee continues to work he shall receive the overtime rate for each additional shift until a break of eight (8) consecutive hours occurs.
- 20.06 An employee whose shift schedule is changed shall receive twenty-four (24) hours notice of shift change. No employee shall suffer loss of regular weekly earnings due to his/her shift schedule change.
- 24.01 (a) There shall be a free zone of thirty-four (34) road kilometers from the Site parking lot to the town hall in the community of the employee's permanent residence. Employees living within that zone shall travel to work at their own expense. ...
- (b) Employees permanently residing at a distance greater than thirty-four (34) road kilometers but less than one-hundred (100) road kilometers from the Site parking lot to the town hall, or such other public building as may be agreed under Article 24.01 a), in the community of the employee's permanent residence shall be paid at a rate of \$0.68 per road kilometer

between the above noted two points by the most direct route to be paid for each day worked with the normal pay day.

- 24.02 (a) Free camp accommodations shall, to the extent of the camp capacity, be made available to employees maintaining their permanent residences at a location outside the travel zone specified in 24.01 b).
- (b) If an employee, permanently residing within the travel zone, applies for camp accommodation the request shall be presented to the camp committee for consideration.
- (c) For the purpose of this Article the definition of “permanent residence” is as follows:

“An employee’s permanent residence is the place where he/she maintains a self-contained domestic establishment where he/she ordinarily resides such as a dwelling, house or similar place of residence where a person generally eats and sleeps.”

- 24.03 (a) Any employee permanently residing outside the travel zone of 24.01 b) shall, upon hiring, and if space available, exercise his option to reside in the camp and shall have the right to exercise this option after each twelve (12) month period.

This regulation shall be subject to review by the camp committee to accommodate special cases or extenuating circumstances.

- (b) Upon hiring an employee he/she shall be paid a transportation allowance equal to the actual road kilometers traveled from his/her permanent residence times the applicable road kilometer rate of travel allowance and pay at his regular rate on the basis of one hour for each seventy (70) road kilometers traveled to a combined maximum of four-hundred dollars (\$400).
- (c) Subject to sub-paragraph d) hereof, if an employee, permanently residing outside the travel zone of Article 24.01 b) chooses not to, or is unable by reason of lack of space, to reside in the camp, he/she shall be compensated with a board allowance of \$68.00 per day payable for seven (7) days per week in which the employee is scheduled to work.
- (d) In the event that an employee is scheduled to work in a week but he/she fails to work any day or days scheduled, except where bereavement leave applies, where weather conditions have led to the closure of a principal, relevant portion of roadway by the appropriate authorities, or where the employee has the prior written consent of his/her superintendent (or his/her designate), his/her board allowance for that week shall be paid in the proportion that the days worked in that week are to the days scheduled in the same week. However, should the employee, at the time of failing to work as scheduled,

be working on a scheduled rotation that exceeds one week, the amount paid shall be in proportion to the days worked to the days scheduled over the full schedule cycle of the rotation. (For example, when an employee is scheduled to work five (5) consecutive days and the employee is absent from work for a reason other than specified above, that employee shall lose twenty percent (20%) of his/her board entitlement for that one (1) week period. In the event that an employee is scheduled to work ten (10) consecutive days and that employee is absent from work for a reason other than specified above, that employee shall lose ten percent (10%) of his/her board entitlement for that two (2) week period.)

- (e) When laying off an employee, the employee shall be paid a transportation allowance equal to the actual road kilometers traveled to his/her permanent residence times the applicable road kilometer rate of travel allowance and pay at his/her regular rate on the basis of one (1) hour for each seventy (70) road kilometers travelled to a combined maximum of four-hundred dollars (\$400).
- 24.04 (a) The travel allowance in accordance with Article 24.01 b) shall change as follows:
- (i) to \$0.70 per road kilometer on May 1, 2011
 - (ii) to \$0.72 per road kilometer on May 1, 2013
- (b) Board allowance in accordance with Article 24.03 c) shall change as follows:
- (i) to \$70.00 per day on May 1, 2011
 - (ii) to \$72.00 per day on May 1, 2013
- 25.05 The Contractor shall remit the amounts for all funds as specified in the Trade Appendices for each hour earned.
- 25.06 The payment of wages will be accompanied by a statement showing:
- a) wage rate;
 - b) amount of hours paid for at straight time;
 - c) amount of hours paid for at overtime;
 - d) amount of premiums and allowances;
 - e) vacation pay;
 - f) holiday pay;
 - g) the amount and purpose of each deduction;
 - h) the name of the Contractor issuing the payment;
 - i) the employee's name and payroll number;
 - j) the pay period; and
 - k) gross and net earnings.

The basic facts are not in dispute. Gus Coombs, a Site Representative working with the Union, and John Adams, who works in Project Management as a Corporate Liaison at the site for Lockerbie & Hole, testified. In May 2010 Lockerbie & Hole assumed the site contract. Lockerbie & Hole provide site services to the project and take instructions from Fluor Canada Limited, the Contract Manager at the site. Lockerbie & Hole perform multiple tasks at the site, including general site clean up, garbage collection, the cleaning of walkways and buildings and accesses to stairs, and also lunchroom and washroom cleaning. They also provide trailer cleaning and janitorial services and similar.

In September 2010 Fluor Canada Limited informed Lockerbie & Hole that a decision had been made regarding shift rotations. The letter dated September 17, 2010, headed "Re Shift Rotations", addressed to Lockerbie & Hole's John Adams, stated:

Please be advised that a decision has been made regarding Lockerbie and Hole Eastern shift rotations.

It is expected that Lockerbie and Hole Eastern shall endeavour to transition to a 10 and 4 schedule (10 days working; 4 days off) commencing September 27, 2010; the majority of which will be trades-people and staff (to be mutually agreed upon by LHE and Fluor Canada Limited). Please note that the 10 and 4 schedule shall also apply to Subcontractors.

In conjunction with the above, and in order to provide continuous service, it is also expected that a selected number of trades-people (second shift; to be mutually agreed upon by LHE and Fluor) will transition to a 7 and 7 schedule (7 days working; 7 days off) commencing October 4, 2010, for essential services only which are to be determined by Fluor.

Janitorial services shall be provided during the regular hours of Project Site Work from 7am to 5:30pm (10 & 4 schedule).

Subsequently, Lockerbie & Hole notified the various Unions carrying out assignments of work, whose members were affected by the change.

This change in shift schedule affected those employees who received remuneration for board allowance, pursuant to Article 24.03(c), at a rate of \$68.00 per day. With this shift variation the commencement day for the start of the shift moved from Wednesday to Monday. In the result, instead of receiving fourteen (14) days payment for board allowance, affected employees could

now receive a maximum of seven (7) days remuneration at \$68.00 per day for board allowance. This was because the shift changed from a Wednesday start to a Monday start and did not expand into a second week as was the case previously. The Board allowance therefore was limited to one week. Both the Union and Employer agree that the work week commences on a Monday for purposes of this grievance.

From a practical perspective the employees affected by the shift change could receive \$476.00 board allowance every other week. Prior to the shift change, when these employees were working a shift stretching from one week into part of a second week, the board allowance was up to \$952 every two weeks.

The Union's submission is based on Article 20.06 of the Collective Agreement. The Union maintains that when the Employer changed the shift schedule employees' earnings were protected under Article 20.06. Therefore, after the shift was changed by the employer, employees affected by this change must receive the same amount for board allowance as paid before the shift change. The Employer's position is that Article 20.06 has no application in the circumstances and that Article 20 pertains to shift changes from the day shift to the night shift. Also, the Employer opines that board allowances as provided for under Article 24.03(c) are not considered earnings and therefore Article 20.06 does not apply in any case.

Earnings are not defined in the Collective Agreement. There was some case law presented in which "earnings" has been subject to include more than wages. In the Greyhound Lines of Canada Ltd. and Amalgamated Transit Union 5 L.A.C. (2d) 1 (Forsyth) meal allowances and vacation pay were an issue. At paragraph 8, the Arbitrator stated:

8. Applying this principle of interpretation to the cause in issue, it appears clear that the 4% meal expense allowance is something to be paid *in addition to* the wages paid to an employee, which wages are calculated in accordance with other provisions of s. 49. Furthermore, the 4% is calculated on "gross earnings" and not wages. This brings into question whether or not gross earnings are something different than, although inclusive of, wages. Reference is made to several authorities in which the term earnings was subject to interpretation by various labour relations boards. In that regards see *Re U.S.W. and Int'l Nickel Co. of Canada Ltd.* (1971), 22 L.A.C. 298 (Rayner); *Re U.A.W. and Bundy Tubing Co. of Canada Ltd.* (1966), 17 L.A.C. 416 (Egan); *Re United Glass & Ceramic Workers, Local 295, and*

Pilkington Brothers (Canada) Ltd. (1966), 17 L.A.C. 146 (Arthurs). While these decisions must be read in the context of the particular issues involved and the particular agreements being interpreted, I am particularly persuaded in the context of this hearing by the decision of the arbitrator in *Re United Glass & Ceramic Workers* case. In discussing earnings, he states at p. 150:

What the union obtains in the area of vacation pay is usually “purchased” by the sacrifice of some other monetary demand, such as additional statutory holiday, a fringe benefit, or wages. All of these – vacations, holidays, fringe benefits, wages – are “earned”; together they represent the total compensation which an employee expects to receive, and the employer expects to pay, as the labour cost of production. We are therefore of the opinion that in common parlance, apart from some special usage, an employee’s vacation pay is part of his “earnings” and that an onus rests on those who seek to establish an exception to this generality.

In *Bedford Furniture and U.S.W.A.* (2002) 113 L.A.C. (4th) 145 (Stocknick) the term “earnings” as these pertained to vacation pay were in issue. In that decision the Arbitrator wrote:

11. This case, then turns on what is included in the term “earnings” used in Article 18. I was referred to numerous cases involving the question of vacation pay calculation where the collective agreement used the word “earnings” or phrases such as “total pay”, “total gross earnings” or “gross earnings”. Decisions on this issue can be found dating back to 1954, and it is fair to say that the earlier awards were mixed, with some supporting the union’s view that “earnings” includes the previous year’s vacation pay and others supporting the company’s practice of excluding it. However, decisions from the past two decades almost uniformly take the view that “earnings” or similar phrases indicate an intention to include a broader range of payments – including previous year’s vacation pay – than only basic wages.
12. For example, in *Twinpak Inc. v. I.W.A.-Canada, Local 1-500* (1993) 37 L.A.C. (4th) 169 (Ont. Arb. Bd.) (Gorsky), which contains a thorough review of the cases, the arbitrator concludes that the normal meaning of “earnings” would include vacation pay earned in the previous period (at page 185). Similarly in *Atlantic Packaging Products Ltd. v. C.P.U., Local 333* (1993), 34 L.A.C. (4th) 59 (Ont. Arb. Bd.) (Starkman), the arbitrator makes the following statement:

It appears from a review of the arbitral jurisprudence that it has been consistently held, since the early 1980s, that the prior year’s vacation pay forms part of gross earnings for the calculation of vacation pay. As stated in *Re Scarborough Centenary Hospital Assn. and OPSEU Loc. 574* (1984) 13 L.A.C. (3d) 416 (H.D. Brown) at p. 419:

It appears now to be well settled by arbitration awards, that the term “earnings” or “gross earnings” includes prior vacation pay for purposes of

calculation of future vacation pay entitlement as being an earned benefit and is part of the total compensation subject to specific exclusions in the agreement. It has been held that vacation pay is earned just as an employee's hourly wages are earned and is directly therefore related to the work performed ...

13. These decisions, in my view, simply confirm the commonly understood meaning of the word "earnings", which is normally used to signify a broader range of monetary items than just basic wages. For example, earnings might include such items as overtime and statutory holiday pay, which in the case of the company in this case, are apparently used in the calculation of vacation pay. There is nothing in this collective agreement which suggests the parties intended anything other than this normal meaning of "earnings." In addition, as noted above, paid vacation is commonly and correctly thought of as an earned benefit.

And there was other arbitral jurisprudence submitted. In Canada Post Corporation and Canadian Union of Postal Workers ([1993] 39 L.A.C. (4th) 6 (Bird), the arbitrator stated:

21. To succeed in a interpretation grievance, so as to require a party to a collective agreement to pay money, clear language contractual language is required; see Re B.C. Transit and Independent Canadian Transit Union, Local 1 (1988) 30 L.A.C. (3d) 201 (Bird) at p. 223 referring to Re Noranda Mines Ltd. (Babine Division) and U.S.W.A., Local 898 [1982] 1W.L.A.C. 246 (Hope) as explained in Re B.C. Transit and I.C.T.U., Local 1, unreported, April 14, 1987 (Larson) at p. 9:

... what it said is that there where one party to a collective agreement asserts an interpretation that is not credible it should not be accepted by the arbitration board. The probability that the obligation would have been undertaken except by express words is an important factor in persuading the board of that assertion. But the board should not be taken to have stated that a monetary obligation can only be undertaken by an employer by express words to that effect.

And in re Cardinal Transportation B.C. Inc. and Canadian Union of Public Employees, Loc. 561 (1997)] 62 L.A.C. (4th) 230 (Devine), the arbitrator writes at paragraph 27:

Where a monetary benefit is asserted, it normally falls to the Union to show in clear, specific and unequivocal terms that the monetary benefit is part of the employees' compensation package. Such an intent is not normally imposed by inference or implication: see Noranda Mines (April 27, 1981), Unreported (Hope).

Brown and Beatty in Canadian Labour Arbitration at 4:2000 refer to the interpretation of Collective Agreements as follows:

Because the basic source of an arbitrator's jurisdiction is found in the collective agreement, in most arbitrations the main task is to construe a word, phrase, section or group of sections in the collective agreement. Conceptually, however, the task of interpreting a collective agreement is no different than that faced by other adjudicators in applying statutes, private contracts and other authoritative directives. And generally speaking, arbitrators view and approach their function in much the same way.

At 4:2100:

It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it. As one arbitrator, quoting from *Halsbury's Laws of England*, stated in an early award:

The object of all interpretation of a written instrument is to discover the intention of the author, the written declaration of whose mind it is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as is possible, and as the law will permit.

And further:

But the intention must be gathered from the written instrument. The function of the Court is to ascertain what the parties meant by the words they have used; to declare the meaning of what is written in the instrument, not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent to the intention.

Accordingly, in determining the intention of the parties, the cardinal presumptions that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions. Thus, where the parties had detailed in the collective agreement specific elements of management rights, without limitation as to the manner in which they would be applied, an arbitrator was held to have erred in implying that those rights were to be exercised fairly and without discrimination. When faced with a choice between two linguistically permissible interpretations, however, arbitrators have been guided by the purpose of particular provision, the reasonableness of each possible interpretation, administrative feasibility, and whether one of the possible interpretations would give rise to anomalies. But where a collective agreement is silent on an issue, yet a legislative provision is presumed to be incorporated and must be applied

by the arbitrator, such a provision “must be interpreted on its own terms and not in light of the understandings of the parties”.

And at 4:2110 Brown and Beatty state:

In searching for the parties’ intention with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless to do so would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless the context reveals that the words were used in some other sense

And at 4:2120:

Another related general guide to interpretation is that in construing a collective agreement, it should be presumed that all of the words used were intended to have some meaning, and that they were not intended to be in conflict. However, if the only permissible construction leads to that result, resolution of the resulting conflict may be made by applying the following presumptions: special or specific provisions will prevail over general provisions; where a definition conflicts with an operative provision, the operative provision prevails; where the same word is used twice it is presumed to have the same meaning; where two different words are used, they are intended to have different meanings; where an incorporated document conflicts with a non-incorporated document, the conflicting provisions of the incorporated document will not be incorporated by reference; a clear expression of intention is required to confer a financial benefit; and finally, in the case of conflict between an earlier and later clause, there is some authority to the effect that “the part of the contract which is written first overrides that which is written later, and it is only otherwise when the later clause clearly spells out the overriding effect intended”, although the better view would seem to be that effect should be given to that part which best carries out the real intention of the parties. Furthermore, as a technique for resolving doubtful meaning, it is sometime said that where a party is seeking to come with an exception, the meaning of the exception should be construed more strictly against that party, known as the *contra proferentum* rule.

Are board allowances, as provided for under Article 24.03(c), “earnings” as found in Article 20.06? I have reviewed the Collective Agreement in its entirety and considered the above-referenced arbitral jurisprudence including the cases provided by the parties. None of the cases are directly on point. However, I do share the observations of Arbitrator Devine in the Cardinal case as quoted previously. A monetary benefit in a collective agreement should be clearly stated in unambiguous language. Certainly this is not the case here.

Article 25.01 requires that wage and benefits must be in accordance with the trade appendices in Schedule D to the Collective Agreement. In these trade appendices, the **Wages and Fringe Benefits** listed include the basic hourly rate, vacation pay, holiday pay, pension plan, industry fund, training fund, diversity fund, GBT fund, NL health care fund, RDC fund, and the gross hourly wage package is based on the listing. Travel and the board allowance as found in Article 24 are not listed under **Wages and Fringe Benefits**.

Article 25 is entitled “**Wages and Benefits Language**.” Article 25.02 requires that a weekly statement of earnings and deductions be issued to each employee. Article 25.06 particularizes what is to be included in that statement of earnings and deductions. The statement must show, among other items: (a) the wage rate, (d) amount of premiums and allowances; and (k) gross and net earnings. While allowances are a segregated item to be included in the Article 25.06 weekly statement of earnings and deductions, I am not satisfied that this leads to the conclusion that board allowances are earnings as envisaged in Article 20.06.

Article 24.03(c) board allowances apply to a select group of employees who cannot be accommodated at the site camp and who do not live in the local area. In fact the evidence is that some boarding homes in the areas around Placentia Bay are charging the exact amount of \$68.00 per day as found under the Collective Agreement for the project employees who board in homes there. This suggests the \$68.00 board allowance provided for in Article 24.03(c) is a reimbursement for an expense associated with accommodation.

Furthermore, Article 24 is entitled Travel and Board. It is common for collective agreements to contain provisions for reimbursement for mileage and lodging when employees travel on behalf of employers. Typical of these collective agreements is Article 36 of the Collective Agreement between Treasury Board, the Health Boards Association, the Province’s Hospitals and the Nurses’ Union, which provides for such reimbursement when employees are required to travel.

In this instance, Article 24.03(c) provides that employees residing outside the travel zone and outside the camp are compensated with a board allowance. The expenditure amount set by the Collective Agreement is \$68.00 per day, payable for seven (7) days per week in which the

employee is scheduled to work and, of course, subject to the other requirements of the Collective Agreement. Based on this contractual language it seems that the purpose of the \$68.00 per day referenced in Article 24.03(c) is the payment of an expense and pertains to an employee reimbursement which is common to collective agreements.

Based on all of the foregoing, I am not satisfied that the language of Article 20.06 supports the Union's case. The Union's case is based on earnings as found in Article 20.06. Earnings is not defined anywhere in the Collective Agreement. I am not prepared to conclude by inference or implication what would ultimately lead to a benefit under Article 20.06. In the result I am not prepared to find that "Earnings" as found in Article 20.06 includes board allowance as found in Article 24.03(c). For that reason, the Union's case must fail.

I need comment no further as to the remainder of the submissions pertaining to Article 20, having found that Article 20.06 does not apply in these circumstances. The grievance is therefore denied.

DECISION

In conclusion, having carefully considered the relevant articles of the Collective Agreement, and all of the evidence and arbitral jurisprudence relating to this matter, I find that grievance is denied.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 26th day of April, 2011.

Dennis Browne, Q.C.
Arbitrator / Mediator