

**PRELIMINARY OBJECTION  
WAIVER / INTERPRETATION**

**FINDINGS AND DECISION IN A DISPUTE**

**BETWEEN:**                    **TREASURY BOARD**

**AND:**                            **THE NEWFOUNDLAND AND LABRADOR HEALTH BOARDS  
ASSOCIATION**

(hereinafter referred to as “the Employer”)

**AND:**                            **THE NEWFOUNDLAND AND LABRADOR NURSES’ UNION**

(hereinafter referred to as “the Union”)

**RE:**                                **GROUP / POLICY GRIEVANCE -  
PRELIMINARY OBJECTION**

(hereinafter referred to as the “Grievance”)

Appearances:                    For the Union:                    David Conway

For the Employer:                    Jody Saunders

Witnesses:                      Called by the Union:                    John Vivian

Called by the Employer:                    Mark Gill

Arbitrator/Mediator:                    Dennis Browne, Q.C.

The Arbitration hearing convened at the Comfort Inn Airport in St. John's, Newfoundland and Labrador, on March 29, 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 there was a preliminary objection pertaining to the grievance procedure.
4. That witnesses would not be excluded from the hearing.
5. That all parties likely to be affected by the outcome of the arbitration had received adequate notice.
6. That Collective Agreement and statutory time limits for making the Award would be waived.
7. 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.

### **THE EXHIBITS**

The following exhibits were entered by consent:

- C1 The Collective Agreement
- C2 The Grievance Form – December 8, 2010 and related correspondence
- C3 Correspondence – Conway/Gill – January 25, 2011
- C4 Various e-mails – Gill/Vivian – October 22, 2010

C5 Correspondence – Conway/Saunders – March 23, 2011

Other Exhibits:

MG1 Email – Gill/Vivian – November 15-17, 2010

The relevant Articles of the Collective Agreement are appended.

**NATURE OF THE GRIEVANCE**

In a grievance dated December 8, 2010, the Union alleged that the Employer had violated Schedule N of the collective agreement by posting newly created NLNU positions, rather than awarding the positions without postings according to the qualifications and seniority of the nurses whose positions had been eliminated.

The Union seeks remedies including (i) that the newly created NLNU positions be awarded without postings according to qualifications and seniority to nurses whose positions have been eliminated, as per Schedule N; (ii) full loss of wages, benefits, and seniority for any nurse(s) who has been negatively affected; (iii) full redress and retroactivity, all in accordance with the Collective Agreement.

The Employer maintains by way of a Preliminary Objection that the Grievance was untimely, and the Union had failed to comply with the prescribed time limits under the Collective Agreement.

Here, we are dealing with that Preliminary Objection and not the substantive issue.

**POSITION OF THE PARTIES**

**The Union**

The September 8, 2010, grievance alleged that the Employer posted newly created positions rather than award them according to qualifications and seniority to nurses whose positions were eliminated. It is the Union's position that Schedule "N" of the Collective Agreement has been violated. On March 23, 2011, the Union withdrew the group aspect of the grievance, on a without prejudice basis, and

maintained that the grievance could proceed by way of a policy grievance. The Union does not want any changes to the outcome of the job postings; rather, the Union seeks an interpretation on the application of Schedule “N” of the Collective Agreement.

Here, the Employer has brought a preliminary objection. The Employer contends in this preliminary objection that the Union failed to comply with the Collective Agreement time limits in bringing this grievance forward.

It is the Union’s position that the time limits preliminary objection cannot be sustained, because the parties agreed to waive time limits. By mutual agreement, time limits were waived by the parties in October 22, 2010, e-mail exchanges. The parties agreed to waive the time limits on all issues until November 30, 2010. The new time limits commenced on November 30, 2010. The grievance was filed December 8, 2010, which would be within the filing timeframe for grievances under Article 15.

The Union has a second submission pertaining to the Employer’s preliminary objection. The fact is that the grievance is a policy grievance. In the Collective Agreement policy grievances are different from ordinary grievances. The Union has seen fit to deal with this matter pursuant to a policy grievance. Time limits were not raised in reference to this policy grievance; policy grievances are of a continuous nature.

In summary, the parties agreed to a waiver of time limits. There is a distinction in law between a waiver of time limits and an extension of time limits. There were discussions with the Employer following November 30, 2010. The Employer did not raise a timeliness objection at the earliest opportunity in discussions on the substantive issue after November 30, 2010. The Employer is in no position to raise a preliminary objection based on time limits now.

Articles relevant to this matter include Articles 15.03 and 15.09.

The Union put forward cases and arbitral jurisprudence in support of its position, including excerpts from Brown and Beatty’s Canadian Labour Arbitration. The Union also referred to a number of cases, including: Newfoundland Hospital and Nursing Home Association v. Newfoundland and Labrador Nurses’ Union (Griffiths Grievance) [1998] Nfld. L.A.A. No. 28 (Browne); Iron Ore Company of Canada v. United Steelworkers of America, Loc. 5795 Re: Policy Grievance No. 6-5787 [1998] Nfld.

L.A.A. No. 43 (Browne); Tornigait Services Inc. v. Labourers International Union of North America, Loc. 1208 [1998] Nfld. L.A.A. No. 8 (Alcock); Newfoundland (Department of Finance) v. Newfoundland and Labrador Association of Public and Private Employees (Re: Cantwell Grievance) [2005] N.L.A.A. No. 9 (Alcock).

It is the Union's position, based on all of the foregoing, and based on the evidence, that this preliminary objection cannot be sustained. The grievance on the substantive issue should be heard.

### **The Employer**

The Employer acknowledges that the grievance pertaining to the substantive issue is restricted and limited to an interpretation of Schedule "N". However, there is a preliminary objection. The arbitration cannot proceed on the substantive issue because this grievance is not timely. There was an agreed deadline for the submission of the grievance. The time limits for filing the grievance were extended to November 30, 2010. The Union failed to comply with this extension. The Union having failed to file the grievance in a timely manner, cannot now proceed to present the grievance on its merits.

The Collective Agreement permits the parties to extend time limits under Article 15.09. Here the parties agreed to extend time limits to November 30, 2010. There is no provision in the Collective Agreement for either of the parties to waive that article or to establish their own time limits. The Collective Agreement stipulates the appropriate procedures.

Nothing in the Collective Agreement distinguishes time limits among the various types of grievances found in Article 15.03. The time limits for all types of grievances are the same. The Union has acknowledged that time limits are mandatory. If the Union required more time after November 30, 2010, a further extension should have been requested.

The Employer is relying upon strict compliance with the language of the Collective Agreement. The parties agreed to the time limits' language as found in the relevant articles of the Collective Agreement. This Collective Agreement favours the Employer's position. The Union failed to

comply with time limits specified in Article 15.07 of the Collective Agreement. In the result, the substantive issue cannot proceed.

The Employer submitted a number of cases in support of its position, including: Canada Post Corp. v. Canadian Union of Public Employees (1994) 40 L.A.C. (4<sup>th</sup>) 19 (Burkett); Charles S. Curtis Memorial Hospital and Canadian Union of Public Employees, Loc. 1644 [1986] N.J. No. 285; Newfoundland and Labrador Association of Public and Private Employees v. Newfoundland (Minister of Education) 221 Nfld. & P.E.I.R. 246 N.L.S.C. T.D; and Agnes Pratt Home and Newfoundland Association of Public Employees (1992) Unreported (Alcock). The Employer also made reference to excerpts from Brown and Beatty's Canadian Labour Arbitration and Black's Law Dictionary.

It is the position of the Employer that the preliminary object should be upheld.

## **CONSIDERATIONS**

Articles relevant to this grievance include:

### **\*15.07 Settlement of Grievance**

All grievances shall be processed without stoppage of work according to the following procedure:

**\*Step 1** – An employee who has a grievance shall within fourteen (14) calendar days of the occurrence or discovery of the grievance submit her/his grievance in writing to her/his manager or designate. The grievance shall outline the nature of the grievance.

**\*Step 2** – Failing satisfactory settlement within ten (10) calendar days after the grievance was submitted under Step 1, the employee concerned shall, within a further seven (7) calendar days, submit the grievance in writing to the Director or designate. The Director or designate shall render her/his decision within ten (10) calendar days of receipt of the grievance.

**\*Step 3** – Failing satisfactory settlement being reached in Step 2, the employee shall, within fourteen (14) calendar days of receipt of the Director's or designate's decision, submit the grievance in writing to the Chief Executive Officer or designate. The Chief Executive Officer or designate shall render her/his decision

within fourteen (14) calendar days of receipt of the grievance and shall prior to the making and rendering of her/his decision provide the employee the opportunity of meeting with her/him to discuss the grievance.

**\*Step 4** – Failing satisfactory settlement being reached in Step 3, either party may refer the dispute to arbitration within fifteen (15) calendar days of the Chief Executive Officer or designate's decision in Step 3.

At all steps of the Grievance Procedure an employee may be accompanied by a Union representative.

#### **15.08 Grievance Presented by Mail**

When a grievance is processed through the mail, all correspondence shall be registered. The time while the mail is moving from one destination to another shall not be considered in the Grievance Procedure time limits.

#### **15.09 Amending of Time Limits**

The above-mentioned time limits may be extended, in individual cases, by the consent in writing of both parties to the grievance.

#### **15.10 May Omit Grievance Steps**

An employee considered to be wrongfully or unjustly discharged or suspended shall be entitled to a hearing under Article 15.07, Grievance Procedure. Steps 1, 2 and 3 of the Grievance Procedure shall be omitted in such cases. The grievance must be lodged within twenty-one (21) calendar days of the date of her/his suspension or discharge or the date she/he received the notice of her/his suspension or discharge, whichever is later.

#### **15.11 Bypass Steps**

Where a dispute arises involving a question of general application or interpretation of this agreement, the Union may initiate a grievance and the parties may mutually agree to bypass Steps 1 and 2 of this Article.

#### **16.03 Decisions of the Board**

Arbitration awards shall be final and binding and communicated to the parties in the form of a signed copy.

#### **16.04 Jurisdiction of the Board**

An arbitration board may not alter, modify or amend any provisions of this agreement but shall have the power to set aside or modify a decision of the

Employer. No arbitration boards shall make an award which would amend or change a collective agreement, a judgement or an earlier award.

There were e-mail exchanges entered by consent. These e-mails give rise to the preliminary objection on time limits.

On October 22, 2010 the Union's John Vivian emailed the Employer's Mark Gill as follows:

**Subject:** Time Limits Waiver

Can we agree of a waiver of time limits for all issues related to the elimination of Nurse 11 positions at Central Health until November 30<sup>th</sup>, 2010.

I would assume by that date we should all be able to assess whether grievances are required.

Mark Gill responded as follows:

**Subject:** Re: Time Limits Waiver

Yes

On November 15, 2010 The Union's John Vivian emailed the Employer's Mark Gill as follows:

**Subject:** New Position

Have you filled all the positions and are you able to indicate to us which of our former Nurse IIs were successful and for what positions?

I think you can assume you will have individual grievances related to individual competitions and a policy grievance from ourselves to clarify the application of Schedule N including answering the question of whether the new positions should have been considered vacancies for its application.

Mark Gill responded to the email as follows:

**Subject:** New Position

There are 4 positions filled to date. They are the Care Facilitator and Educator at each ER/ICU unit.

At CNRHC: Joanne Baird (Ed) and Trevor Gill (CF)  
At JPMRHC: Karlene Kelly (Ed) and Arlene Martin (CF)

Arlene is the only Nurse I. The current Nurse II at JPM who did not get a new position is in the nurse II role on a temp basis.”

The Union filed the grievance on December 8, 2010.

On March 10, 2011, the Employer’s Labour Relations Officer wrote to the Union as follows:

This is to advise that the employer will be raising a preliminary objection on time limits for the above noted matter scheduled for arbitration on March 29 and 30, 2011.

The Employer’s Director of Strategic Human Resources Management is Mark Gill, whose portfolio includes recruitment, retention and labour relations. He is involved in Collective Bargaining and was familiar with the grievance. Mr. Gill received the grievance a few days after December 8, 2010. Mr. Gill did not respond to the grievance but testified that this was not out of the ordinary. Sometimes Mr. Gill responded to grievances, depending on the step in the procedure. Other times he referred grievances to the appropriate channels.

Mr. Gill testified that failure to settle the grievance at Step 1 would be typical. Often when discussions occurred on a particular matter the grievance procedure steps could move more quickly. There was no need for the Employer to respond to the various steps in the grievance procedure. The Union would have been aware of that practice.

Mr. Gill stated that the grievance pertaining to the substantive issue involved the “Ottawa Model of Nursing”. In October 2010 there were job postings in reference to the Ottawa Model, The Employer posted the new positions which were created to fulfill the objectives of the model. The positions were first posted on October 18, 2010, and extended to October 31, 2010.

The Union's John Vivian had written and provided a significant interpretation of the Union's position on the implementation of the Ottawa Model in a formal letter October 26, 2010. However, the Employer saw no violation of the Collective Agreement in its implementation of the Ottawa Model.

Mr. Gill agreed to the waiver to extend time limits in the e-mail exchanges. Mr. Gill had no problem agreeing to November 30, 2010. It was clear to him that November 30, 2010, was the deadline and any grievance had to be filed by that date.

Mr. Gill reviewed Article 15 of the Collective Agreement and, in particular, Article 15.07. It is the Employer's position the grievance should be filed at the point of discoverability, which was October 18, 2010, when the positions were first posted. The issue was discovered by the Union at that time. It is not Mr. Gill's practice to agree to waive time limits. Mr. Gill testified that when he responded to Mr. Vivian's e-mail of October 22, 2010, he had intended that November 30, 2010, would be the deadline for filing a grievance

Mr. Gill testified that time limits are referenced in Article 15.09. Article 15.09 refers to an extension of the time limits. The grievance was filed December 8, 2010. The discovery of the grievance reverts to the October 2010 postings. By failing to file the grievance on or before November 30, 2010, the Union was out of time. Mr. Gill testified that the e-mail exchanges setting a November 30, 2010, deadline were a waiver to extend time limits as permitted under Article 15.09. The Collective Agreement favoured the language of extension. The e-mails extended the time limits up to November 30, 2010, for filing the grievance.

Mr. Gill stated that the grievance pertained to newly created positions which caused some existing positions to be declared redundant. The new positions were awarded over a period of time. The Union disagreed with the Employer's position on these postings. Mr. Gill had a telephone conversation with John Vivian in reference to that. Some positions were awarded in January 2011.

When Mr. Gill received the grievance after December 8, 2010, the Employer made no objection to the time limits. When various steps of the grievance procedure were completed by the Union there

was no Employer objection to time limits. In this case, on January 25, 2011, the Union formally submitted the grievance to arbitration. Time limits were not raised with the Union until the Employer forwarded correspondence on March 10, 2011.

John Vivian, the Executive Director of the Nurses' Union, was responsible for labour relations for the Union. Mr. Vivian has been involved in collective bargaining, served as chief negotiator and negotiated collective agreements. Mr. Vivian referred to Schedule N of the Collective Agreement as the issue the Union wanted to advance on the substantive issue. Mr. Vivian described the purpose of Schedule N from his perspective.\* There had been much discussion on the Ottawa model. The Union's position was that Schedule N could facilitate the creation of new positions.

Mr. Vivian testified that the grievance arose because of the Employer's actions pertaining to posting new positions based on the Ottawa model. The Ottawa model is to be implemented provincially over time. The Union required the rules pertaining to the implementation of the model because existing nursing positions were affected. With the Employer's October job posting, displaced senior nurses needed to apply for the posted positions. The Union required time because of this, as discussions were needed within the Union. That is why Mr. Vivian sought a waiver of time limits in the e-mail exchanges. Mr. Vivian did not know how long it would take to resolve these issues when he requested the waiver. Furthermore, from his perspective, the substantive issue pertained to an interpretation of Schedule N.

Following the October 22, 2010, waiver of time limits, there were some discussions. Then the matter went silent. Mr. Vivian actually had wondered what had happened. He had thought that the issues may have resolved.

Mr. Vivian never believed that November 30, 2010, was a deadline to file a grievance. He sought the waiver because he needed discussions on the Ottawa model and how Article 25.02 – vacancies

---

\* The Union objected that Mr. Vivian's testimony pertained more to the substantive issue than the preliminary objection. The objection was overruled. It was reasonable for some information to be provided on the substantive issue to appreciate the nature of the preliminary objection.

and job competitions – would be affected. All the Union is now seeking in reference to the substantive issues is an interpretation of Schedule N on a go forward basis.

### **REASONS FOR DECISION**

It is the Employer's position that the e-mail exchanges of October 22, 2010, constituted a waiver to extend time limits up to November 30, 2010, based on Article 15.09. According to the Employer, the grievance should have been filed on or before November 30, 2010. The Union's position is that the e-mail exchanges of October 22, 2010, waived time limits and therefore the Union could file the grievance after November 30, 2010. The grievance was filed on December 8, 2010.

Does the evidence support a waiver to extend time limits ending November 30, 2010? Or does the evidence support a waiver so that time limits would commence on November 30, 2010?

Brown and Beatty in Canadian Labour Arbitration discuss time-limits at 2:3128:

Many collective agreements fix time-limits within which a grievance is to be filed and within which the various steps established by the grievance procedure must be taken. And where they do, questions may arise as to when the grievance first arose. In that regard, it has been held that a grievor need not anticipate a breach of the agreement and can wait until the issue crystallizes. Indeed, where a grievance is premature, it may be inarbitrable on the ground that a dispute did not exist at the time it was brought. ...

Where the violation of the agreement is of a *continuing nature*, compliance with the time-limits for initiating a grievance may not be as significant unless, of course, the collective agreement specifically provides that in those circumstances the grievance must be launched within a fixed period of time. Continuing violations consist of repetitive breaches of the collective agreement rather than simply a single or isolated breach. ...

Where it is established that the breach is a continuing one permitting the time period for launching the grievance to be measured from the latest occurrence, it has been held that the failure to initiate it within the stipulated time from the date of its first occurrence will not render it inarbitrable. ...

On the other hand, where a party merely fails to reply to a grievance or other decision in the course of the grievance procedure within the stipulated time, that failure will not normally result in the allowance or forfeiture of the grievance. Rather, apart from contract language to the contrary, the consequence of a failure to reply is simply to permit the party wishing to proceed to take the next step.

The parties are in agreement that the time limits contained in Article 15 of the grievance procedure are mandatory. Indeed, mandatory time limits are pretty well the norm in collective agreements. Arbitrator Alcock's comments are instructive on this issue when he wrote:

It is common ground that the time limits in the grievance and arbitration processes are mandatory. That means that, absent an agreement to extend the limits, or the existence of waiver or estoppel, the grievance will not be arbitrable. †

Arbitrator Alcock distinguishes between an extension of time limits and waiver. This, in my opinion, is correct.

Waiver is defined by Sack and Poskanzer in Labour Law Terms – A Dictionary of Canadian Labour Law as follows:

**Waiver** voluntary or intentional relinquishment or surrender of a right, claim, privilege or advantage; waiver may arise from words or conduct, and implies an intention to forego or abandon a condition which has not been complied with by the other party; thus, for example, where an employer participates in processing a grievance to arbitration, without objecting to a breach of time limits, a waiver may be inferred; see **estoppel**

Sack and Poskanzer define extension of time limits as follows:

**extension of time limits** term used to describe enlargement of time by an arbitrator or the parties themselves so as to permit the processing of a grievance to arbitration where it is breach of the time limits contained in a collective agreement.

Here, the Employer maintains there was a “waiver to extend time limits”, which was permissible under Article 15.09. However, that article does not employ the term “waiver”. Waiver and extension of time limits are not synonymous. These are distinct terms. The Union's case is based on waiver.

Brown and Beatty in Canadian Labour Arbitration discuss waiver at 2:3130:

---

† Agnes Pratt Home and Newfoundland Association of Public Employees (1992) Unreported (Alcock) at p. 17.

## 2:3130 Waiver of procedural irregularities

The concept of “waiver” connotes a party not insisting on some right, or giving up some advantage. However, to be operative, waiver will generally require both knowledge of and an intention to forego the exercise of such a right.

In its application, waiver is a doctrine that parallels the one utilized by the civil courts known as “taking a fresh step”, and holds that by failing to make a timely objection and “by treating the grievance on its merits in the presence of a clear procedural defect, the party waives the defect”. That is, by not objecting to a failure to comply with mandatory time-limits until the grievance comes on for hearing, the party who should have raised the matter earlier will be held to have waived non-compliance, and any objection to arbitrability will be sustained. This has been held to be so even though there was a timely objection as to arbitrability but not one that related to the failure to meet time-limits. Where, however, the objection to untimeliness is made at the earliest opportunity, even if it is not made in writing, it will preclude a finding that the irregularity was waived.

Black’s Law Dictionary defines “waiver” as follows:

**Waiver.** The intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, or when one dispenses with the performance of something he is entitled to exact or when one in possession of any right, whether conferred by law or by contract, with full knowledge of the material facts, does or forbears to do something the doing of which or the failure of forbearance to do which is inconsistent with the right, or his intention to rely upon it. The renunciation, repudiation, abandonment or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong. ...

Waiver is essentially unilateral, resulting as legal consequence from some act or conduct of party against whom it operates, and no act of party in whose favour it is made is necessary to complete it.

Here, the evidence is that the Union’s John Vivian wrote the Employer’s Mark Gill on October 22, 2010. Mr. Vivian did not request an extension of time limits pursuant to Article 15.09. Mr. Vivian headed his e-mail as follows:

**Subject:** Time Limits Waiver

Can we agree of a waiver of time limits for all issues related to the elimination of Nurse 11 positions at Central Health until November 30<sup>th</sup>, 2010.

I would assume by that date we should all be able to assess whether grievances are required.

No article of the Collective Agreement is mentioned in the e-mails. Mr. Vivian asks: "Can we agree of a waiver of time limits for all issues ...". Mr. Vivian also states that by that date "we should all be able to assess whether grievances are required".

Mark Gill replied on October 22, 2010. The subject of Mr. Gill's reply was "Re: Time Limits Waiver". Mr. Gill answered in one word "Yes". Mr. Gill made no mention of Article 15.09, nor did he request any clarification from Mr. Vivian.

Mr. Vivian's October 22, 2010, e-mail did not state that he would be filing a particular grievance. This is consistent with the evidence of Mr. Vivian who testified that, when he wrote the e-mail, he required time to assess the impact of the implementation of the Ottawa Model. Indeed, Mr. Vivian's e-mail forwarded to Mr. Gill on November 15, 2010, states:

**Subject:** New Positions

Have you filled all the positions and are you able to indicate to us which of our former Nurse IIs were successful and for what positions?

I think you can assume you will have individual grievances related to individual competitions and a policy grievance from ourselves to clarify the application of Schedule N, including answering the question of whether the new positions should have been considered vacancies for its application.

Mr. Gill replied on November 17, 2010:

**Subject:** New Position

John,

There are 4 positions filled to date. They are the Care Facilitator and Educator at each ER/ICU unit.

At CNRHC: Joanne Baird (Ed) and Trevor Gill (CF)

At JPMRHC: Karlene Kelly (Ed) and Arlene Martin (CF)

Arlene is the only Nurse I. The current Nurse II at JPM who did not get a new position is in the nurse II role on a temp basis."

These e-mail exchanges indicate that as of November 17, 2010, the Union was yet to determine what grievances were to be filed. Also, Mr. Gill, in his e-mail, continued to provide information pertaining to the new positions.

After the Union filed the December 8, 2010, grievance, the parties held further discussions. However, the Employer did not raise time limits during these discussions. Furthermore, the Employer did not raise any objection pertaining to time limits during any stage of the grievance procedure. If time limits were in issue, the Employer ought to have raised such an objection at the first opportunity after the grievance was filed. The Employer did not do this. In fact, the Employer did not raise the time limits objection until October 10, 2011, in correspondence to the Union.

After considering all of the evidence, I am satisfied that the Union requested a waiver of time limits. These time limits were to commence on November 30, 2010. The Union did not request an Article 15.09 extension of time limits and there was no mention of that in the e-mails. Further, I find that the Union could have reasonably inferred that the Employer had granted such a waiver in the Employer's reply to the Union's October 22, 2010, e-mail. I can find nothing in the language of these e-mail exchanges to satisfy me that there was an extension of time limits as envisaged under Article 15.09. In the result, I find that there was no requirement to file a grievance until the waiver expired on November 30, 2010. It follows that the Union's grievance of December 8, 2010, was therefore timely and in compliance with the requirements of Article 15 of the grievance procedure.

I note as well that the concept of waiver should be familiar to the parties. Waivers, in circumstances such as these, are not uncommon. In many arbitrations the parties waive time limits for an arbitrator to render a decision. In this particular case, at the commencement of the hearing the parties agreed as follows:

6. That Collective Agreement and statutory time limits for making the Award would be waived.

I have already found that the terms waiver and extension of time limits are distinct in arbitral jurisprudence.

In conclusion, the grievance filed December 8, 2010, was timely and met the requirements of the Article 15 grievance procedure. It follows that the preliminary objection cannot be sustained. The grievance can proceed. The parties are directed to contact the undersigned to provide dates for the continuance. Finally, in view of the foregoing, there is no need to consider that aspect of the Union's submission relating to a continuing policy grievance.

### **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 the preliminary objection is denied. The grievance may proceed.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 19<sup>th</sup> day of May, 2011.

---

Dennis Browne, Q.C.  
Arbitrator / Mediator