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Nonpayment of wages  
And benefits

**FINDINGS AND DECISION**  
IN A DISPUTE  
between

**HURLEY SLATEWORKS COMPANY INC.**  
("the Employer")  
and

**INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 904**  
("the Union")

Grievance on behalf of the employees listed in Consent #1

**APPEARANCES:**

For the Employer:

Presenter: Mr. John Hurley

For the Union:

Presenter: Mr. Randell J. Earle, Q.C.

Advisor: Mr. Roy Hawco, I.U.O.E.

Witnesses: Mr. Philip Blundon, Shop Steward  
Mr. Terry Sparkes, I.U.O.E. 904 Business Agent

Arbitrator: Dr. John A. Scott (By letter of appointment by the Minister of Human Resources, Labour and Employment dated October 7, 2010)

The hearing was held in St. John's on January 12, 2011

**Statement of Grievance** reads: "No Payment of Wages and Benefits."

**The Union requests that:** "Compensation for all lost wages and benefits and to be paid in accordance with the Memorandum of Agreement."

**THE PARTIES AGREED THAT:**

- the Arbitrator was properly appointed and had authority to hear the case;
- in the event of conflict the Arbitrator's notes of the evidence and argument as recorded in the final award will prevail;
- all matters pertaining to the grievance procedure and all time limits, whether statutory or arising from the collective agreement, were either properly observed or are waived;
- there were no points raised as to arbitrability or other preliminary objections;
- the Arbitrator will remain seised of the matter for thirty (30) calendar days after publication of the award to deal with matters of interpretation should they arise.

**ITEMS TAKEN INTO EVIDENCE**

Consent # 1 Grievance August 16, 2010

Consent # 2 Collective Agreement expiring December 31, 2013

PB # 1 List of employees showing hourly rates, hours worked, and amounts owed

TS # 1 Spreadsheet showing Union Dues not remitted to the Union

**ARTICLES OF THE COLLECTIVE AGREEMENT CONSIDERED**

3.05 **CHECK-OFF** - The company agrees to deduct bi-weekly union dues from the employees who have authorised the deductions in writing on a form acceptable to both parties.

3.06 **CHECK-OFF Remittance** - The Union agrees to notify the company in writing of the amount of the dues to be deducted from employees. This amount may only be changed through written notification. Such notices must bear the seal of the Union and the signature of its proper official. Dues collected shall be remitted to the Financial Secretary for the union accompanied by a list for said deductions by the 15<sup>th</sup> day of the following month.

11.01 **REMUNERATION** - The company shall remunerate an Employee at the wage rate applicable in the job classification that such an Employee is employed in. The job classification and applicable wage rates shall be those agreed upon and set out in Appendix "A", attached hereto, and forming part of this Agreement.

11.06 **PAYMENT OF WAGES** - All wages shall be paid bi-weekly by cheque or automatic deposit on Thursday of the week following the pay period.

## **OPENING STATEMENTS**

**For the Union**, Mr. Earle sketched the grievance as relating both to the timeliness and to the actual payment of wages.

The Union's purpose is to secure an order requiring the Employer to pay outstanding wages and the Union dues which have, to date, not been remitted to the Union, and to make all payments in a timely manner.

The Union submits that there has been a long history of difficulties in the employees being paid on time. In August of 2010, this culminated in people being sent home without proper lay-off notices and without pay. The Union seeks an order for payment of outstanding amounts due and that, for the future, payment be made in a timely manner.

**For the Employer**, Mr. Hurley pointed out that all involved are well aware that the company has been having difficulties. In 2008 the company faced a deficit and changed its management. There was a contract lost which led to a series of losses in 2008 and in 2009, and a walkout by staff in December of 2009 who were not paid wages on time. Through 2010 there were cash problems. By the end of July, productivity at the site was hampered. By the end of August, all staff were laid off. No funds were coming in. The phone and power were cut off.

The company has been seeking funds to restart the operation. The company has markets for the product , but its production needs to be cost effective.

### **EVIDENCE**

**THE FIRST EMPLOYER WITNESS** was Mr. Philip Blundon who worked in Maintenance with Hurley Slateworks up until August 2010, and is Shop Steward. His last day of work for the Employer was August 5, 2010.

"I heard there was something on the go down at the plant. I phoned and they said not to come in for the next scheduled shift.... Other people that showed up were told to go home until further notice. That was on the 6<sup>th</sup> of August at the plant."

Asked whether he had been paid up to his last shift of work, Mr. Blundon said he had not been paid for the last "30 hours", and that there were others too that had not been paid for work. He had spoken to several of the employees about this over the phone.

Mr. Blundon identified as PB #1 a list of employees showing hourly rates, hours worked, and amounts owed as provided to him by the employees themselves. Asked to review PB #1, Mr. Blundon confirmed that those listed were all the employees at Hurley Slateworks at the time. "Yes. That is under the Collective Agreement. "

Asked if he knows the name Joseph Chatman, Mr. Blundon said, "Yes, the name sounds familiar." Mr. Blundon agreed however that the name Joseph Chatman does not appear on PB #1. Asked if he had spoken to Joseph Chatman, Mr. Blundon said, "Some people I never got hold to"and confirmed that PB #1 actually lists the names only of those to whom he spoke. Each of those with whom he spoke gave him the hours worked. The hourly rate listed for each is "in the Collective Agreement at Appendix "A".

It shows the rate of pay for each occupation or classification....  
According to this my rate of pay as Maintenance in 2010 was \$16.48 hourly, and Victor Miller's as a quarry operator was \$13.07 hourly.

**On Cross Examination,** Mr. Blundon confirmed that he was due to go on night shift the day he was told not to come in to work.

Mr. Hurley commented that it was earlier that day that "We made the decision not to carry on. We knew we'd fail on finances."

Mr. Blundon also confirmed for Mr. Hurey that the hourly rate for a Journeyman outside the Collective Agreement was \$31.50 per hour. Mr. Hurley indicated that the company was actually paying rates in excess of the figures in Schedule "A".

**The Second Union Witness** was Mr. Terry Sparkes, Business Agent and Secretary Treasurer of the IUOE Local 904. Mr. Sparkes testified that he requests dues payments from employers, "to ensure that they come in in a timely manner and are paid to the Financial Secretary."

Mr. Sparkes said he is familiar with Hurley Slateworks, and that the Union has a bargaining Unit there as confirmed in Consent #2, which provides authority, at Article 3.05, for the deduction of dues at the rate of one hour's pay per week .

Mr. Sparkes testified that the company is in arrears in respect of dues that were to have been remitted, and described efforts over the past few years to bring the payments up to date. There had been meetings with the Employer at which undertakings were made but these undertakings were not sustained. It was a repeated "start stop" pattern. Mr. Sparkes identified as TS #1 a Spreadsheet showing Union Dues owed to the Union by the company.

**On Cross Examination**, Mr. Sparkes confirmed for Mr. Hurley that the problems began in 2008. "It coincided, in my opinion, with the last half of 2008." He also confirmed that, in the meetings that Mr. Sparkes described in his direct testimony, Mr. Hurley had never said that he would not pay.

"Yes, there were commitments made each time, and we did get some post-dated cheques, but that did not keep pace with current dues  
....You always recognised you owed the money, no doubt about it."

**For the Employer** Mr. Hurley testified under oath, that his office records show that, in fact, Mr. Philip Blundon and Mr. Rick Furlong were paid, not the \$31.50

per hour indicated on PB #1 but \$32.50 per hour. His records also show that Mr Harvey Slade was paid not the \$16.48 hourly (per PB #1) but \$22.00. Mr. Hurley did not contest the accuracy of PB #1 in any other particular.

Mr. Hurley again sketched the debt problems that the company has faced in recent years, stemming from the international financial crisis of 2008 which made it very difficult to return to profitability and very hard to secure credit from the banks. The company is now actively pursuing new investment, and intend to get it up and running in 2011.

Up to the June-July-August period of 2010 the company still had confidence in its capacity, but it then became clear it could not carry on. It would have been even more disastrous for the company and its staff.

At each meeting with the Union there was no confrontation. We have the company and the markets. Production, operations, and currencies are our problem, and we are fighting to get it back up and running as it was from 2004 until 2010.

When we get the financing in place we'll ... come up with an agreement to pay the outstanding debt.

**On Cross Examination**, Mr. Hurley confirmed that there are also other creditors involved. "Yes, we have accounts payable and things like that."

### **ARGUMENT**

**For the Union**, Mr. Earle acknowledged that Mr. Hurley ...

has been straight with us about the debt. But like many employers, he has been squeezed between the creditors and the employees. But employees are the priority and wages. Union dues, it should be remembered, are deducted from the employees' wages."

Mr. Earle stressed that the Union's purpose in bringing this grievance to arbitration is to secure an order for payment to the individuals in the amounts set out. (In this

connection, Mr. Earle also thanked Mr. Hurley for his evidence on the actual rates paid as otherwise the Union could only claim for amounts set out in Schedule "A".

The Union also seeks an order that the amounts owing the Union be paid in the total amount of \$73,206.99 as set out in TS #1. Mr. Earle pointed out that the Union has exercised considerable forbearance in securing these dues, which are, in fact, a portion of the individual employees' pay. However, the Union has no choice but to secure these entitlements.

**For the Company**, Mr. Hurley again emphasized that efforts are underway to secure new financing.

"The company is not hiding anything, and we want to get ... back up and running..., and to pay the wages. The company intends to do that; but does hope for leniency in respect of the dues so as to get the working capital ..."

### **CONSIDERATIONS**

I note that Mr. Hurley, for the company, did not contest the accuracy of PB # beyond the corrections he offered in his own testimony. He also acknowledged the debt to employees in the amounts set out in that list and the debt to the Union in the amount set out in TS #1.

I also note some discrepancy between those named on the grievance form as employees on whose behalf the instant grievance was brought, and those named, with specified amounts owing, in PB #1. I note that sixteen or so of those listed on the grievance form do not seem to appear on PB #1, while two of those named on PB #1 do not seem to appear on the grievance form. I further note that the grievance form concludes the list by saying: "... and any employees effect (*sic*) by this action."

I conclude, from this inclusive claim, and from Mr. Hurley's testimony, that the two names not appearing on the grievance form (Mr. Craig Philips and Mr. Leroy Miller) are bonafide employees also owed the amounts specified in PB #1.

With respect to those 16 or so employees listed on the grievance form but not appearing on PB #1, I note Mr. Blundon's testimony that such absences were due to fact that he had not managed to contact all interested parties to collect their particulars of hours worked and amounts due.

In respect of the 16 or so employees listed on the grievance form but not appearing on PB #1, the evidence is inconclusive as to what if any amounts are owing. I am, therefore, unable to make an order at this time in their regard.

### **DECISION**

In light of the foregoing evidence, argument, and considerations

**I order that the company make the payments below listed in the amounts specified and in a timely manner:**

**To the Employees listed on PB #1:**

Victor Miller	\$339.82
Olive Coish	\$339.82
Lewis Carberry	\$300.61
Edna Miller	\$143.77
Sheila Gill	\$300.61
Jim Morris	\$209.12
Philip Blunden	\$975.00
Cory Ploughman	\$261.40
Patricia Goodyear	\$300.61
Harvey Slade	\$792.00
Robert Penney	\$354.12
Craig Philips	\$365.96
Leroy Miller	\$339.82

Clifford Parrott	\$470.52
Samuel Piercey	\$300.61
Ashley Martin	\$169.91
Corwin Philips	\$169.91
Cecil Shiner	\$313.26
Patricia Donnolly	\$216.00
Kyna Blundon	\$339.82
Rick Furlong	\$1,690.00
Robert Bailey	\$300.61
Everett Hiscock	\$169.91
Tony Hiscock	\$169.91
Nelson Stanley	\$294.08
Travis Hyde	\$261.40
Jamie Miller	\$216.00

**To the Union:**  
as set out in TS #1                      \$73,206.99

I remain seised of the matter, as agreed by the Parties at the outset of the hearing, should there be any questions of interpretation arising from this award.

Respectfully submitted as the decision of the Arbitrator.

John A. Scott, PhD.  
Arbitrator

January 19, 2011

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And benefits

**CLARIFICATION**  
of the  
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**HURLEY SLATEWORKS COMPANY INC.**  
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**APPEARANCES:**

For the Employer: Mr. John Hurley

For the Union: Mr. Randell J. Earle, Q.C.  
Mr. Roy Hawco, I.U.O.E.  
Mr. Terry Sparkes, I.U.O.E. 904 Business Agent

Arbitrator: Dr. John A. Scott (by letter of appointment by the Minister of Human Resources, Labour and Employment dated October 7, 2010)

At the request of the Union and with the consent of the Employer, the hearing reconvened in St. John's on March 10, 2011 under my reserved powers to deal with matters of clarification. In its February 4, 2011 letter requesting the resumption the Union notes that my January 19, 2011 Award makes "reference to amounts being made in a timely manner", and that "The bargaining agent has difficulty in understanding what this means and would like it clarified in terms of a specific identifiable time period."

**For the Union,** Mr. Earle pointed out that the Union seeks clarification of the phrase "in a timely manner" as it appears in the decision on page 8 of my January 19<sup>th</sup> Award. He noted that the Employer appears unable to make the required payments at the present moment, but pointed to the Union's obligation to maintain the bargaining unit members' rights by securing an enforceable order that protects their entitlements. He noted that a Union is a group of bargaining unit members who pay their dues to sustain the Union's ability to provide services they need.

**For the Employer,** Mr. Hurley said he has no issue with the Union's request, and acknowledged the outstanding debt is to be paid. He noted work ongoing toward recapitalising the Company and restarting the operation in Spring 2011. Meetings are to be held over the next few weeks that will increase probability of getting back into production, which will entail payment of the back wages and allow a payment schedule to be worked out for payment of Union dues.

### **CLARIFICATION**

In clarification of my January 19, 2011 decision,

**I order the Company to make payments in the amounts specified in that January 19, 2011 award within 14 calendar days of the date of this clarification.**

Respectfully submitted as the decision of the Arbitrator.

John A. Scott, PhD.  
Arbitrator

March 11, 2011