

**ARBITRATION AWARD**

BETWEEN:

COUNCIL OF ATLANTIC TELECOMMUNICATION UNIONS (CATU)  
(CEP LOCAL 410)  
(hereinafter called the "Union")

AND:

ALIANTELECOM INC.  
(hereinafter called the "Employer")

GRIEVANCE:                      Vacation Scheduling

COUNSEL:                        For the Union  
Dana K. Lenehan, Q.C.

For the Employer  
Michelle A. Willette

ARBITRATOR:                    James C. Oakley

The arbitration hearing was held at St. John's on October 15 and 16, 2008. 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.
5. Witnesses were excluded from the hearing.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Aliant Telecom Inc. and Council of Atlantic Telecommunication Unions (CATU) effective September 20, 2004 to December 31, 2007
- Consent 2 - Grievance Form, Grievance No. CEP ACC 2006-0041-4 submitted December 15, 2006
- Consent 3 - Letter dated February 9, 2007 from Dale Grimes, Director of Regional Services, Bell Aliant to Mike Williams, Chief Steward, Local 410, CEP
- MW - 1 List of employees at Donovans by classification and manager
- TH - 1 2007 vacation schedule - Stephenville - existing
- TH - 2 2007 vacation schedule - Stephenville - Union's version
- KY - 1 List of service class groupings
- KY - 2 Technician load sheet details, January, 2005 to September, 2008 - Terry Hoddinott
- KY - 3 Technician load sheet details, January, 2005 to September, 2008 - William Newell
- KY - 4 Technician load sheet details, January, 2005 to September, 2008 - Roy Bourgeois
- KY - 5 Technician load sheet details, January, 2005 to September, 2008 - Mark Legge

- KY - 6 Summary of Aewt hours and volume of hours by market - Stephenville
- KY - 7 Summary of count of ticket number and volume of tickets by market - Stephenville
- DG - 1 Map of Stephenville area
- DG - 2 Map of Stephenville and Burgeo area
- DG - 3 2005 Stephenville vacation schedule
- DG - 4 2006 Stephenville vacation schedule
- DG - 5 2008 Stephenville vacation schedule

**Nature of the Grievance**

The Union filed a group grievance on behalf of employees in Stephenville. The Union alleged that the Employer violated the vacation scheduling provisions of the Collective Agreement by placing four employees together in a single vacation scheduling group. The Union submitted that the right of employees to select their vacation schedule was violated. The Employer denied any violation of the Collective Agreement.

**Collective Agreement**

The relevant Articles of the Collective Agreement are as follows:

- Article 11 Seniority & Service
- ...
- 11.06 (a) Employees will not be temporarily assigned to serve in a non-bargaining unit capacity for more than six (6) months in a twelve (12) month period. Assignments to backfill for non-bargaining unit employees who are on SDB or Child Care Leave can extend for a maximum of twelve (12) months in an eighteen (18) month period. Extensions to either of these timeframes will require the agreement of the Council.
- ...

Article 21 Definitions

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21.03 CLASSIFICATION means the job title of an employee. All employees will be assigned one of the classifications as listed in Appendix A.

...

21.18 QUEUE means a group of employees who are commonly dedicated to the processing of incoming or outgoing calls which are routed specifically through that group.

...

21.29 WORK GROUP (or Supervisor's Work Group) means a group of employees, reporting to the same supervisor, who work together on a regular basis and who normally backfill for each other.

...

Article 26 Vacation

26.01 All regular employees will be entitled to an annual vacation with pay. The vacation year will be twelve (12) months between January 1<sup>st</sup> and December 31<sup>st</sup> of the same year.

Vacation credits are not earned during periods of LTD, Personal leaves, Educational leaves or for Worker's Compensation exceeding one year.

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26.06 Vacation Scheduling

(a) Scheduling of vacations will begin no later than October 1<sup>st</sup> of the year previous to the vacation year and will be completed and posted by November 30<sup>th</sup> of the same year.

...

(d) Vacation entitlements may be divided and taken in more than one period during the vacation year. Except for the weeks which include Christmas Day or New Year's Day, vacations will be scheduled in one week blocks. However, once vacation scheduling for the one week blocks has been completed, a second round of vacation selection will provide for employees to select remaining vacation time of less than one week provided this does not interfere with another employee's scheduled vacation.

(e) Vacations will be scheduled on the basis of seniority within a vacation scheduling group. The supervisor will endeavor to allow as many employees as possible, in the vacation scheduling group, to take vacation at the same time, given workload and service requirements. However, at least ten percent (10%) of a vacation scheduling group will be allowed to schedule vacation at any given time. The vacation

scheduling group will normally be all employees in the same classification within the queue or immediate supervisor's Work Group. A supervisor's Work Group is a group of employees, reporting to the same supervisor, who work together on a regular basis and who normally backfill for each other. Extended geography covered by a Work Group may make a single vacation scheduling group impractical. Also, there may be circumstances where the group of employees who normally backfill for each other extends beyond more than one supervisor's Work Group. These exceptions will be reviewed with the Council before vacation schedules are distributed.

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#### Article 29 Miscellaneous Working Conditions

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##### 29.08 Classification Flexibility

There may be times during any scheduled tour when an employee of one classification would be required to perform duties of another classification to meet customer service requirements, restore service, backfill for an employee who is away from the workplace, or to prevent extensive travel by an employee who would normally do that work. Employees who perform duties of a higher paid classification will receive the higher wage rate for all time worked in that classification. Employees who perform duties of a lower paid classification will continue to be paid at their current rate of pay. Safety requirements, as outlined in Article 10 of this Agreement, will apply to all work performed under classification flexibility.

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#### Article 31 Temporary Employees & Student Temporary Employees

31.01 The period of employment for a Temporary employee will not exceed six (6) months in any consecutive fifty-two (52) week period, except in cases of backfill for Child Care Leave or Sickness Absence, or where otherwise mutually agreed by the Council and the Company. The period of employment for a Student Temporary employee will not exceed 975 hours in a calendar year and will not extend beyond the duration of their education program.

...

#### Article 33 Transfer & Reassignment

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##### 33.05 Temporary Reassignment

The Company has the right to temporarily reassign an employee to any Reporting Centre and/or classification without posting a vacancy, subject to the following conditions:

- (a) Temporary reassignment of an employee will not exceed thirty-nine (39) weeks in a calendar year, except in cases of backfill for child care leave or sickness absence, or where otherwise agreed to by the Council and the Company.
- (b) Where the temporary reassignment is expected to exceed thirty (30) days, employees will be selected on the basis of seniority within the classification and Work Group. Unless more senior employees accept the temporary reassignment, the most junior employee who has the necessary ability and standard entry level qualifications will be selected.
- (c) All provisions of Article 19 of this Agreement will apply to employees who are temporarily reassigned outside their normal Reporting Centre.
- (d) No employee will be temporarily reassigned to a classification if there is an employee in the Reporting Area with recall rights to that classification, who can perform the work.
- (e) The provisions of this Article do not apply to situations where employees travel to other Reporting Centres as part of the normal requirements of their job. However, the provisions of Article 19 apply to these employees.

...

Appendix "A"  
Classification Definitions

The summary of responsibilities associated with each of the following job classifications is not intended to be all inclusive, nor is it a list of job qualifications. Rather it is intended to provide general guidance to the parties regarding the typical roles and responsibilities of each classification.

Classification	Classification Definition
...	
Business Service Technician	Employees whose primary responsibilities are the installation, maintenance and repair of services provided to business customers, including key and PBX equipment. Includes employees designated as SMC
...	

Consumer Service Technician	Employees whose primary responsibilities are the installation, maintenance and repair of services provided to residential and small business customers. May perform installation, maintenance, repair and coin collection of payphone services.
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### **Evidence**

The witnesses called by the Union were Mike Williams, Business Service Technician and Chief Shop Steward, and Terry Hoddinott, Business Service Technician. The witnesses called by the Employer were Kieth Young, Team Lead Strategic Analysis Group, and Dale Grimes, Director of Regional Services, Newfoundland and Labrador.

For the purpose of vacation scheduling in 2007, the Employer organized the employees in Stephenville into 5 vacation scheduling groups, as follows:

- (1) T. Hoddinott, Business Service Technician (BST)  
W. Newell, Consumer Service Technician (CST)  
R. Bourgeois, Business Service Technician (BST)  
M. Legge, Business Service Technician (BST)
- (2) G. Bennett, Cable Technician (CT)  
J. Chaulk, Cable Technician (CT)  
L. Branton, Cable Technician (CT)
- (3) W. Chubb, Network Service Technician (NST)
- (4) P. Hawkins, Consumer Service Representative (CSR)  
H. Burt, Consumer Service Representative(CSR)
- (5) M. Ingram, Cable Technician (CT)

The Union submitted that in order to comply with the Collective Agreement, the Employer was required to place the 4 employees it had placed in the first vacation scheduling group listed above into 3 vacation scheduling groups. The Union requested that T. Hoddinott and M. Legge be placed in one group, and that W. Newell and R. Bourgeois each be placed in a separate group. The Union submitted that the classifications of Consumer Service Technician (“CST”) and Business Service

Technician (“BST”) are different classifications and employees in different classifications are required by Article 26.06 (e) to be placed in different vacation scheduling groups. W. Newell is a CST, a different classification from the others, and therefore belongs in a different group. The Union also submitted that it is a requirement of Article 26.06 (e) that employees backfill for each other, in order to be placed in the same vacation scheduling group. In the Union’s submission, R. Bourgeois does not backfill for the others in the BST classification and therefore belongs in a different group.

Mike Williams, Chief Shop Steward, testified that the effect of placing employees from different classifications in the same vacation scheduling group, is to increase the size of the group and reduce the freedom of employees to choose their vacation schedule. Employees select their vacation in order of seniority for one week blocks. The Employer does not usually permit more than one employee to be absent on vacation at a time in the same group. Mr. Williams testified that the Union’s position was that there were 4 required components of a vacation scheduling group, namely, (1) same classification, (2) report to the same supervisor, (3) work together on a regular basis, and (4) normally backfill for each other. Mr. Williams testified that Article 26.06 (e) allows for exceptions. For example, there may be a group of employees in the same classification who regularly backfill for each other, but have 2 supervisors. A group of this type was brought to the attention of the Union by the Employer. The Union had no issue with allowing this group as an exception under Article 26.06 (e). Mr. Williams testified that in larger centres, such as Donovans, the Business Service Group has several sub groups, such as voice, data and Service Management Concept (“SMC”). Mr. Williams testified that the term “backfill” in the Collective Agreement may, in the context of some Articles, apply to employees in different classifications, but in the context of the vacation scheduling group in Article 26.06 (e), backfill meant within the same classification.

Terry Hoddinott, Business Service Technician (BST), testified that he has been employed in the Stephenville area for about 21 years. The geographical area served by the Stephenville group includes the Stephenville area, the St. Georges area, the Port au Port Peninsula, and the Burgeo area. The employees in Stephenville report to the same supervisor. The Supervisor is currently Don Hardy. Gord Andrews was the Supervisor until his retirement in May, 2008. Mr. Hoddinott testified that he does repair and installation of voice and data services for business customers. He also does consumer service work. He considers his assignments to do CST work to be made under the classification flexibility provision of Article 29.08. He is assigned CST work on days when there is not enough BST work. On some days he does not do any CST work. Mr. Hoddinott testified that he and Mark Legge backfill for each other in the BST classification. Mr. Hoddinott testified that

Roy Bourgeois, although classified as a BST, does CST work and not BST work. He said that Mr. Bourgeois does not attend BST training, and does not usually work outside his geographical area on the Port au Port Peninsula. He testified that Mr. Bourgeois does not backfill in the BST classification. Mr. Hoddinott said that when he is on vacation, he is replaced by Gary Bennett, one of the Cable Technicians.

Kieth Young, Team Lead Strategic Analysis Group, testified that he examines historical trends and makes recommendations on the number of technicians required in a group. It is not part of his job to recommend changing an employee's classification based on the type of work the employee performs. Mr. Young described information compiled for the hearing on documents headed "Technician Load Sheet Details". The information was based on reports filed by Technicians as to the number of work tickets and the amount of time spent on each job. Mr. Young presented a summary of the information for the period January, 2005 to September, 2008 for the 4 employees classified as BST and CST in Stephenville. The summary showed that most of the work was consumer service work. Mr. Young said this was typical for rural areas. Most of the business service work was done by Terry Hoddinott and Mark Legge. The report showed that Terry Hoddinott spends about 50% of his time doing business work and that Mark Legge spends about 25% of his time doing business work. The report showed that Roy Bourgeois spends about 95% of his time doing consumer work. Mr. Young said that if it was necessary to add another Technician in Stephenville, then he would recommend adding a Consumer Service Technician based on the amount of consumer work performed in the area. He said that when work is assigned by the dispatcher to the Technicians, there is a profile available showing the abilities of each Technician to do business or consumer work.

Dale Grimes is the Director of Regional Services for Newfoundland and Labrador. The Regional Managers report to him and the Supervisors for each geographical area report to the Regional Managers. Mr. Grimes described how work is assigned to the Technicians. The work of the Business Service Technician, Consumer Service Technician and Cable Technician is assigned by geographical area. The Technicians are dispatched to jobs from their homes. Technicians bring their Company vehicle home. At the beginning of the work day, they download the work assignments to their notebook computer and proceed from home to the work location. Mr. Grimes testified that in rural areas, there is not a consistent volume of either business or consumer work. It is typical that BSTs do BST work and a fair amount of CST work. He said that the lines were "blurry" around the classifications. The volume of work is demand driven.

Mr. Grimes was asked to explain why there are 3 BSTs and one CST in Stephenville, when most of the work is CST work. Mr. Grimes testified that the classifications developed for historical reasons and did not correspond to the current workload. Prior to the 2004 to 2007 Collective Agreement, there was a classification known as Combination Technician, which was assigned the duties of both business and consumer service work. After the classification of Combination Technician was eliminated, employees in that classification were placed in other classifications. Some employees who were formerly classified as Combination Technicians became Business Service Technicians and others became Consumer Service Technicians. As a result, some employees were classified as Business Service Technicians, but did not have a business service workload. Employees preferred to be classified as a Business Service Technician, and not a Consumer Service Technician, because the BST was formerly a higher paid classification than the CST. However, there is no longer a different rate of pay. The 2004 to 2007 Collective Agreement places the BST and CST classifications in group 13 of Appendix "B", where they receive the same rate of pay.

Mr. Grimes testified that the Employer organized the 3 BSTs and the one CST in Stephenville into one vacation scheduling group. The Employer did not want to split the group by classification, because it would be difficult to service the region if more than one of these 4 Technicians was off work on vacation at the same time. All 4 of the employees in the group do CST work on a regular basis and backfill for each other doing CST work. Roy Bourgeois does primarily CST work on the Port au Port Peninsula and backfills CST work for other Technicians. Mr. Grimes agreed that Mr. Bourgeois does not backfill BST work for Mr. Hoddinott or Mr. Legge. Mr. Newell backfills both BST and CST work. Mr. Grimes testified that when employees in Stephenville are doing work outside their classification, the work is done under classification flexibility in Article 29.08. He did not believe that Article 33.05 applied in that situation.

Mr. Grimes testified that Mark Ingram is a Cable Technician, but he has physical limitations and is placed in a separate vacation scheduling group from the other Cable Technicians. Mr. Ingram does records verification work, and does not backfill for the other Cable Technicians.

Mr. Grimes testified that the group of one CST and 3 BSTs in Stephenville was one of 9 vacation scheduling groups, out of 54 vacation scheduling groups, where there was more than one classification in the same group. He testified that the Employer needs the flexibility of having more than one classification in a vacation scheduling group in order to meet service requirements.

Mr. Grimes replied to the grievance by letter dated February 9, 2007 as follows:

5. Grievance 2006-0041-4 Group Grievance (Article 26 - Vacation)

There are two different issues for this grievance:

Firstly, the union's position is that Wayne Chubbs and Glen Devereaux cannot be on the same vacation schedule because they do not backfill for one another and they are in different geographic regions. The company believes that employees from different geographic areas can be on the same vacation schedule as per Article 26.06 e), if they work together on a regular basis and normally backfill for each other. However, in this case, the employees do not normally backfill for each other so we will place them on separate vacation schedules.

The second issue is that the Business Service Technicians and Consumer Service technicians in Gord Andrews group should be on the same vacation schedule. We believe that these employees do backfill for each other on a regular basis and therefore can be on the same vacation schedule.

Grievance Denied.

Mr. Grimes testified that the Employer accepted the Union's position with respect to Wayne Chubbs and Glen Devereaux. Wayne Chubbs was a Network Service Technician who reported to the Supervisor in Stephenville. Glen Devereaux was a Network Service Technician who reported to the Supervisor in Port aux Basques. The Employer accepted that Mr. Chubbs and Mr. Devereaux did not normally backfill for each other and agreed to place them on separate vacation schedules.

### **Union Submission**

The Union submitted that the Employer did not correctly apply the meaning of vacation scheduling group in the Collective Agreement. The effect of the Employer's interpretation was to deny employees the benefit of selecting their vacation schedule on the basis of their seniority. The Employer placed 4 employees in Stephenville in one vacation scheduling group, but there should be 3 groups. The Union submitted that T. Hoddinott and M. Legge were in one vacation scheduling group, because they were in the same classification and backfilled for each other. W. Newell was in a different classification and R. Bourgeois did not backfill BST work for the other employees, and

they should each be placed in a separate vacation scheduling group. Whether there would be operational difficulties for the Employer as a result of having additional vacation scheduling groups was not relevant to the interpretation of the Collective Agreement. The Arbitrator could interpret the Collective Agreement to apply to situations not within the contemplation of the parties at the time of the negotiations. The clear language of the Collective Agreement ought to be applied unless the result was unworkable or the interpretation led to an absurdity (*Essex County v. CUPE, Local 2974.1* (2003) 115 L.A.C. (4<sup>th</sup>) 316). The requirements of a vacation scheduling group under Article 26.06 (e) were that employees be in the same classification, and in the immediate supervisor's work group. The Employer was not correctly applying the Collective Agreement to have employees in more than one classification in the same vacation scheduling group. The Business Service Technician and the Consumer Service Technician were different classifications. The Employer did not correctly interpret the meaning of "backfill". To be placed in a supervisor's work group, employees must normally backfill for each other. Backfill does not mean the sharing of common work, as suggested by the Employer. To backfill across classifications and geographic areas is not consistent with the use of the word "backfill" in the Collective Agreement. The Union referred to Articles 31.01 and 33.05 (a). Backfill means replacement of another employee which is the same meaning it has in other Articles of the Collective Agreement. Under Article 26.06 (e) "backfill" means to replace another employee in the same classification. The use of the word "normally" in reference to the vacation scheduling group, means that there may be exceptions to the norm. Article 26.06 (e) lists two exceptions to the norm, namely, (1) extended geography that makes a single vacation scheduling group impractical; and (2) where employees who normally backfill for each other extend beyond more than one supervisor's work group. The fact that two exceptions were listed meant that the parties agreed there would be no other exceptions. The Union referred to the principle of interpretation *expressio unius, exclusio alterius*, meaning to express one thing is to exclude another. The Employer's interpretation that "normally" has a broader meaning, and allows for other exceptions, would have the effect of disregarding the purpose and meaning of the Article. The Union distinguished the award relied upon by the Employer in *Telus and TWU (Gray)* (2007) 90 C.L.A.S. (Sims) on the basis that it applied different collective agreement language. The Union requested that the Arbitrator allow the grievance and issue a declaration upholding the Union's interpretation of the Collective Agreement.

### **Employer Submission**

The Employer submitted that it applied the correct interpretation of “vacation scheduling group” in Article 26.06 (e), having regard to the principles of interpretation of Collective Agreements. The parties had agreed that employees in the same work group doing the same work cannot take vacation at the same time. The supervisor’s work group referred to the physical location, which in this case was Stephenville. The employees, T. Hoddinott, W. Newell, R. Bourgeois and M. Legge report to the same Supervisor and normally backfill for each other. Employees in the Business Service Technician and the Consumer Service Technician classifications do work for each other interchangeably. Although W. Newell and R. Bourgeois do less Business Service Technician work than the other BSTs, the records indicate that they perform some BST work and they have the ability to backfill a BST position. If R. Bourgeois is absent from work, the other 3 technicians in the group normally backfill for him. The reference to “backfill” in various Articles in the Collective Agreement indicates that “backfill” is not limited to situations where an employee does the work of another employee in the same classification. The Employer referred to Articles 11.06 (a) and 29.08 to support its position that “backfill” is not limited to the same classification. It is a principle of interpretation that the same word should be given the same meaning throughout the Collective Agreement. The meaning of “backfill” in other Articles should be applied in Article 26.06 (e). The result of the Union’s interpretation would be that one employee would be required to do the work of 4 employees if the other employees were absent on vacation at the same time. The Employer referred to *Telus and TWU (Gray)* (2007) 90 C.L.A.S 189 (Sims) where the arbitrator found the employer had discretion to establish a vacation group based on service requirements, and to include in the same group employees from two work locations. The Employer submitted that Article 26.06 (e) listed two exceptions to the “normal” vacation scheduling group. The purpose of the exceptions was to illustrate where the norm does not apply. The listing of two exceptions did not mean there is a closed class of exceptions. The principle of interpretation relied upon by the Union of *expressio unius, exclusio alterius*, was a principle that arbitrators considered unreliable and had fallen into disfavour (*VME Equipment of Canada Ltd. v. CAW (Canada), Local 1917* (1990) 10 L.A.C. (4<sup>th</sup>) 348 (Hinnegan)). The Employer submitted that there was no violation of the Collective Agreement and requested that the grievance be denied.

### **Considerations**

The parties dispute the interpretation of the vacation scheduling provisions of the Collective Agreement, and how to apply those provisions to employees in Stephenville.

Article 26.06 addresses the procedure for employees to select vacation. Vacation is selected on the basis of seniority within a vacation scheduling group, according to Article 26.06 (e). The size of a vacation scheduling group is a matter that is important to both the employees in the group and the Employer. When there is a large vacation scheduling group, then less senior employees will have less choice of vacation, because the more senior employees select their vacation first. When there is only one employee in a vacation scheduling group, then the employee may select vacation without any restriction based on selection by other employees. The Employer is concerned about the impact on meeting service obligations in the event there are several small vacation scheduling groups and a large number of employees doing the same work select vacation at the same time.

The Employer established 5 vacation scheduling groups in Stephenville. The Union submits that there should be a total of 7 vacation scheduling groups in Stephenville. The parties dispute whether 4 of the Stephenville employees should be placed in one group or 3 groups. The 4 employees placed in one group by the Employer are T. Hoddinott, Business Service Technician (BST), W. Newell, Consumer Service Technician (CST), R. Bourgeois, Business Service Technician (BST) and M. Legge, Business Service Technician (BST). The Union submits that these 4 employees should be placed in 3 vacation scheduling groups, that T. Hoddinott and M. Legge meet the requirements to be placed in one vacation scheduling group, and the other 2 employees should each be placed in a separate group.

The Employer submits that, in the event the Union's interpretation of "vacation scheduling group" is applied, then 3 out of the 4 employees who do BST and CST work in Stephenville could be absent on vacation at the same time. The effect of following the Employer's interpretation, which is to place 4 employees in the same vacation scheduling group, is that there would be no more than one of these employees absent on vacation at a time.

“Vacation scheduling group” is described in Article 26.06 (e) as follows:

The vacation scheduling group will normally be all employees in the same classification within the queue or immediate supervisor’s work group. A supervisor’s work group is a group of employees, reporting to the same supervisor, who work together on a regular basis and who normally backfill for each other.

When considering the interpretation of Article 26.06 (e), the Arbitrator will have regard to the principles of interpretation of collective agreements applied by arbitrators. The Arbitrator refers to the principles of interpretation discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, in particular, that the object of construction is to determine the intention of the parties from the express provisions of the collective agreement (paragraph 4:2100), that the language should be viewed in its normal or ordinary sense (paragraph 4:2110), that it should be presumed that all the words used were intended to have some meaning (paragraph 4:2120) that where the same word is used in more than one place, it should be given the same meaning, unless the parties have indicated otherwise (paragraph 4:2120), and that the language is to be interpreted within the context of the collective agreement as a whole (paragraph 4:2150) and the industrial relations practices of the parties (paragraph 4:2300).

The first requirement of a vacation scheduling group is that it will “normally be all employees in the same classification within the queue or immediate Supervisor’s work group”. The Arbitrator will address the meaning of “normally” later in the Award. In this case, the employees do not work within a queue. The employees work within a Supervisor’s work group. Is it a requirement that employees in a vacation scheduling group be in the same classification, regardless of whether they are in a queue or a Supervisor’s work group? The reference to “same classification” appears in the sentence prior to the reference to the queue and prior to the reference to the work group. There is no indication from the specific sentence or from Article 26.06 (e) as a whole to indicate that the parties would have agreed that the “same classification” would not apply to both “the queue” and the “work group”. Therefore, the “same classification” applies to the “work group”. It follows that it is a requirement of a vacation scheduling group, that employees will normally be in the same classification and in the same Supervisor’s work group.

What is the meaning of “Supervisor’s work group”? Article 26.06 (e) sets out language that is identical to the definition of “Supervisor’s work group” in Article 21.29. There are 3 requirements

of a “Supervisor’s work group”, (1) report to the same Supervisor, (2) work together on a regular basis, and (3) normally backfill for each other. The issue arising on the facts of this case is whether the employees backfill for each other. Employees in Stephenville classified as Business Service Technician and Consumer Service Technician perform both business and consumer work. In the past, both business and consumer work was done by employees in the classification of Combination Technician, but that classification does not exist in the 2004 to 2007 Collective Agreement.

The parties dispute the meaning of “backfill” in Article 26.06 (e). The Arbitrator will consider the context of the language in the Collective Agreement. The word “backfill” is found in other Articles of the Collective Agreement, in particular, Articles 11.06 (a), 29.08, 31.01 and 33.05. It is helpful to consider the meaning of “backfill” in the other Articles. Article 11.06 (a) refers to an employee being assigned to backfill for a nonbargaining unit employee absent on sickness or child care leave. Article 29.08 is headed “classification flexibility” and refers to employees in one classification being required to perform the duties of another classification in various circumstances, including “backfill for an employee who is away from the workplace”. Article 31.01 refers to the period of employment of a temporary employee, which is stated not to exceed a specified period except in case of “backfill for child care leave or sickness absence”. Article 33.05 (a) states that temporary reassignment will not exceed 39 weeks except in the case of “backfill for child care leave or sickness absence”. In these Articles “backfill” refers to an employee assigned to replace another employee who is absent from the workplace, whether in the same classification, a different classification within the bargaining unit, or a position outside the bargaining unit. I have considered the meaning of “backfill” within the context of Article 26.06 (e). There is no language in Article 26.06 (e) expressly stating that the parties intended “backfill” to have a narrower meaning than it has in other Articles. If the parties had intended “backfill” in Article 26.06 (e) to refer only to replacing an employee in the same classification, the parties could have used language to that effect. I have considered the Union’s submission that “backfill” in Article 26.06 (e) applies only to the same classification because the vacation scheduling group is normally employees in the same classification in the Supervisor’s work group. However, having regard to the Collective Agreement as a whole, it is contemplated that employees in the same classification could backfill for each other to do the work of different classifications, in particular where employees do the work of other classifications under the classification flexibility provision in Article 29.08. I find that the parties did not intend that “backfill” in Article 26.06 (e) would have a narrower or different meaning than it has in other Articles of the Collective Agreement. Therefore “backfill” in Article 26.06 (e) may apply to employees who backfill for each other in different classifications.

The parties have agreed in Article 26.06 (e) that a vacation scheduling group is a group of employees who normally have the same classification, report to the same Supervisor, work together on a regular basis and normally backfill for each other. I will discuss later the meaning of “normally” and whether any exception applies. Assuming that no exception applies, W. Newell is not part of the same vacation scheduling group as T. Hoddinott, R. Bourgeois and W. Legge because he is in the CST classification and not in the same classification as the other employees who are in the BST classification. Do the 3 employees in the BST classification meet the other requirements of a vacation scheduling group? T. Hoddinott, M. Legge and R. Bourgeois report to the same Supervisor and work together on a regular basis. Do they backfill for each other? The evidence in that regard was provided by the testimony of Mr. Hoddinott and Mr. Grimes and the documents entered by Mr. Young showing the number of work tickets and hours of work in various categories of business and consumer work. Mr. Hoddinott and Mr. Legge do most of the BST work in the Stephenville area, which for Mr. Hoddinott is about 50% of his time and for Mr. Legge is about 25% of his time. R. Bourgeois does mostly CST work and spends less than 5% of his time doing BST work. He does not backfill BST work for either T. Hoddinott or M. Legge. All employees backfill for each other doing CST work. T. Hoddinott and M. Legge backfill for each other doing BST work, and they both backfill for R. Bourgeois. The parties dispute whether or not R. Bourgeois backfills for T. Hoddinott and M. Legge within the meaning of Article 26.06 (e). R. Bourgeois is classified as a BST and he does perform some BST work. The Employer submits that R. Bourgeois is capable of replacing T. Hoddinott and M. Legge if either one of them is absent from the workplace. As discussed above, the term “backfill”, as used throughout the Collective Agreement is not restricted to doing the work of the same classification. T. Hoddinott, M. Legge and R. Bourgeois perform a significant amount of work in the CST classification under “classification flexibility” in Article 29.08. When classification flexibility is applied, R. Bourgeois “backfills” for T. Hoddinott and M. Legge. The fact that an employee in the Cable Technician classification also backfills for T. Hoddinott does not alter this conclusion. Therefore R. Bourgeois, T. Hoddinott and M. Legge “backfill” for each other, within the meaning of Article 26.06 (e).

Article 26.06 (e) allows for exceptions to the normal vacation scheduling groups. Article 26.06 (e) states that a vacation scheduling group will “normally” be employees in the same classification within the Supervisor’s work group. The parties disagree as to whether there are only 2 exceptions to the norm, namely, the exceptions listed in Article 26.06 (e) or whether there may also be other exceptions. The exceptions stated in Article 26.06 (e) are (1) extended geography making a single vacation scheduling group impractical, and (2) circumstances where employees who normally

backfill for each other extend beyond more than one Supervisor's work group. The Union submits that the principle *expressio unius, exclusio alterius* ought to apply, and because the parties have listed 2 exceptions to what is normal in Article 26.06 (e), the parties must have intended that there are no other exceptions. The Union also submits that allowing for other exceptions would have the effect of weakening the purpose of the Article.

I have reviewed Brown & Beatty, *Canadian Labour Arbitration*, 4<sup>th</sup> edition, paragraph 4:2142 and the case authorities discussing the *expressio unius, exclusio alterius* principle. The principle states that the expression of one thing means the exclusion of another. The principle is considered by some authorities to be unreliable, because the listing of examples may be intended as a complete list, or it may be intended as a list of examples of the class of things that make up the complete list. I consider that the *expressio unius* principle ought to be applied with caution because it may not be consistent with the intention of the parties. Subject to that caution, it is one principle available to the arbitrator, when interpreting the collective agreement, that may be considered together with other principles of interpretation.

There are 2 exceptions to the "normal" vacation scheduling group listed in Article 26.06 (e). The first exception is "extended geography covered by a Work Group may make a single vacation scheduling group impractical". In other words, there may be more than one vacation scheduling group, where there is extended geography, where there would normally be one group. The second exception is "circumstances where the group of employees who normally backfill for each other extends beyond more than one Supervisor's Work Group". In this exception, where there would normally be 2 or more vacation scheduling groups, there may be one group. These 2 exceptions apply in different ways. The effect of one exception is to have more groups than normal and the effect of the other exception is to have fewer groups than normal. Therefore, the parties have not indicated from these 2 exceptions how there might be other exceptions of the same class. There are no guidelines as to how a list or class of exceptions might be described based on the 2 exceptions listed. The Employer submits that it has discretion to apply other exceptions. If the Employer's submission is applied, there could be a class of exceptions in any case where employees backfill for each other. The Employer submits that the 4 employees in Stephenville backfill for each other and an exception applies, even though they are not all in the same classification. However, had the parties intended that the Employer could have discretion to establish other exceptions, or that an exception could apply in any circumstance where employees backfill for each other, then the parties

could have used language to that effect. To allow for other exceptions to the normal vacation scheduling group would have the effect of weakening the purpose of the Article, which is to establish the vacation scheduling groups based on stated requirements. I also refer to the last sentence of Article 26.06 (e) which states “these exceptions will be reviewed with the Council before vacation schedules are distributed”. The reference to “these exceptions”, appearing where it does at the end of the Article, following the description of the 2 exceptions, is likely intended to be a reference to the 2 exceptions described. The last sentence of the Article means that for one of the 2 listed exceptions to apply, there is a requirement that it be reviewed with the Council. It is unlikely the parties would have intended that other exceptions could be allowed, but that those other exceptions were not required to be reviewed by the Council. In conclusion, having regard to Article 26.06(e) as a whole, the parties did not intend to allow other exceptions. Therefore, the 2 exceptions described in Article 26.06 (e) are the only exceptions to the normal vacation scheduling group.

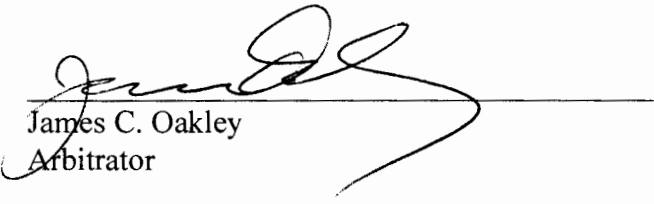
On the facts of this case, the exceptions to the normal vacation scheduling group, listed in Article 26.06 (e), do not apply. Therefore, the vacation scheduling groups in this case are employees in the same classification in the same Supervisor’s work group.

The Arbitrator finds that a vacation scheduling group in Article 26.06 (e) is normally a group of employees in the same classification who report to the same Supervisor, work together on a regular basis and normally backfill for each other. “Backfill” in Article 26.06 (e) means performing work of another employee, whether in that employee’s own classification or a different classification. The exceptions to the normal vacation scheduling group are the 2 exceptions described in Article 26.06 (e). The exceptions do not apply in this case. In Stephenville, W. Newell is in the CST classification, which is a different classification from the 3 employees in the BST classification. Therefore Article 26.06 (e) requires that W. Newell be placed in a different vacation scheduling group. The other 3 employees meet all the requirements of a vacation scheduling group. Therefore, the vacation scheduling groups for BST and CST classifications in Stephenville are W. Newell in one group and T. Hoddinott, R. Bourgeois and M. Legge in another group.

**Decision**

The grievance is allowed in part. It is declared that a vacation scheduling group in Article 26.06 (e) is normally a group of employees in the same classification who report to the same Supervisor, work together on a regular basis and normally backfill for each other. "Backfill" in Article 26.06 (e) means performing work of another employee, whether in that employee's own classification or a different classification. The exceptions to the normal vacation scheduling group are the 2 exceptions described in Article 26.06 (e). The exceptions do not apply in this case. In Stephenville, the vacation scheduling groups for BST and CST classifications are W. Newell in one group and T. Hoddinott, R. Bourgeois and M. Legge in another group.

**DATED** this 9<sup>th</sup> day of December, 2008.



James C. Oakley  
Arbitrator