

ARBITRATION AWARD

BETWEEN:

TRANSPORT AND ALLIED WORKERS, LOCAL UNION 855
(hereinafter called the "Union")

AND:

PUROLATOR COURIER
(hereinafter called the "Employer" or the "Company")

GRIEVANCE: Group Grievance re 8 hour band couriers

COUNSEL: For the Union

Stuart A. Morris

For the Employer

Michelle A. Willette

ARBITRATOR: James C. Oakley

The arbitration hearing was held at St. John's on October 27 and 28 and November 7, 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 following publication of the Award in the event there is a question of interpretation or compensation arising from the Award.
5. The parties agreed to waive any applicable time limits for the filing of the Award.
6. Witness were excluded from the hearing.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Purolator Courier and Canada Council of Teamsters, Local 855 and others, expiry dated December 31, 2007
- Consent 2 - Letter dated February 18, 2008 from Richard Gill of the Union to Fonda Everson of the Employer
- Consent 3 - Grievance Form dated February 26, 2008
- Consent 4 - Courier Availability List
- Consent 5 - List of employees and net hour changes
- Consent 6 - Email dated May 22, 2008 from Fonda Everson to Tom McMenamon re Preload Presentation with attached emails and presentation
- Consent 7 - Minutes from meeting dated May 1, 2008
- Consent 8 - Email dated October 22, 2008 from Allan Chisholm to Stephen Noseworthy with attached minutes of conference call dated February 1, 2008
- Consent 9 - Email dated October 22, 2008 from Allan Chisholm to Stephen Noseworthy with attached email from Fonda Everson dated February 4, 2008 and attached presentation

- Consent 10 - Copies of invoices from Dynamex, 2008
- Consent 11 - Copies of invoices from Dynamex, 2007
- Consent 12 - List of classifications and classification numbers
- SC - 1 Job posting for courier, posting date May 30, 2007
- SC - 2 Job posting for sorter, posting date September 21, 2007
- SN - 1 Daily Tracking Report
- SN - 2 Quarterly Hours Review Report, 2007, first quarter
- SN - 3 Quarterly Hours Review Report, 2007, second quarter
- SN - 4 Quarterly Hours Review Report, 2007, third quarter
- SN - 5 Quarterly Hours Review Report, 2007, fourth quarter
- SN - 6 Quarterly Hours Review Report, 2008, first quarter
- SN - 7 Quarterly Hours Review Report, 2008, second quarter
- SN - 8 Quarterly Hours Review Report, 2008, third quarter
- SN - 9 NL Courier Productivity, 2007 vs. 2008
- SN - 10 Worksheet for Variance, 2007
- SN - 11 Worksheet for Variance, 2008
- SN - 12 Weekly payroll, 2008

Nature of the Grievance

The Union grieves that couriers in the 8 hour band were placed in the 7 hour band and had their hours of work reduced by one-half hour to 7 ½ hours per day, in violation of the Collective Agreement. The Union submits that the Company introduced a preload system without prior

consultation with the Union resulting in the loss of one-half hour per day on average for each courier. The Union requested that the 8 hour band be reinstated, and compensation paid to the affected couriers. The Company submitted that it had the right to make the changes in the work schedules and denied any violation of the Collective Agreement.

Collective Agreement

The relevant Articles of the Collective Agreement are as follows:

Article 3 Management Rights

3.01 Acknowledged Right

The Union recognizes the exclusive right of the Company to operate its establishment, machinery and equipment and to manage its undertakings as it sees fit, subject only to the restrictions imposed by law or by the provisions of the present Collective Agreement.

Without limiting the generality of the foregoing, the Union recognizes that it is the Company's right:

- (a) To administer the Company, including the right to study and introduce new methods, to increase or reduce its personnel, to modify its route structures as well as its schedules of work;
- (b) To demote, discharge, reprimand, suspend and discipline with just cause;
- (c) To maintain order, discipline, productivity and output;
- (d) To hire or transfer.

In the exercise of its management rights, the Company shall comply with the provisions of the present agreement and the paragraphs above shall not deprive employees or the Union of the right to have recourse to the grievance and arbitration procedure provided for in the present agreement.

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Article 5 General Provisions

5.01 Regulations and Policies

- (a) The Company has the exclusive right to make, modify and implement regulations, policies and procedures to be observed by the employees; such regulations, policies and procedures must not be inconsistent with the provisions of the present agreement. Furthermore, where in the present agreement it is provided that a policy is maintained, such policy remains in force and may not be modified by the Company for the duration of the present agreement.

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Article 16 Hours and Work Week

16.01 Full-Time and Part-Time Work Week

- (a) An employee will be considered to be a full-time employee if his regular weekly scheduled hours of work are thirty (30) hours or more. The normal work week for full-time employees shall be based on their daily and weekly schedules. The sole exception to this are employees in the Utility Courier classification who shall have only a weekly schedule.

Employees who are regularly scheduled for less than thirty (30) hours per week are considered part-time employees. The normal work week for part-time employees shall be based on their daily and weekly schedules. The sole exceptions to this are employees in the Relief classification (and part-time Utility Couriers in the province of Quebec) who shall have only a weekly schedule. It is understood and agreed that there shall be no Relief employees in the province of Quebec.

The normal work week from Monday to Friday includes weeks beginning on the Sunday night and terminating on the Friday morning, as well as beginning on the Monday night and terminating on the Saturday morning.

Full-time and part-time employees will be considered to be regular employees.

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16.02 Meal Period

The time allotted for the meal period can vary between thirty (30) and sixty (60) minutes for all full-time employees, according to the needs as determined by the Company.

The meal periods hereinabove are not remunerated and should normally be taken towards the middle of the work day i.e. between the third and fifth hours of work, at a time authorized by the immediate supervisor. It is understood that the Company will respect a certain regularity as far as the duration and time of the meal period is concerned and that it is in exceptional circumstances only that the above parameters will not be met.

An employee in the functional group of Drivers, must take his meal at a place situated along his route.

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16.03 Break Period

- (a) All full-time employees in the functional groups of Depot and Garage are entitled to a paid break period of fifteen (15) minutes for each regularly scheduled period of four (4) consecutive hours of work.

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16.05 Hours Bands and Extra Work

All schedules shall be based on hours bands, except for Utility Couriers and Relief positions. An hour band is defined as a base number of hours per day plus up to one additional hour of work per day. Employees who are in an hour band may be required by the Company to regularly work any daily hours which fall in that specific band, i.e.; a Courier in the eight (8) hour band may be required to work between eight (8) and nine (9) hours per diem.

- (a)
 - i) For the courier classification only, there will be five (5) bands defined as follows: A four (4) hour band, a five (5) hour band, a six (6) hour band, a seven (7) hour band and an eight (8) hour band.
 - ii) For other classifications, there will be six (6) bands defined as follows: A three (3) hour band, a four (4) hour band, a five (5) hour band, a six (6) hour band, a seven (7) hour band and an eight (8) hour band.

- (b) For the purposes of this clause and Clause 16.01:
- i) Employees in the eight (8) hour band shall be scheduled for eight (8) hours per day and forty (40) hours per week
 - ii) Employees in the seven (7) hour band shall be scheduled for seven (7) hours per day and thirty-five (35) hours per week.
 - iii) Employees in the six (6) hour band shall be scheduled for six (6) hours per day and thirty (30) hours per week.
 - iv) The remaining hour bands shall be scheduled on the same basis as above.
- e) A quarterly hours review will take place for each depot. These reviews are intended to determine if new positions should be created or if existing positions should be increased in hours. The Company will not wait for the quarterly hours review to create a new position or increase hours on an existing position in cases where it is clear that there is an immediate and ongoing need for the creation of a position or increase of hours in an existing position. The quarterly review will take place by the 15th of January, April, July, and October. Within five (5) working days following the review, the new positions and increased hours positions will be posted. It is understood that in the January review anticipated reductions in volume shall be taken into account.

The local Union must contact the Company designate at the end of each quarter in order to schedule a meeting date prior to the results of the review being released. The Company agrees to meet with the chief steward or designate to share and discuss the Company's findings. Should a concern arise during the initial review of the report the Company will utilize supporting documentation in the form of timecards or FMR data to determine hours worked.

The procedures for the quarterly hours review are as follows:

- i) For Driving Classifications

A route which, on a daily basis over a period of a full quarter, has one (1) or more hours of work above the scheduled band for the route will be posted for the appropriate hours band.

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- (g) In depots where an eight (8) hour band currently exists, it shall remain established for the life of this Collective Agreement.
- (h) The Company will optimize operations by combining, re-organizing and balancing runs to create as many positions in an eight (8) hour band as practical in all depots. The decision to create such positions shall be based on optimizing service, productivity and employee satisfaction.
- (i) The Company agrees that it will give serious and reasonable consideration to increasing the hour band in any case relating to 16.05 e) i) and e) ii) where the Union advises the Company that an employee or route has exceeded 90% of the criteria outlined in the clause.
- (j) When hour reductions are required, the Company will firstly reduce such hours from non-eight hour positions in the affected classification. Should it not be feasible to remove the required hours from the non-eight hour positions, the Company will meet with the Union to discuss alternatives.

17.01 Overtime

- (a) At the request of the Company and with its authorization, any employee, who works in excess of eight (8) hours in a day or forty (40) hours in a week shall be paid at one and one-half (1 ½) times his regular hourly wage rate for such hours.

At the request of the Company and with its authorization, any employee performing work in the linehaul classification (117), who works in excess of nine (9) hours in a day or forty-five (45) hours in a week shall be paid at one and one-half (1 ½) times his regular hourly wage rate for such hours.

- (b) With the agreement of the Union and of the Company, the work schedule exceeding the hours mentioned above may be scheduled and will not be considered to be overtime.

17.02 Allocation

- (a) The policy of the Company is to maintain overtime at the necessary minimum; however, the Union and the employees recognize that

overtime may be necessary in order to attain the standards of the best service possible or to fulfill the needs of the client.

- (b) Overtime work that may be required is assigned by the Company in the most economical and efficient manner possible and then in order of seniority. The Company will have extra work performed at straight time rates whenever possible.

In establishing the most economical manner, the employee's position on the wage scale shall not be considered as a factor.

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Article 28 Sub-Contracting and Purchase-Merger

28.01 Sub-Contracting

- (a) For the duration of the present agreement, except in the case of "force majeure" or of circumstances beyond the control of the Company, and with the exception of that which is already assigned to third parties, the Company agrees not to assign to third parties, by sub-contracting, pick-up and delivery work performed by the regular qualified drivers of the bargaining unit, where the granting of such sub-contracts would result directly either in the lay-off of or preventing the recall of laid-off employees, in the group of drivers qualified for the said work or where a transfer of such work currently being performed by regular qualified drivers of the bargaining unit would lead to a reduction in hours for the drivers.

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Letter of Understanding No. 5

Between
Purolator Courier Limited
And
The Canada Council of Teamsters

By exception to the provisions of clause 16.05 (a) and (b) of the Collective Agreement, the following employees will not have the "hour band" concept apply to them and will continue to be scheduled according to whatever daily and weekly hours may be required:

- a) Employees in the 117 classification;
- b) Employees in the 113 and 114 classifications at the Toronto Hub;
- c) Employees in the 115 classification.

Evidence

The witnesses called by the Union were Patrick Walsh, Courier, Edward Squires, Courier, and Richard Gill, Union representative. The witnesses called by the Employer were Sandi Chase-Caron, Senior Human Resources Consultant, Thomas McMenamon, Regional Operations Manager and Stephen Noseworthy, District Manager.

The grievance concerns reduction of hours of 8 hour band Couriers operating from the depot at 16 Duffy Place in St. John's, Newfoundland and Labrador. The District Manager for Newfoundland and Labrador at the time of the grievance was Fonda Everson. Ms. Everson left the Company and was replaced in the position by Stephen Noseworthy in May, 2008. The District Manager reports to the Atlantic Regional Manager, Thomas McMenamon. The District Manager for Newfoundland and Labrador is responsible for the movement of ground freight. The Company operates aircraft for transporting freight. Air transportation is not the direct responsibility of the District. Freight arriving by ground and air is delivered to the depot, where it is sorted and placed on delivery trucks for delivery to customers. The ground freight arrives overnight on transport trucks. The transport trucks are usually available to be unloaded early in the morning. The aircraft delivering the air freight lands at St. John's airport between 6:00 a.m. and 6:30 a.m. The air freight is off loaded and delivered in three truck loads from the airport to the depot, starting at about 7:30 a.m. The aircraft transports freight for Purolator and other companies. The couriers deliver freight from the depot to customers in the St. John's area and pick up freight from customers. The freight is transported to the airport and loaded on the aircraft before the scheduled departure time of about 5:00 p.m. The time between when the aircraft lands at St. John's in the morning and departs in the evening was described as the delivery window.

The position description for courier states the main duties and responsibilities are "pick up and delivery of customer's shipments". The position description for sorter states the main duties and responsibilities are "cubing, load/unload freight, scanning, reweighing, other duties as required". Patrick Walsh and Edward Squires testified about their duties and responsibilities as couriers. They testified that prior to the implementation of the preload system, they were in the 8 hour band and worked an 8 hour shift, commencing at 8:30 a.m.. They sorted and loaded freight onto their delivery trucks. Each courier placed the freight in convenient locations in the truck based upon the planned delivery route. The route was organized to be efficient and to avoid backtracking. The couriers left the depot at about 9:30 a.m. or earlier. The work schedule included a 15 minute paid break in the

morning and a one-half hour unpaid lunch break. The couriers testified that they would frequently work through the lunch break, and the 8 hour shift would end at 4:30 p.m. If the courier did not work through the lunch break, then the 8 hour shift would end at 5:00 p.m. Work after the end of the 8 hour shift was paid at overtime rates. The courier routes are organized so that each courier will have approximately the same volume of deliveries. Some of the deliveries have a deadline of 10:30 a.m. At the time of the grievance, the hourly rate of couriers was about \$22 per hour. The hourly rate of sorters was about \$17 per hour.

In February, 2008, Fonda Everson, the District Manager for Newfoundland and Labrador, with support from the Atlantic regional office, implemented a preload system at the St. John's depot. Under the preload system, sorters preload the delivery trucks. The objective of the preload system is that when the couriers arrive at the depot at the start of their shift, the delivery trucks are preloaded. The couriers do not have to load the trucks, and may depart immediately from the depot. To implement the preload system, the Company decided to assign additional hours of work to the sorters in the depot. The sorters started work earlier and additional sorters were hired. Mr. McMenammon testified that the courier business is very competitive and customer service is important. He said the rationale for the preload system included reducing the amount of overtime, having the sorters do sorting work and the couriers do courier work, having the couriers avoid getting uniforms dirty from sorting work so they could depart from the depot wearing clean uniforms, and reducing the congestion of freight packages on the floor of the depot.

Mr. McMenammon testified that he and the District Manager, Ms. Everson, discussed the preload system at a budget meeting in September, 2007. Mr. McMenammon said it was a corporate decision not to budget for implementation of the preload system in 2008. The preload system could be implemented, but it would not change the budget. The district office decided to proceed with the preload system with input from engineering and safety consultants at the regional office. Mr. McMenammon said that he received an email from Ms. Everson on February 1, 2008. Attached to the email was a presentation about the preload system that Ms. Everson planned to use at a labour relations meeting and separate meetings with couriers and sorters. The part of the presentation that referred to the reduction of hours for couriers stated as follows:

Impact to Couriers

- All routes will be reduced to a 7 hour band, except for 2 senior couriers (Arch Manning & Ed Sweeney)
- Effective Feb. 24th start time for all couriers will be 08:45, except for pre-loaded routes, whose start time will be 09:00 am
- Pre-load roll out of 2 courier routes per week
- No bumping option as all routes changed equally

The Company presented information about the preload system to the Union at a labour relations meeting on February 7, 2008, and to couriers and sorters at meetings on February 8, 2008. At the labour relations meeting, the Company representatives were Fonda Everson, District Manager, Keith Tucker, Unit Manager, and Sandi Chase-Caron, Senior Human Resources Consultant. The Union representatives were Gary Bailey, Shop Steward, Calvin Lockyer, Shop Steward and Rick Gill, Union representative.

Sandi Chase-Caron testified that there was a discussion at the February 7, 2008 meeting about alternatives proposed by the Union to reducing one-half hour per day from the couriers. Those alternatives included having an earlier arrival time or later departure time for the aircraft, and having the sorters load the ground freight and the couriers load the air freight. The Company response was that air schedules were difficult to change because St. John's was at the end of the cross Canada route and subject to the national schedule set by the air operations division. It was explained to the Union that the Company wanted to have sorters do sorting and loading work and have couriers do courier work. Ms. Chase-Caron said she was not aware of the plan to implement the preload system before she attended the meeting. She was not surprised by the preload, because the preload system was in common use at other depots. Ms. Everson asked her to attend the meeting for support. Ms. Chase-Caron said the power point presentation prepared by Ms. Everson was not shown at the labour relations meeting.

Richard Gill testified that he attended the labour relations meeting on February 7, 2008. He first heard about the preload system in early February from one of the shop stewards. Mr. Gill said he was aware there was a preload system in other depots, but it did not have much impact on hours of work of couriers. He understood that preload would not be introduced in St. John's until there was

a new depot at the airport. Mr. Gill said the Company had avoided implementing a preload system at the St. John's depot, because there was a limited "window" for the couriers, and couriers would lose hours of work. He said that the couriers had no objection to a preload system, so long as the couriers did not lose hours of work. Mr. Gill understood that there were preload systems implemented in Corner Brook, Grand Falls and Gander, but no one complained to the Union about a reduction of hours of couriers in those locations. At the labour relations meeting on February 7, 2008, Mr. Gill made two suggestions that he believed would make up the lost half hour. The first suggestion was to change the aircraft arrival time. The second suggestion was to offload Purolator freight from the aircraft on a priority basis. He understood that air operations did not want to change anything. Mr. Gill said there was no discussion of combining or balancing routes. He said that the Company could have retained more 8 hour band routes if the routes were "tweaked". He said there was no discussion of reducing hours from non 8 hour positions, within the meaning of Article 16.05 (j) of the Collective Agreement. He said the Company was not prepared to talk about these issues at the February 7th meeting. He testified that "the Company was implementing preload and that was the end of it". The Union filed the grievance about the reduction of hours following implementation of the preload system. Mr. Gill testified that he attended a grievance meeting in March, 2008, at which time there was further discussion about alternatives to reducing the hours of couriers.

Following implementation of the preload system, the two most senior 8 hour band couriers, Arch Manning and Ed Sweeney, did not have any reduction of hours. The other 8 hour band couriers commenced work at 9:00 a.m., one-half hour later than their previous starting time. According to a list of net hour changes (exhibit C-5), there were 12 couriers whose hours of work were reduced by 2 ½ hours per week. Patrick Walsh testified that he has not observed any significant changes in operations following implementation of the preload system. Mr. Walsh said that he loaded his own truck for about 20 years, before implementation of the preload system. He testified that after implementation of the preload system, he still leaves the depot at about 9:30 a.m. When he starts work at 9:00 a.m., the truck is not fully preloaded. The sorters sometimes scan the freight, but leave it on the floor. Mr. Walsh said that several different sorters are assigned to load his truck. Before the preloading of his truck started, Mr. Walsh prepared a diagram of his truck interior showing where freight was to be placed. He said the sorters are unable to load the truck as well as the couriers, because couriers are quite familiar with their own route, but sorters are expected to know several routes. He said the sorters often misplace the freight in the truck and he needs to move it. He said there were problems with the equipment and the layout in the depot. Some of the freight left on the floor after the couriers leave the depot is delivered by subcontractors, such as Dynamex. After

the preload, Mr. Walsh sometimes does not have time to make a delivery and he passes the undelivered freight to a subcontractor. This procedure is coded “agent transfer”. Mr. Walsh said he is unable to add one-half hour onto the end of his shift, because there is a deadline to return to the depot with the pickups in time for the departing flight. He said he is no longer permitted to work through his lunch break unless he phones the District Manager or Unit Manager and obtains permission. He has not called to ask for permission to work through lunch. The couriers suggested to the Company that they work through lunch so they would continue to have an 8 hour shift, but the suggestion was not accepted. He said the loss of one-half hour per day has also affected his entitlement to benefits. He said that he had the opportunity to work overtime under the previous schedule, but now he has no opportunity to work overtime.

Edward Squires testified that prior to implementation of the preload system he would usually leave the depot at about 9:30 a.m. He said that after implementation of the preload system, most of the freight is already scanned and loaded before he arrives at work. However, he is required to sort the freight after it is loaded on the vehicle. After implementation of the preload system, he still leaves the depot at about 9:30 a.m. He delivers less freight than he did before the preload. Some deliveries are now made by sorters working in the position of relief courier. Mr. Squires said the Company could reorganize the routes, or abolish routes operated by junior couriers, and have more 8 hour band routes. He said there could be drop zones where couriers could pass freight to another courier if he was delayed making deliveries. He said the couriers were not asked for any input prior to the implementation of the preload system.

Thomas McMenammon testified that between September, 2007 and January, 2008, he had brief discussions with Fonda Everson about proceeding with the preload. He received updates from the District office following implementation of the preload system. The preload system resulted in an increase of 55 hours per week for all positions at the St. John’s depot. He said the initial rollout date was moved back because of concern that sorters and couriers might have a “negative mind set” about the system. He attended a labour relations meeting and focus group meetings with employees on or about March 19, 2008. The employees at the focus group meetings were selected on a volunteer basis. At the focus group meetings he heard concerns about the loss of hours by couriers. He explained to the couriers that the preload system was the common practice in other depots. Mr. McMenammon responded to suggestions made by couriers. He told them that the aircraft schedule could not be changed, and that Purolator freight could not be offloaded from the aircraft first. He understood that freight from different companies is loaded on the aircraft based upon loading and

balancing. He said that after implementation of the preload, the cost of subcontracting courier work had doubled. There were several reasons for the additional deliveries by subcontractors, including couriers having difficulty adjusting to new scanners, aircraft arrival delays, absenteeism of couriers, and “push back” from the courier group. When asked by Union counsel, Mr. McMenammon said he did not possess any documentation to show that the Company first tried to reorganize routes or reduce hours from the non 8 hour band courier positions before reducing the hours of the 8 hour band couriers.

Stephen Noseworthy testified that after the preload was implemented, the starting time for some of the sorters was moved to 4:30 a.m. This had the effect that sorters could start sorting ground freight earlier. Prior to starting his position as District Manager, Mr. Noseworthy held positions in the air operations division of the Company. He said that aircraft were loaded based on balancing of freight and not according to which courier company was delivering the freight. Mr. Noseworthy said that the couriers who were formerly in 8 hour band positions were now in 7 hour band positions and were scheduled to work 7 ½ hours per day. There were 2 couriers retained in 8 hour band positions. Mr. Noseworthy understood that the Collective Agreement required the Company to retain at least one 8 hour band courier in the depot. Ms. Everson had decided to retain two 8 hour band couriers. Mr. Noseworthy referred to the daily tracking reports showing productivity. The reports showed a reduction in the amount of overtime. Monthly overtime cost, as a percentage of the payroll, was reduced from 2007 to 2008. Commencing in the month of April, 2008, the reduction from the same month in the previous year varied from about 8% to 70%. Mr. Noseworthy said that the cost of subcontractors doubled from 2007 to 2008. There was an overflow of freight left on the floor after the couriers left the depot. The Company regularly contracted out deliveries of freight to Dynamex. Deliveries were also contracted out to Millennium for a 2 week period in July, 2008. Mr. Noseworthy said that the number of courier stops per hour decreased from 2007 to 2008. The productivity reports showed that productivity dropped in 2008 compared to 2007, however, there was a positive trend from July to September, 2008. Mr. Noseworthy testified that there was an increase from 2007 to 2008 in the total number of freight pieces delivered. Some of this freight is delivered by sorters who also work as relief couriers.

Union Submission

The Union submitted that the grievance applies to all couriers in the 8 hour band who were moved to the 7 hour band as a result of implementation of the preload system. The practice for about 20 years was that 8 hour band couriers started work at 8:30 a.m., worked through the one-half hour lunch period, and ended the 8 hour shift at 4:30 p.m. Work after 8 hours was paid at the overtime rate. Following implementation of the preload system, the former 8 hour band couriers work from 9:00 a.m., to 5:00 p.m. with a one-half hour unpaid lunch, for a total of 7 ½ hours per day. The couriers have lost 2 ½ hours regular pay per week, and have lost the opportunity to work overtime. The Union acknowledged that the preload system is used in other depots, but there was no evidence that other depots had reduced the hours of the 8 hour band couriers. The Union submitted that the Collective Agreement established a regular work week, and it was a violation of the Collective Agreement to reduce the regular hours of work. The entitlement to the regular work week was based on Articles 16.01 (a), 16.05 (b), Letter of Understanding No. 5, and other Articles. The Union relied on *Harvey and Co. v. Transport and Allied Workers Union, Local 855* (1992) 29 L.A.C. (4th) 164 (Alcock) (the “Harvey” case) and *Teamsters, Local Union No. 879 v. Brytor International* (1985) O.L.R.B.R. 372 (Ont. LRB). The Union noted that the Company had not called former District Manager, Fonda Everson or Unit Manager, Keith Tucker as witnesses. These were the key persons responsible for implementing the preload system. The Company did not comply with Article 16.05 (h). There was no documentation to show how the Company had optimized operations to create as many positions in an 8 hour band as practical. The Company did not make a decision based on “employee satisfaction” as required by Article 16.05 (h). The Company did not comply with the requirement in Article 16.05 (j) to firstly reduce hours from non 8 hour band positions and then “meet with the Union to discuss alternatives”. The labour relations meeting held on February 7, 2008 was not a meaningful discussion. The Company did not give the Union any documentation showing that it had no alternative other than to reduce the hours of work from the 8 hour band couriers. The Company implemented the change and then entertained discussion with the Union about alternatives. One of the Company’s reasons to implement the preload system was to increase the hours of the sorters and reduce the overtime of the couriers, having regard to the higher wage rate paid to the couriers. The reduction of overtime based on wage rates was a violation of Article 17.02. After the implementation of the preload system, the amount of freight delivered by subcontractors doubled. The transfer of work to subcontractors led to a reduction of hours of the couriers and was a violation of Article 28.01 (a). The Company was estopped from reducing the hours by a representation made to Richard Gill of the Union that the preload system would not be implemented

until the depot was relocated to the airport. The Company could not impose a mandatory unpaid lunch break where there was a past practice to allow employees to work through the lunch break. The Company's actions were discriminatory and violated the management rights article because the Company took hours of work from the full time employees and assigned work to part time employees. The Union requested that the affected couriers be returned to 8 hour positions and compensated for lost wages and benefits, including overtime. The amount of compensation for overtime for each courier could be determined from the average total overtime paid to couriers in the year preceding the implementation of the preload system. The Union requested that the grievance be allowed.

Employer Submission

The Company submitted that there was no violation of the Collective Agreement. The Company had reasonably exercised its management rights to reduce or modify the hours of work. Article 3.01 (a) stated that it was a management right to modify the schedules of work. There was no express prohibition in the Collective Agreement against reducing the hours of work of employees in the 8 hour band. The Company implemented the preload system and reduced the hours of work of the couriers for legitimate business reasons, in particular, to reduce overtime costs, to have the lower paid classification of sorter do the sorting work, to have the couriers do courier work and not sorting work and to align with the work arrangements in place in the rest of the country. There was no evidence that the hours of work of couriers in other depots were not reduced when a preload system was implemented. The Collective Agreement did not guarantee an 8 hour work day. Full time employees were those who received 30 or more hours per week. The Company complied with Article 16.05 (g) by maintaining 2 couriers in 8 hour band positions. Article 16.05 (g) did not require that all couriers at the depot be maintained in the 8 hour band. Article 16.05 (j) contemplated that there would be circumstances where the Company would be required to remove hours of work from the 8 hour band courier positions. The Company met its obligation under Article 16.05 (j), by discussing alternatives with the Union at the February 7, 2008 labour relations meeting. The Company considered alternatives, such as having the aircraft arrive earlier and having ground freight delivered to the depot earlier. The first alternative was not practical because of the requirements of air operations and the second alternative was implemented. There was no requirement in the Collective Agreement that the Union consent to the reduction of hours of work. The Company relied on arbitral authority that an employer could change the work week, for example *Daam Galvanizing Ltd. v. Marine Workers and Boilermakers Union, Local 1* (1993) 42 L.A.C. (4th) 276 (Greyell). The

Company distinguished the *Harvey* case, on the basis of different collective agreement language. The requirement that employees obtain prior approval to work through the lunch break was not related to implementation of the preload system. There was no violation of Article 28.01 because the increased use of subcontracting did not lead to a reduction of hours. There was no proof of any representation that the Company would not implement a preload system, and estoppel was not proven by the Union. There was no ambiguity in the language of the Collective Agreement and past practice was not relevant. The Company requested that the grievance be denied.

Considerations

The Company reduced the regular daily and weekly hours of work of couriers in 8 hour band positions at the St. John's depot. The reduction of hours occurred when the Company implemented a preload system in February, 2008. The couriers were formerly scheduled to work 8 hours per day commencing at 8:30 a.m., Mondays to Fridays. Following implementation of the preload system, couriers were moved to the 7 hour band and were scheduled for 7 ½ hours per day, commencing at 9:00 a.m. According to the exhibit listing the hour changes, there were 12 couriers whose hours were reduced by 2 ½ hours per week. The grievance was filed on behalf of the affected couriers. Two of the affected couriers testified at the hearing. The reduction of hours applied to all couriers in the 8 hour band, except for the two most senior couriers, whose hours were not reduced.

Under the preload system, the sorting and loading of delivery trucks at the depot is done by sorters. These duties are within the position description of the sorters. Before the preload system was implemented, the loading was done by the couriers. The Company submitted that it had legitimate business reasons to implement the preload system and reduce the hours of the couriers. The business reasons included greater efficiency, reduced overtime costs, better customer service, earlier delivery starting times and having work performed by the appropriate classification. The Union does not object to sorters loading the trucks under a preload system, so long as the couriers do not have a reduction in hours, or the impact on couriers is minimal. The preload system is used in other depots in Newfoundland and Labrador and in other parts of the country.

Freight arrives at the St. John's depot by ground and by air. The ground freight arrives in St. John's on transport trucks late at night, and is available early in the morning to be loaded on the delivery trucks. The sorting and loading of air freight, and the delivery and pickup of air freight, is organized by the Company according to the scheduled arrival and departure times of the aircraft. The aircraft

arrives at St. John's between 6:00 a.m. and 6:30 a.m. and departs at about 5:00 p.m. As a result of the aircraft schedule, there is a "window" for the couriers to deliver and pick up freight. The sorting and loading of air freight cannot start until after the arrival of the aircraft. Upon implementation of the preload system, the Company determined that it was unnecessary for the couriers to continue to start work at 8:30 a.m. The starting time was changed to 9:00 a.m., when it was expected the trucks would be preloaded and the couriers could leave the depot. The scheduling of the end of the shift could not be changed to a later time, because the freight pickups had to be completed within the "window" to meet the departure time of the aircraft.

The Arbitrator will consider the issues of (1) was the reduction of hours in violation of the Collective Agreement? (2) is the Company estopped from implementing the reduction of hours by any representation made about the preload system? and (3) in the event that issues (1) or (2) are decided in favour of the Union, what is the appropriate redress?

The Arbitrator refers to the principles of interpretation of collective agreements, as discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, in particular, the principles 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), 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 principles of interpretation are also discussed in Palmer, *Collective Agreement Arbitration in Canada*, 3rd edition, at page 121 as follows:

2. Examples of Rules of Construction Used as Aids to Interpretation
 - A. Words to be given ordinary meaning
 - 4.9. As a rule of construction, the clear words of a collective agreement are to be given their ordinary and plain meaning. . .
 - 4.10. This basic rule has been qualified, however, by other rules of construction which follow.
 - . . .

B. The collective agreement to be read as a whole

- 4.14. It is widely accepted by arbitrators that the collective agreement is to be construed as a whole. Therefore words and provisions must be interpreted in light of the entire agreement. As a result:

It is elementary that all the terms of the agreement must be read together and that any board of arbitration should be highly skeptical of an interpretation of one article which would nullify or render absurd the effect of another article.

The Arbitrator will consider the interpretation of Article 16, headed “Hours and Work Week”, having regard to the principles of interpretation. Article 16.01 (a) states that an employee is a full time employee “if his regular weekly scheduled hours of work are 30 hours or more”. Article 16.01 (a) also states “the normal work week for full time employees shall be based on their daily and weekly schedules”. Article 16.05 is headed “Hours, Bands and Extra Work”. An hour band is defined as the base number of hours per day plus up to one additional hour of work per day. For the courier classification there are 5 bands, which are defined as a 4 hour, 5 hour, 6 hour, 7 hour and 8 hour band. Article 16.05 (b) states that an employee in the 8 hour band shall be scheduled for 8 hours per day and 40 hours per week. Article 16 does not require that all couriers be placed in the 8 hour band. This is evident from the fact that there are 5 different bands for the courier classification. Also, since a full time employee has 30 or more scheduled hours per week, a full time employee may have less than 8 hours per day, 40 hours per week. There is a reference to 8 hour band employees in Articles 16.05 (g), (h) and (j). Article 16.05 (g) states that in depots where an 8 hour band currently exists, it shall remain established for the life of the Collective Agreement. When the Company reduced the hours of work of the 8 hour band couriers by one-half hour per day, it did not change the hours of work of the two most senior 8 hour band couriers. The Company considered that an 8 hour band was required to remain established at the St. John’s depot, to comply with Article 16.05 (g), and that the Company complied so long as it retained at least one 8 hour band courier. Article 16.05 (g) could be interpreted to mean that all 8 hour band courier positions must remain established. However, such an interpretation would be inconsistent with Article 16.05 (j), which provides for hour reductions, under certain conditions. When Articles 16.05 (g) and (j) are read together, it is evident that the Company has authority to reduce the hours of work of 8 hour band couriers, subject to compliance with the requirements of the Collective Agreement.

Article 16.05 (h) states that the “Company will optimize operations by combining, reorganizing and balancing runs to create as many positions in an 8 hour band as practical in all depots. The decision to create such positions shall be based on optimizing service, productivity and employee satisfaction.” Thus, the parties have agreed to the desirability of having as many 8 hour band positions as practical in all depots, including the St. John’s depot. There is a stated preference for 8 hour band positions. The preference for 8 hour band positions is also supported by Article 16.05 (j), which states that “when hour reductions are required, the Company will firstly reduce such hours from non 8 hour positions in the affected classification.” Thus, when hour reductions are required from the courier classification, the Company is first required to reduce hours from couriers who are not in an 8 hour band position. Article 16.05 (j) states that “should it not be feasible to remove the required hours from the non 8 hour positions, the Company will meet with the Union to discuss alternatives.” The Article does not list the alternatives. However, it is evident from reading Article 16 as a whole, that one of the alternatives would be to reduce hours from the 8 hour band positions.

The right of an employer to reduce the hours of work is subject to the provisions of the collective agreement. The arbitral case law in this regard is discussed in Mitchnick and Etherington, *Labour Arbitration in Canada*, 2006, at page 356, as follows:

The employer’s right to schedule production includes the right to shorten the hours of work, provided the reduction is not contrary to collective agreement provisions defining the “regular” hours of work. . . . The decisions in *Air-Care Ltd. v. U.S.W.A.* (1974), 49 D.L.R. (3d) 467 (S.C.C.), and *E.S. & A. Robinson (Canada) Ltd. and Printing Specialities & Paper Products Union, Local 466* (1976), 11 L.A.C. (2d) 408 (Swan), discussed in Chapter 21.1, continue to be the leading authorities on the extent of management’s right to curtail the usual work hours. While contract provisions which identify “normal” hours, or a “regular” or “present” schedule, do not represent a guarantee of minimum hours and will not preclude a temporary reduction, they do prohibit the establishment of a new norm by unilateral management initiative.

The Union submits that the Collective Agreement provides for regular hours and the Company cannot change the hours by unilateral action. The Union relies on *Harvey and Co. v. Transport and Allied Workers Union, Local 855* (1992) 29 L.A.C. (4th) 164 (Alcock) (the “Harvey” case). In the *Harvey* case, the employer reduced the hours of work of employees from 8 hours to 7 ½ hours per day. The collective agreement stated that the regular work week was 40 hours per week and 8 hours per day, and that there was no guarantee of hours. The employer told the employees that the

reduction of hours was temporary, based upon the poor economy, but that the reduced hours would continue indefinitely until the economy improved. The arbitrator stated that a unilateral change in the regular work week violated the collective agreement. The provision that there was no guarantee of hours meant that the Company could implement a temporary change in the hours of work, but not a permanent or indefinite change. The Arbitrator finds that the decision in the *Harvey* case, and the arbitral authority that precludes a permanent unilateral employer establishment of new “regular” hours, does not apply in this case. The “regular” hours of work may be changed by the Employer, subject to compliance with the Collective Agreement language agreed by the parties. In the present Collective Agreement, the normal work week for hours band employees varies according to the band into which an employee is placed. Employees in the 8 hour band have regular hours of work of at least 8 hours per day and 40 hours per week. However, Article 16.05 (j) of the Collective Agreement contemplates that, subject to meeting certain requirements, the Company may reorganize its operations and reduce the hours of work. The effect is that, for example, an employee in the 8 hour band could have his hours of work reduced and be placed in the 7 hour band.

Having regard to Article 16.05 as a whole, the Company may reduce the hours of work of an employee in the 8 hour band, provided that it complies with Articles 16.05 (h) and 16.05 (j). In this case, the Company reduced the hours of work from 8 hour band positions at the St. John’s depot, and converted those positions from the 8 hour band to the 7 hour band at 7 ½ hours per day. The Company is obligated by Article 16.05 (h) to create as many positions in the 8 hour band as practical in the St. John’s depot. Having implemented the preload system, the question arises under Article 16.05 (h) as to whether 2 positions are as many positions in an 8 hour band as practical. What is the basis upon which the Company has retained 2 positions and not another number of positions in the 8 hour band? When it decided to have 2 positions in the 8 hour band, what consideration was given by the Company to the factors of “optimizing service, productivity and employee satisfaction?” Although the Company anticipated that the preload system would improve service and productivity, the Company has not demonstrated how these factors were applied to the number of 8 hour band couriers retained. Also, under Article 16.05 (j), before hour reductions are made in the 8 hour band positions, the Company is required to first reduce the hours from the non 8 hour band positions. The Company is required to give consideration to all the factors in Articles 16.05 (h) and 16.05 (j) prior to the reduction of hours from the 8 hour band positions. The Company is required to demonstrate compliance with Articles 16.05 (h) and (j) prior to its implementation in February, 2008 of the reduction of hours from the 8 hour band couriers. The Company has not demonstrated compliance with these Articles. The Company has not demonstrated how it attempted to optimize operations

by combining, reorganizing and balancing runs to create as many 8 hour band positions as practical. The Company has not demonstrated that it gave consideration to optimizing service, productivity and employee satisfaction. The Company has not demonstrated that it first reduced hours from non 8 hour band positions in the courier classification in the St. John's depot prior to removing hours from the 8 hour band positions.

Article 16.05 (j) states that the Company will meet with the Union to discuss alternatives prior to removing hours from the 8 hour band positions. I agree with the submission by the Company that Article 16.05 (j) does not require that the Company obtain the Union's consent to the reduction of hours before the reduction may be implemented. The Article requires "discussion", and pursuant to such language, it is ultimately management's right to set the work schedule (Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, paragraph 5:3126). Arbitrators have also stated that where an agreement requires discussion, there must be meaningful discussion in which the employer is open to alternate proposals put forward by the union (*Oak Terrace and C.L.A.C.* (2004) 75 C.L.A.S. 429 (Levinson), *Ivaco Rolling Mills and USWA Local 8794* (1997) 67 L.A.C. (4th) 66 (Adell), and *Canadian Airlines International Ltd. and IAM, Local 721* (1989) 18 C.L.A.S. 322 (Ready)). The "discussion" must also comply with any procedural or substantive requirements of the collective agreement. The Company is required to be open to implementing alternatives proposed by the Union. In this case, the Company met with the Union at a labour relations meeting on February 7, 2008. The Company planned to implement the preload system, and part of the plan was to reduce the hours of the 8 hour band couriers. At the meeting the Company presented how the plan would be implemented. The Company proceeded to implement the plan following the meeting. In these circumstances, the Company did not appear to be open to changing the plan. The Union did not have any notice of the plan prior to the meeting. The Union's opportunity to propose alternatives to the reduction of hours was limited by the fact that, without notice of the meeting, it did not have time to prepare for any discussions. In order to have discussions, within the meaning of Article 16.05 (j), the Union is entitled to have reasonable notice of the plan prior to the discussions. The purpose of having discussions is to give the Union an opportunity to convince the Company that there are alternatives to reducing the hours of the 8 hour band couriers. Had the required procedure been followed, the Company may have been convinced to implement other alternatives.

The Company did not comply with its obligations under Articles 16.05 (h) and 16.05 (j) prior to reducing the hours of work of the 8 hour band couriers in February, 2008. This finding does not mean that the hours of work of the 8 hour band couriers cannot be reduced. The Company is not

prohibited by the Collective Agreement from reducing the hours of work of the 8 hour band couriers at the St. John's depot, provided that it does so in compliance with the requirements of Article 16.05. However, because the Company did not comply with the Collective Agreement prior to the reduction of hours, the Arbitrator finds that it is appropriate that the 8 hour bands be reinstated. The reinstatement is effective from the date of the reduction of hours.

The Company is not prohibited from reducing the hours of work by Articles 17.02 or 28.01 (a) on the facts of this case. This is not a case of an improper assignment of overtime, and Article 17.02 does not apply. There is no violation of Article 28.01 (a). The reduction of hours, and the implementation of the preload system, had the effect that less freight was delivered by couriers, and more freight was delivered by subcontractors. However, the subcontracting did not cause the reduction of hours. The parties also made submissions on the issue of whether or not the Company properly exercised its management rights. However, having found a violation of a specific article of the Collective Agreement, namely Article 16.05, it is unnecessary to consider the issue of management rights.

The Arbitrator has considered the issue of estoppel and whether the Company is precluded from relying on its rights under the Collective Agreement. The requirements of estoppel are (1) representation by words or conduct, (2) the representation was intended to be relied upon, and (3) reliance on the representation to the detriment of the party relying. (See *Lewisporte Wholesalers Ltd. and UFCW, Local 1252* (1989) Nfld. & P.E.I.R. 237 (NSCTD) and *Canadian National Railway v. Beatty* (1981) 128 D.L.R. (3d) 236 (Ont. Div. Ct.)) In this case, the Union alleges that a representation was made to Rick Gill, Union representative. However, the Arbitrator is not convinced by the evidence that the Company represented that it would not implement the preload system, or that there was any detrimental reliance by the Union on any Company statement. Therefore, the requirements of estoppel are not met. The Company is not prevented from reducing the hours of work by operation of estoppel.

The Arbitrator has considered whether the redress should include compensation, in addition to a declaration that the Collective Agreement was violated. The arbitral authorities in this regard are discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition at paragraph 5:3126. The Company did not comply with Article 16.05 of the Collective Agreement prior to reducing the hours of work. The evidence does not support any finding by the Arbitrator as to what decision the Company would have likely made, had it complied with Article 16.05. In the circumstances of this

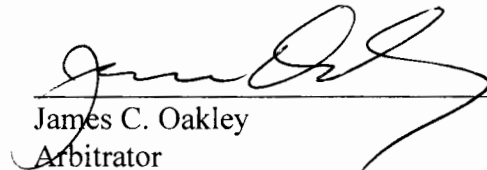
case, it is appropriate that compensation be paid to the affected group of 8 hour band couriers. The next issue is the method of calculating compensation. The principle of compensation is to place the affected employees in the position they would have been in had there been no violation of the Collective Agreement. The Arbitrator has found it appropriate that the 8 hour bands be reinstated effective from the date of the reduction of hours. The 8 hour band couriers are entitled to be scheduled for 8 hours per day in accordance with Article 16.05 (b)(i). The 8 hour band couriers who lost regular hours of work are entitled to compensation for the difference in wages together with any related loss of benefits.

The Union claims compensation for loss of overtime. The claim for overtime is based, in part, on the Union's position that couriers are entitled to work through the lunch break. The Union disputes the Company's requirement that couriers take a one-half hour unpaid lunch break. The Collective Agreement addresses the issue of lunch breaks. Article 16.02, headed "Meal", states that the meal period is not remunerated and that there will be regularity, as far as the duration and time of the meal period is concerned, unless there are exceptional circumstances. The Company's requirement that couriers take a one-half hour unpaid lunch break complies with Article 16.02. The Company allowed couriers to call the office and request permission to work through lunch in order to meet delivery requirements. The requirement to call and request permission is consistent with the provision for "exceptional circumstances" within the meaning of Article 16.02. The Union argues past practice, on the basis that 8 hour band couriers had been allowed to work through the lunch break. However, Article 16.02 is clear and unambiguous. Past practice may only be considered as an aid to interpretation of a collective agreement provision that is ambiguous (Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, paragraph 3:4430). Therefore, the Arbitrator has determined that couriers are not entitled to compensation for any amount of overtime calculated on the basis that couriers work through the lunch break and are paid for the lunch break. The Union may claim compensation for proven loss of overtime, provided that any such claim is calculated on the basis of an unpaid lunch period. The Arbitrator retains jurisdiction over issues of compensation, if the parties are unable to agree.

Decision

The grievance is allowed, in part. In the circumstances of this case, the Company did not comply with Article 16.05, for the reasons stated in the Award, when it reduced the regularly scheduled hours of work of the 8 hour band couriers at the St. John's depot. The Company is not prohibited by the Collective Agreement, or by the operation of estoppel, from reducing the hours of work of the 8 hour band couriers in all circumstances. Any reduction of hours is required to be in compliance with Article 16. The affected couriers shall be reinstated to 8 hour bands and paid compensation, including any related loss of benefits, effective from the date of reduction of hours. The scheduling of an unpaid lunch period complies with Article 16.02. The order of compensation includes proven loss of overtime, provided that any such claim is calculated on the basis of an unpaid lunch period.

DATED this 12th day of February, 2009.


James C. Oakley
Arbitrator