

M. St-Jules – Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

M. Pitcher – Representative, Toronto

AWARD OF THE ARBITRATOR

It is not disputed that the Corporation was required to call employees in their order of seniority to fill the vacancy in the receptionist's position. It is also common ground that the position fell under the terms of Paragraph 5 of the Memorandum of Agreement executed jointly by the parties on August 13, 1987, which provides:

5. It may be necessary in certain circumstances to maintain some positions as mutually arranged.

The displeasure which gives rise to this grievance is prompted by the Union's belief that if the Corporation had been more decisive in determining to fill the receptionist's position with a bargaining unit employee earlier in the day the grievor, who was then at work, could have been contacted and given the opportunity to accept the job. As it happens, the decision to assign the work within the bargaining unit was not made until 4:30 p.m., when the grievor and other employees had left.

As understandable as the grievor's frustration may be, there is no provision within the Collective Agreement of which the Arbitrator is aware which places a time limit on the Corporation's decision to fill a particular position. Indeed, the circumstances at hand were clearly unusual, arising as they did from a general work stoppage, a fact that is acknowledged by the extraordinary provisions of the Memorandum of August 13, 1987. Moreover, that document contemplates a certain amount of mutual discussion between the parties with respect to maintaining bargaining unit positions.

In the instant case the Arbitrator does not have jurisdiction to dispose of the grievance on the basis of whether it would have been more equitable for the grievor to have been assigned the work in question. The sole issue to be resolved is whether the Collective Agreement, and any other arrangement between the parties such as the special memorandum, were complied with in the circumstances. There is no suggestion in the evidence of any bad faith on the part of the Corporation, or deliberate gerrymandering of events to deprive the grievor of his rights.

It is not disputed that, in keeping with normal practice, once it was determined to maintain the position and to assign it to a bargaining unit member, employees were called in order of seniority. The first employee called, being senior to the grievor, declined the position. The grievor was called next, and was not at home, in consequence of which he was considered unavailable. The two next most senior employees were reached by telephone and declined the position and Mr. T. White, the fifth and least senior of the employees called, finally accepted it. In the circumstances then prevailing, and in light of the terms of the Memorandum of Agreement signed by the parties to deal with the extraordinary circumstances of the work stoppage, the Arbitrator can find no violation of the Collective Agreement, the Memorandum or any other right of the grievor.

For the foregoing reasons the grievance must be dismissed.

February 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR