

IN THE MATTER OF AN ARBITRATION

BETWEEN

GOVERNMENT OF BRITISH COLUMBIA  
(B.C. PUBLIC SERVICE AGENCY)

AND

THE PROFESSIONAL EMPLOYEES ASSOCIATION

(Grievance of Hayter, Salokannel & Hart: Supplementary Award)

Arbitrator : Donald R. Munroe, Q.C.

For the employer : Peter A. Gall, Q.C.

For the union : Ernie Gorrie

Date of award : April 19, 2007

This award is supplementary to my award dated October 30, 2006 (the October award).

As described at paragraph 1 of the October award, the union's "...grievance was filed on behalf of three Practices Foresters, namely, Mark Hayter, Susan Salokannel and Derek Hart, who are employed by BC Timber Sales (BCTS) and headquartered at the BCTS office at Fort St. James".

As described at paragraph 2 of the October award, "the issue in this proceeding [was] whether the grievors are 'stationary employees' (as the union contend[ed]) or 'field status employees' (as the employer contend[ed]) as those terms are defined in the parties' collective agreement." As further stated at paragraph 2 of the October award, "A resolution of that issue [would] effectively resolve the underlying question of whether the grievors [were] entitled to 'travel status', which is to say, a meal (lunch) allowance when travelling away from their designated headquarters with the approval of the employer".

The concluding paragraph of the October award (page 18) says this:

The grievance succeeds. I find and declare that the grievors are "stationary employees" within the meaning of the collective agreement, and therefore not disqualified from "travel status". I will remain seised of the matter to resolve any remedial issues that the parties cannot themselves resolve.

The employer implemented the October award by paying the meal allowances to the three grievors, as claimed by them in the grievance, both retrospectively and prospectively. And the union does not suggest in this supplementary proceeding that the employer's implementation of the October award as regards the three grievors is lacking in any way. Rather, the union invokes my retained jurisdiction (see the last sentence of the October award as

quote above) in pursuit of an Order directing the employer to apply the October award to all Practices Foresters employed by BCTS (in like manner as the award has been applied to the three grievors) at all the several BCTS regional headquarter locations throughout the province.

(I note parenthetically that a few weeks ago, the employer decided and informed the union that effective April 1, 2007 it would be treating all Practices Foresters [not just the three grievors] as “stationary employees”, going forward. Accordingly, the practical issue between the parties is the union’s claim that the entire body of Practices Foresters are entitled, by virtue of the October award, to the same retroactivity as was awarded the three grievors -- i.e., for the 3-4 year period that the employer had been treating them as “field status employees” [see pp. 9-10 of the October award]).

The union points to certain passages in the October award from which it argues an arbitral intention that the award’s holding would apply to all Practices Foresters in the province, not just the three grievors; that is to say, that the award would apply to the position of Practices Forester generally.

The employer argues otherwise. As noted by the employer, the first paragraph of my award identifies the grievors (three in number) and their place of work; the second paragraph of my award describes the dispute as being whether *the three grievors* are “stationary employees” or “field status” employees; and the concluding paragraph of my award declares only that *the grievors* are “stationary employees” within the meaning of the collective agreement and therefore entitled to the benefit in question. Clearly, says the employer, “...you neither intended to, nor did you, make a remedial award to persons other than the grievors”.

The union is deeply frustrated by what it sees as employer obstructionism necessitating additional grievances over essentially the same issue. And no doubt, were the shoe on the other foot, that is to say, had the employer been the victor in the October award, and had the union then initiated similar grievances on behalf of other Practices Foresters, the employer would have argued that the three grievors named in the October award ought to be seen as representative of Practices Foresters generally (and see the *Bruckner* award [Government of BC -and- BCGEU, May 20, 2002] at pp. 15-16).

However, I must and do conclude that the employer is correct in its characterization of the remedial scope of the October award. Whatever might have been the union's intention as to the potential remedial consequences of the proceeding leading to that award, the grievance that I was constituted to hear and decide was on behalf of three named grievors at a single headquarters. It is true, as the union points out, that there was some evidence adduced at the October hearing that would be applicable to all Practices Foresters (e.g., the generic job description). However, the main focus of the evidence was the day to day activities of the particular grievors. In *Bruckner*, I commented on the unlikelihood of the parties in that case intending that fine distinctions be drawn for present purposes amongst employees occupying the same position. But in the present case, I simply do not have the evidence that would allow me to make a reasonably informed judgment as to whether all or any of the several Practices Foresters at other BCTS headquarters throughout the province function in the same or roughly the same way as the grievors were doing at Fort St. John (i.e., in relation to the definitions in the collective agreement of "stationary employees" and "field status employees"); and neither does the October award purport to make such a finding or purport to extend the remedial reach of the award to any persons other than those whose grievance I was constituted to hear and decide.

In the result, I must deny the union's application for the supplementary remedial Order sought by it.

DATED THE 19<sup>th</sup> DAY OF APRIL, 2007

*"Donald R. Munroe"*

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Donald R. Munroe, Q.C.  
Arbitrator