



Our File No.: CMBC/CASE/20-0325

July 8, 2020

Via Email: cheryl.shizgal@coastmountainbus.com

Cheryl Shizgal
Director, Corporate Services
Coast Mountain Bus Company
6th Floor – 13401 108th Avenue
Surrey, BC V3T 5T4

Dear Cheryl:

Re: Policy Grievance – Spread Over Premiums

This letter is further to Tracy Ramlu's e-mail to myself on June 10, 2020, indicating that the employer intends to implement split shifts in the fall of 2020 in the various Depots for the Depot Coordinator position. The union disagrees with the employers position that the new language negotiated in article 11.04 of the new Collective Agreement ("CA") can be applied to any position which the employer deems fit.

The union is raising a policy grievance, pursuant to article 3.02 of the CA.

The union alleges that the employer is violating the CA with its interpretation of article 11.04. The union asserts that it can exhibit via extrinsic evidence, such as bargaining demands, the specific proposals dealing with Article 11.04, discussions in caucus with Chief Negotiator, Tracy Ramlu and bargaining notes that this language was intended for employees within the employer's operations who could be scheduled to work a split shift. For example, the Transit Security Officers or Transit Data Collectors. In fact, the union's bargaining notes clearly show the entire discussion about this clause focused on discussing how this clause would apply to the Transit Security Officers. At no point did the union bargaining committee communicate to the employer bargaining team that the union was in agreement with implementing split shifts to all our members at Coast Mountain Bus Company.

Furthermore, had the union wanted this clause to apply to the entire membership the union would have clearly communicated this to the employer at the bargaining table. There is well documented legal doctrine in labour relations that if the union negotiates a change to the collective agreement, especially a monetary benefit, there is a requirement to be clear about the application and the intent of the new language, see *British Columbia Hydro and Power Authority and Office and Technical Employees' Union, Local 378, Re 1993 CarswellBC 3297, [1993] B.C.C.A.A.A.*

MoveUPTogether.ca

No. 361, 35 C.L.A.S. 5. The union was clear with its intent of this new language with Chief Negotiator, Tracy Ramlu, during deliberations and discussions the union intended this language to be applied to employees who could be scheduled to work split shifts, which in the current iteration of the CA are only Transit Security Officers and Transit Data Collectors.

In addition, the union also asserts that the employer is in violation of the “Bird” principles. With respect to interpreting language and provisions of the Collective Agreement, the union relies on the well-established canons of construction and interpretive principles, referred to as "the modern principles of interpretation" in *Southern Railway Limited v. Canadian Union of Public Employees, Local 7000*, [2000], 198 L.A.C. (4th) 283 (Germaine) and repeated in one form or another in several texts and many arbitration awards. In particular the factors listed and applied in *Pacific Press and Graphic Communications International Union, Local 25-C*, [1995], B.C.C.A.A.A. 637 (Bird) ("Pacific Press") and *Health Employers Association of British Columbia v. Hospital Employees Union* [2002], B.C.C.A.A.A. 130 (Gordon) ("HEABC"). At para 27 of


Pacific Press, Arbitrator Bird presents a non-exclusive listing of principles and aids to the interpretation of collective agreements:

1. The object of interpretation is to discover the mutual intention of the parties.
2. The primary resource for interpretation is the collective agreement.
3. Extrinsic evidence (outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.
4. Extrinsic evidence may clarify but not contradict the collective agreement.
5. A very important promise is likely to be clearly and unequivocally expressed.
6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.
7. All clauses or words in the collective agreement should be given meaning, if possible.
8. Where an agreement uses different words, one presumes that the parties intended different meanings.
9. Ordinary words in the collective agreement should be given their plain meaning.
10. Parties are presumed to know about relevant jurisprudence.

As a remedy, the union is seeking the employer cease and desist on rolling out the split shifts to its operations. The union is of the view that the employer must negotiate individual positions into the split shift language similar to what exists for the Transit Security Officer and Transit Data Collector. In the event the parties are not able to reach a resolve the union reserves the right to advance this matter to binding third-party arbitration.

Please advise when you are in position to discuss this issue with the union, respective of the timelines in article 3.02.

In Solidarity,

A handwritten signature in black ink, appearing to be 'PS', written in a cursive style.

Parm Sandhar, Union Representative

/LJ:USW2009

cc: Kevin Smyth, Senior Union Representative
Ruth Ritchey, CMBC Union Bargaining Committee
Vivian Ho, CMBC Union Bargaining Committee
Brendon Faustin, CMBC Union Bargaining Committee
Christy Slusarenko- Vice-President of Combined Units