

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

SIEMENS CANADA LIMITED - TILBURY

- The Employer

-and-

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS UNION OF CANADA (CAW - CANADA)
and its LOCAL UNION 1941

- The Union

AND IN THE MATTER OF a grievance of Darryl Norman

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Erin R. Kuzz - Counsel
Konrad Boehler - Siemens

On behalf of the Union:

Rick Garant - President CAW Local 1941
Darryl Twigg - Chairperson Siemens CAW Local 1941
Darryl Norman - Grievor

Hearing held June 14, 2000 in Chatham, Ontario.

AWARD

I. THE ISSUES

Two issues were raised at this hearing. The first was a Union request for an adjournment as the Union representative presenting this case was sick and unable to attend. The second issue was an Employer request for its costs for the adjournment, including its costs in having its counsel attend the hearing.

This award records the decisions given orally at the hearing.

II. THE BACKGROUND AND THE PARTIES' POSITIONS

November 9, 1999 I issued an award in this matter in which I directed that the grievor, Mr. Darryl Norman, be reinstated. At page 15 of that award I wrote as follows:

. . . the Employer is directed to reinstate the grievor without loss of wages, seniority or benefits. I note that the grievor would not have been able to return to work immediately after the termination. In addition, I note that the grievor may be entitled to the payment of benefits - he had claimed sickness and accident benefits but his claim was not processed because of the intervening termination. I leave it to the parties to work out the details of this order.

. . .

Finally, I remain seized to deal with any difficulties which may arise in the implementation of this award.

The parties were unable to resolve the issues related to the grievor's reinstatement and a hearing was scheduled for June 14.

Mr. Robert Jenner represented the Union at the earlier hearing and planned to represent the Union at this hearing. However, on June 14 he was sick and unable to attend.

Rick Garant, the President of the Local, asked that the hearing be adjourned to a time when Mr. Jenner could attend. Mr. Garant advised that he was not able to represent the Union as he had reviewed neither the issues in dispute nor the evidence.

The Employer opposed the adjournment request. The Employer advised that during the previous afternoon (June 13) there had been discussions between the parties regarding Mr. Jenner's health. At that time the Union had raised the possibility that Mr. Jenner might not be well enough to attend the hearing. The Employer said that if the Union had indicated on June 13 that it wished an adjournment, the Employer would have consented to that request and the Employer would have saved its expenses for the hearing. However, the Union had informed the Employer that it wished to proceed. As a result the Employer was present, was ready for the hearing, and opposed the adjournment.

If I were to grant an adjournment, the Employer sought its costs, including the costs it incurred in having its counsel attend the hearing. The Employer relied upon Article 9.05 of the agreement.

Mr. Garant agreed that there had been discussions of the nature the Employer described but he said that on June 13 Mr. Jenner had expected to be able to attend the hearing. Mr. Garant said that it was only on the morning of June 14 that he learned Mr. Jenner was unable to attend.

As for the Employer's request for costs, the Union said that it had never sought the costs of its officials' attendance at an adjourned hearing and it opposed the Employer's request.

III. PROVISIONS OF THE AGREEMENT

The following are the relevant sections of the parties' 1998-2001 collective agreement:

ARTICLE 9 - Arbitration Procedure

...

9.04 Each of the parties to this Agreement shall bear the fees and expense(s) of their representatives and witnesses. The fees and expense(s) of the arbitrator shall be shared equally between the parties.

9.05 Notwithstanding the foregoing, should one party request a postponement or cancellation of a scheduled arbitration hearing, any charges incurred as a direct result of the postponement or cancellation shall be borne by the party initiating such postponement or cancellation.

IV. CONCLUSIONS

The adjournment

Mr. Jenner normally represents the Union. He acted for the Union in the earlier hearing and he had planned to act for the Union at this hearing. He was sick and unable to attend. No other person was in a position to act for the Union in this matter.

Arbitration is intended to provide a speedy means of resolving disputes but, more importantly, it must be a fair process. To require the Union to proceed without Mr. Jenner, when no one else was in a position to act for the Union, would create an obvious unfairness. For that reason, I grant the Union's request for an adjournment.

Costs

The Employer's request to be reimbursed for its costs was based on Article 9.05 of this collective agreement. Such language is not usually found in collective agreements and the parties disagreed as to its application here.

While the Article uses the words "postponement or cancellation", there was no dispute that it included the adjournment of the June 14 hearing. The collective agreement says that in such a situation "any charges incurred as a direct result . . . shall be borne" by the Union. What were those charges?

My fees and expenses were incurred as a direct result of the June 14 hearing. There was no dispute on that issue and thus the Union is required to bear all of those costs, both the half it would normally pay and the half which would usually be paid by the Employer.

If the parties had intended that Article 9.05 be limited to the arbitrator's fees and expenses, as distinct from the costs of its representatives, it is clear from Article 9.04 that they knew how to express that concept. However, in Article 9.05 the parties chose the more general concept of "any charges". I conclude the parties deliberately chose a very general phrase.

The dispute between these parties relates to the Employer's costs in having its counsel attend. The Employer's counsel, Ms Kuzz, travelled from Toronto to Chatham to attend the hearing. She will bill the Employer for her travel time, for her time at the hearing and for her expenses. Those costs were incurred as a direct result of the June 14 hearing, and are thus covered by the language of Article 9.05. Although the Union has not sought to be reimbursed for similar costs arising from previous adjournments, there was no suggestion that this prevented the Employer from relying on its rights under the Agreement. I thus order

the Union to bear the fees and expenses incurred by the Employer in having Ms Kuzz attend the June 14 hearing. This does not include any costs incurred as a result of Employer counsel's preparation for the hearing.

Finally, I remain seised to deal with any difficulties which may arise in the implementation of both this award and my earlier award.

Dated at London, Ontario this 28th day of June, 2000.

Howard Snow, Arbitrator