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

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ACCURCAST DIVISION OF MERIDIAN OPERATIONS INC.
- The Employer

-and-

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS UNION OF CANADA (CAW - CANADA)
and its LOCAL 351
- The Union

AND IN THE MATTER OF a policy grievance regarding pay for weekend employees working on a holiday

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

D. Stephen Jovanovic	- Counsel
Matt Hogan	- Human Resources Manager
Brent Bonner	- Director of Human Resources

On behalf of the Union:

Joe McCabe	- National Representative

Hearing held May 19, 1998 in Wallaceburg, Ontario.

AWARD

I. INTRODUCTION

This grievance raises the question of the appropriate pay rate for weekend employees who work on a paid holiday. The weekend employees ordinarily work two twelve (12) hour shifts each weekend and receive 40 hours pay, or 1.67 times the normal pay rate. When those employees work on a holiday for which they are to receive "double" pay, are they entitled to double the rate they ordinarily receive, or simply double the normal pay rate?

II. THE EVIDENCE

This is a matter of interpretation of the agreement. There was no factual dispute and no witnesses were called. Each side outlined its view of the relevant background as its argument was presented. From those presentations, the situation can be summarized as follows.

The Employer operates an automotive parts business in Wallaceburg. This is the first collective agreement between these parties. The employees were previously represented by another union, but the earlier collective agreements did not contain similar provisions.

Overtime was voluntary under the collective agreement. As the Employer wished to operate seven days per week, the parties negotiated provisions for a weekend shift in which some employees worked only two twelve-hour shifts a week. The two shifts were worked on Saturday and Sunday.

This collective agreement required that the pay for a regular weekday employee who worked on a Saturday was time and a half (1.5) the normal rate for the first eight hours worked. The pay rate was double (2.0) the normal rate after eight hours of work on a Saturday and for all

hours worked on a Sunday. A regular Monday to Friday employee who worked a twelve-hour shift on both Saturday and Sunday would receive (8 x 1.5) + (16 x 2.0) = 44 hours pay for that work.

Rather than pay the weekend employees using those overtime rates for Saturday and Sunday, the parties agreed to alternative provisions. They agreed on a weekend shift arrangement under which employees who worked 24 hours on the weekend received the same total pay that the regular weekday employees received for working eight hours per day Monday through Friday. Thus the agreement specified that the weekend employees received "40 hours pay " for their 24 hours work. This was also expressed in the collective agreement as "1.67 times the basic hourly rate for each hour worked."

Weekend employees who were late arriving for work or who left work early lost 1.67 times the basic rate for each hour missed.

The collective agreement also provided for paid holidays. The weekday employees had paid holidays on each Monday through Friday from Christmas Eve (December 24) until New Years Day (January 1) inclusive. The agreement listed holidays for weekend employees as well. In 1997, December 27 and 28 fell on Saturday and Sunday and were listed as paid holidays for weekend employees. However, the Employer asked employees to work voluntary overtime on those days and some weekend employees worked on those holidays. The parties then disagreed as to the rate of pay for that work. While they agreed that these employees were entitled to receive twelve hours pay at 1.67 times the basic rate as their paid holiday pay each day, they disagreed on the method of calculating the additional pay for those two days.

As this was the first time this issue has arisen, there was no past practice. In addition, the parties acknowledged that the issue had not been specifically addressed in negotiations.

III. PROVISIONS OF THE AGREEMENT

The following are the relevant provisions of the parties' collective agreement:

Article 2
Management's Rights

2.01 Except as otherwise specifically provided for in this Agreement, the Company retains the sole and exclusive authority to manage its enterprise and direct its working forces in all respects.

. . .

Article 14
The Weekend Operation

14.01 Employees shall receive 40 hours pay for the 24 hours so worked or 1.67 times the basic hourly rate for each hour worked.

. . .

14.02 The Christmas holidays will be in accordance with Schedule 'B' hereto. For the other holidays employees would receive 8 hours at the basic hourly rate but no time off.

14.03 One (1) weekend not worked would equal one (1) weeks vacation.

. . .

Article 15
Hours of Work

. . .

15.02 The standard work week shall consist of forty (40) hours per week composed of five (5) eight (8) hour days (Monday to Friday).

. . .

15.05 All work performed in excess of eight (8) hours per day (Monday to Friday) shall be paid the rate of time and one-half (1 ½) the straight time rate.

15.06 All work performed up to eight (8) hours on Saturday shall be paid for at time and one-half (1 ½) the straight time rate.

15.07 All work performed on a Sunday or in excess of eight (8) hours on Saturday shall be paid for at double (2X) the straight time rate.

15.08 All work performed on paid holidays shall be at two times (2X) the straight time rate.

15.09 It is understood and agreed that there shall be no pyramiding of premium or bonus payments. Shift premiums shall not be used as a basis for the calculation of overtime.

. . .

Article 19
Wages

19.01 The Company agrees to pay and the Union agrees to accept for the term of this Agreement, the wages set forth in the schedule of wage rates (Appendix "A") forming part of this Agreement.

. . .

Article 23
Paid Holidays

23.01

. . .

Weekend Operation Holidays
1st Year
December 27, 1997
December 28, 1998 [sic]

. . .

Wages Schedule 'A'
[The schedule provides the wage rates for eleven job classifications.]

I note that although Article 14.02 refers to holidays in Schedule 'B', the holidays are in fact found in Article 23.

IV. POSITION OF THE UNION

The Union submitted that the basic pay rates for most employees were as provided in Schedule 'A'. Article 15.08 stated that all work on a paid holiday was "at two times (2x) the straight time rate". But the normal straight time rate for weekend employees was 1.67 times the Schedule 'A' rates. It followed that the pay on holidays for weekend employees should be 2 times the rate which such employees actually received (that is 2.0x1.67), not simply 2 times the Schedule 'A' rate.

V. POSITION OF THE EMPLOYER

The Employer submitted that Article 14 was a complete code for weekend workers. Article

15 was not intended to regulate the employment of weekend employees and Article 15.08 thus had no application here. Instead the payment for those weekend employees who worked on holidays was governed by Article 2, the Management's Rights Article, and that Article had not been violated.

In the alternative, the Employer submitted that Article 15.08 had been correctly applied. Article 14.01 did not establish a new straight time rate for weekend employees. Weekend employees should have received two (2) times the Schedule 'A' rate of pay for their holiday work.

VI. CONCLUSIONS

Does Article 15 apply to weekend employees?

Article 14 says nothing about the amount of pay weekend employees are to receive for working on a paid holiday. However, Article 15.08 does address the issue of pay for holiday work. While the Union relied on Article 15.08, the Employer submitted that Article 15 did not apply to weekend employees. I address this issue first.

Article 14 includes several provisions specifically regulating the employment of weekend employees. In addition to the provisions reproduced above, the Article addresses issues such as the normal starting and stopping times, rest periods, lunches, filling of weekend positions, discontinuing weekend operations, payment of wages, temporary transfers, weekly indemnity, jury duty, bereavement leave, education leave, reporting to work, and layoffs. Although a number of topics are addressed in Article 14, the question is this: are the other provisions of the collective agreement, including Article 15.08, intended to also apply to weekend employees?

On some issues Article 14 provides specific rules for weekend employees. On many other issues commonly dealt with in collective agreements, there are no specific provisions in Article 14. A listing of the titles of some of the other Articles in the collective agreement - Recognition, Management's Rights, Union Security, Strikes and Lockouts, Discrimination & Harassment, Grievance Procedures, Discipline and Discharge, Arbitration, Seniority, Loss of Seniority, Union Representation, Transfer out of the Bargaining Unit, Leaves of Absences, Benefit Programs, Health and Safety Act, Bulletin Board, Skilled Trades, Apprenticeship, Cost of Living Allowance, etc. - demonstrates some of the issues the parties dealt with elsewhere, issues on which no specific rules for weekend employees are included in Article 14. I cannot believe that the parties intended that weekend employees were, for example, to have no grievance and arbitration procedure or that the weekend employees were to be excluded from the "no strike" provision. *The Labour Relations Act, 1995* requires that all collective agreements include provisions dealing with these issues. The grievance procedure applies to "any employee" (Article 6:02) and the no strike provision says that "there will be no strikes . . . on the part of employees" (Article 4:01). I conclude that they apply to weekend employees. The benefit programs apply to "All employees" (Article 25) and under the Health and Safety Article the Employer must "make all reasonable provisions for the safety and health of all its employees" (Article 26.02). I can see no basis for distinguishing between the Articles on the resolution of grievances and on no strikes on the one hand and the remaining Articles on the other hand. If some Articles apply to weekend employees then it seems clear that all apply. I conclude that, subject to the comments in the following paragraph, these general provisions contained in other Articles in the agreement were intended to apply to weekend employees.

As noted, some of the other general Articles were adapted for the weekend employees and those adaptations were included in Article 14. Thus Articles such as Lay-off and Recall, Hours of Work, Overtime Distribution, Reporting to Work, Wages, Jury Duty/Subpoena Witness, etc., were modified for weekend employees. It appears that when a general

provision needed to be altered in order to suit the weekend operation, the parties modified it and included the specific rules in Article 14. From this I conclude that the parties intended that if Article 14 addressed a specific issue relating to the employment of weekend employees, that specific provision governed. However, when Article 14 did not address a topic but another Article dealt with this issue, then that other Article, or part of an Article, regulated the employment of weekend employees. In this case, while Article 14 is silent on the issue of payment for work on a holiday, Article 15.08 does address the issue and thus Article 15.08 regulates the pay of weekend employees who work on a holiday.

What is a weekend employee's "straight time rate"?

Article 15.08 states that the work which is at issue here should be paid at double "the straight time rate." The meaning of that phrase is in dispute.

Clearly the employees ordinarily receive 40 hours pay for 24 hours work, or 1.67 times the basic hourly rate for each hour worked. Does that mean that the "straight time rate" for weekend employees is 1.67 times the basic hourly rate?

I begin by noting that both "basic hourly rate" and "straight time rate" are used in the agreement. There was no suggestion that either term had a special meaning and I have been unable to find a special meaning for either. While one would ordinarily assume they are two different concepts, it appears that they are used interchangeably. In order to determine the parties' intention in using the phrase "straight time rate", I thus turn to the context in which that phrase is used.

Article 15.08 does not apply simply to weekend employees - it applies to all employees. December 25, 1997 - Christmas Day - was a holiday for weekday employees. If weekday employees worked on Christmas Day, 1997 they would have received two times their straight

time rate. It seems likely the parties intended the phrase "straight time rate" in this context to mean the basic hourly rate. Did the parties intend that weekend employees receive, for their work on December 27 or 28, 1997, 1.67 times the amount weekday employees would have received for working on their Christmas Day holiday?

While weekend employees ordinarily receive a higher rate than weekday employees, it is because they are working on Saturday and Sunday, days on which premium pay would be paid to regular weekday employees. As noted above, if Articles 15.06 and 15.07 applied to the weekend employees' normal work, those employees would receive 44 hours pay for the 24 hours of work. In my view, the weekend employees' 40 hours of pay, or 1.67 times the basic hourly rate, for the 24 hours worked is in the nature of a specific premium payment for working twelve-hour shifts on Saturday and Sunday. Thus these employees ordinarily receive a premium rate which is 1.67 times the basic rate for their work on Saturday and Sunday.

When the weekend employees worked on a holiday they were entitled to receive two (2) times the "straight time rate" as compared with "1.67 times the basic hourly rate" they usually received. The weekend employees are governed by Article 19 and Schedule 'A' (which specify the dollar value of the wage rates) in the same way that they are covered by Article 15.08 - that is Article 14 does not address the issue of pay rates in specific terms and thus the general provisions of the agreement apply. Their basic hourly rate is therefore found in Schedule 'A'. Although these employees never actually do any work for the basic hourly rates as on the weekends all their work is paid at a premium (1.67 times basic) rate, nevertheless the weekend employees do have a "straight time rate". The phrase "straight time rate" is commonly used for the normal pay rate which is then multiplied to obtain an overtime or other premium rate. This agreement does not describe the 1.67 times rate as a straight time rate. It would be unusual, I believe, for the parties to have used the phrase "straight time rate" in order to describe a premium "1.67 times" rate.

Other than the fact that the parties used both "basic hourly rate" and "straight time rate", I can see no basis for concluding that the parties intended the two phrases to describe different concepts. Thus when these weekend employees worked on the holidays in December and were entitled to receive double the straight time rate under Article 15.08, I conclude that it was double the wage rates specified in the agreement, not double the premium rates which they normally received.

Under this interpretation, if a weekday employee worked on his or her Christmas Day holiday and a weekend employee worked on his or her December 27 holiday then, leaving aside the amount of the paid holiday pay itself, they would receive the same pay for each hour worked. This result is, I believe, consistent with the expectation of most employees.

The above interpretation is also consistent with and supported by Article 15.09 which, like Article 15.08, applies to weekend employees and states that there is to be "no pyramiding of premium or bonus payments".

While the first sentence of Article 15.09 is a general statement, I note that the second sentence of Article 15.09 specifies that shift premiums are not to be used in calculating overtime. I read the second sentence as an example of the general prohibition in the first sentence and not as a limitation on the scope of that general statement. Thus the "no pyramiding" prohibition applies in all situations and for all types of premium payments.

The no pyramiding provision in Article 15.09 simply means that one premium rate should not be based on, or be a multiple of, another premium rate regardless of whether that other premium rate be a shift premium, overtime premium, or otherwise. The weekend employees normally receive a premium (1.67 times) rate. In specifying that there should be no pyramiding of premium payments, Article 15.09 provides that the double time holiday pay should not be based on another premium rate, that is it should not be based on the weekend

employees' normal (1.67 times) premium rate.

I thus agree with the Employer's position on the calculation of the pay which employees were entitled to receive. Weekend employees who worked on the listed December holidays were entitled to the normal holiday pay plus two times (2x) the rates specified in the agreement for the hours of work they performed, not two times (2x) their premium (1.67 times) rate.

As I understand that the Employer paid the weekend employees on the above basis for the December holidays, I assume that no remedy is needed for any individual employee. I will, however, remain seised to deal with any issues which may arise in the event that I am incorrect in my understanding as to the amount which individual employees were paid, or to deal with any other difficulties which may arise in the implementation of this award.

Dated at London, Ontario this 17th day of June, 1998.

Howard Snow, Arbitrator