Federal Court Cour fédérale

Date: 20150320

Docket: T-422-14

Citation: 2015 FC 355

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, March 20, 2015

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

CANADIAN UNION OF POSTAL WORKERS

Applicant

and

CANADA POST CORPORATION
ALAIN RHAINDS
DOMINIQUE ALLARD

Respondents

JUDGMENT AND REASONS

[1] The applicant, the Canadian Union of Postal Workers (the Union) is seeking a declaration that the respondents are guilty of contempt of court under rules 466 to 472 of the *Federal Courts Rules*, SOR/98-106 (the Rules) on the basis that they deliberately breached the arbitration award

issued on September 20, 2013, by Arbitrator Huguette Gagnon. For the reasons that follow, the application is dismissed.

I. **Background and procedural history**

[2] The Union is composed of a group of employees of the Canada Post Corporation (the Corporation), which includes letter carriers. The parties are bound by a collective agreement that governs, *inter alia*, the hours of work, the organization of the work and the times of employees' breaks and meals. Arbitrator Gagnon had before her eight grievances in which the Union claimed that the Corporation was not complying with certain provisions of the collective agreement concerning the organization of the day-to-day work and the parameters for the taking of meal periods by letter carriers at the Roberval office.

[3] On September 20, 2013, the Arbitrator allowed the grievances. It quickly became clear that the parties did not agree on the scope and interpretation of the arbitration award or on what the Corporation was required to do to comply with it.

[4] On February 17, 2014, the Union filed a notice of registration of the arbitration award with the Court pursuant to subsection 66(1) of the *Canada Labour Code*, RSC 1985, c L-2 [the Code]. Subsection 66(2) of the Code provides that an arbitration award registered in the Court has the same force and effect as a judgment obtained in the Court. The notice of filing, certificate of filing and a copy of the award attached thereto were served on the Corporation's legal department on February 19, 2014.

[5] On June 5, 2014, the Union filed an *ex parte* motion with the Court for an order requiring the respondents to appear before the Court to respond to a charge of contempt of court. This motion was granted on July 4, 2014, by Justice Simon Noël.

[6] It was agreed at the beginning of the hearing that the argument would be split, that the evidence and representations of the parties would deal first with the issue of whether the respondents were guilty of contempt of court and that a hearing to address the sanction would then be scheduled if needed.

II. **Legal principles applicable to a contempt of court proceeding**

[7] There is no real disagreement between the parties about the general principles that apply to a contempt of court proceeding. Contempt of court is governed by rules 466 to 472 of the Rules, and the general principles that apply to contempt of court are well established in the jurisprudence.

[8] First, it is recognized that civil contempt of court is quasi-criminal in character (*Bhatnager v Canada (Minister of Employment and Immigration)*, [1990] 2 SCR 217 at page 224, 71 DLR (4th) 84; *Pro Swing Inc v Elta Golf Inc*, 2006 SCC 52 at para 35, [2006] 2 SCR 612; *Canadian Union of Postal Workers v. Canada Post Corporation*, 2011 FC 232 at para 25, [2011] FCJ No. 267 [*Canada Post Corporation*]; *Rameau v Canada (Attorney General)*, 2012 FC 1286 at para 1, [2012] FCJ No 1641 [*Rameau*]).

[9] The burden of proof is on the party who seeks a declaration of contempt *(Canada (Minister of National Revenue) v Marangoni*, 2013 FC 1154 at para 22, [2013] FCJ No. 1272), in this case the Union, and a finding of contempt of court must be based on proof beyond a reasonable doubt (rule 469 of the Rules).

[10] The Union must establish, through proof beyond a reasonable doubt, the three constituent elements of contempt: (1) the existence of an order (2) the respondents' knowledge of the order and (3) the respondents' knowing disobedience of the order (*Canada Post Corporation*, para 25; *Rameau*, para 13, *Orr v Fort McKay First Nation*, 2012 FC 1436 at para 15, [2012] FCJ No. 1650; *Canada (Minister of National Revenue) v Vallelonga*, 2013 FC 1155 at para 18-19, [2013] FCJ No. 1273). The parties agree on the three constituent elements of contempt, but they put forward nuanced positions on the intention required to establish knowing disobedience of the order. However, I find it unnecessary to deal with the nuances submitted by each of the parties because they have no impact on my decision.

[11] The jurisprudence also requires that the order a party alleges has been disobeyed be enforceable, clear and unambiguous and that it must be clear on the face of the order what is required for compliance. In *Telus Mobility v Telecommunications Workers Union*, 2004 FCA 59 at para 4, [2004] FCJ No. 273, the Federal Court of Appeal stated the following in this regard:

> 4. . . A finding of contempt cannot be based on a court order that is ambiguous, or an order that is merely declaratory. It must be clear on the face of the order what is required for compliance. There are numerous examples where contempt proceedings failed because the order was obscure or vague: see, for example, *United Steelworkers of America, Local 663 v. Anaconda Co. (Canada) Ltd.* (1969), 3 D.L.R. (3d) 577 (B.C.S.C.), *C.U.P.W. v. Canada*

Post Corporation, [1987] F.C.J. No. 1021, (1987) 16 F.T.R. 4 (T.D.).

[12] The Union also argued that the order must be read in light of the reasons contained in the order. In *Warman v Tremaine*, 2011 FCA 297 at para 57, [2011] FCJ No. 1502, the Federal Court of Appeal in fact stated "that the Tribunal order itself cannot be dissociated from the reasons given for its issuance". The reasons of an order may be used for the purpose of supporting the disposition, but they cannot replace or be substituted for the disposition (*Canada Post Corporation*, para 33).

[13] The Corporation argued that the contempt of court proceeding could not include respondents Alain Rhainds and Dominique Allard because the Union did not establish that they knew about the notice of filing of the arbitration award with the Court. I do not believe it is necessary for me to address this issue because the arbitration award is not sufficiently clear and precise to ground a finding of contempt of court.

III. **Provisions of the collective agreement, grievances and arbitration award**

A. *Provisions of the collective agreement and the nature of the disagreement leading to the grievances*

[14] It is useful to reproduce certain provisions of the collective agreement to understand the nature of the dispute that led to grievances being filed, as well as the arbitration award issued by the Arbitrator and the parties' interpretation of it.

[15] The evidence established that the regular work schedule of full-time employees begins at 7:00 a.m. and ends at 3:00 p.m. The employees are paid for 8 hours a day regardless of the actual time required for their daily mail delivery. The employees' work day consists of a mail delivery route that includes one portion in the morning and one portion in the afternoon with a 30-minute meal period. At the Roberval office, the meal period is scheduled from 12:00 to 12:30 p.m.

[16] The interpretation of the provisions of the collective agreement that set out the general principles governing the organization of the work day does not cause any real problems between the parties. It is, however, useful to state them in order to understand the dispute that led to grievances being filed; this dispute stems from the application of an appendix to the collective agreement (Appendix BB) that provides for deviations from some of the parameters that govern the organization of the work.

[17] Therefore, I will begin by setting out the general principles.

[18] Clause 14.05 of the collective agreement states the parameters that apply to meal and rest periods for full-time employees. It reads as follows:

> **14.05** Meal and Rest Periods - Full-time Employees
>
> (a) Time off for a meal for full-time employees shall be as close as possible to mid-shift and shall be for a minimum of one-half (½) hour. The provisions of this paragraph do not apply to Group 4.
>
> (b) The meal period for Letter Carriers on foot, Motorized Mail Courier passengers and Mail Mobile Letter Carrier passengers shall start between four (4) hours and five (5) hours after the official starting time of the route.

[19] The distribution of work for the purposes of the employees' routes is governed by clause 48.03 of the collective agreement, which provides for the distribution of work between two portions, one in the morning and the other in the afternoon:

> **48.03** Distribution of Work on Letter Carrier Routes
>
> (a) Letter carrier routes are to be set up with a.m. and p.m. portions using the Letter Carrier Route Measurement assessment information.
>
> (b) Letter carrier routes must be so arranged that time off for meals shall be as close as possible to mid-shift and shall be for a minimum of one-half (½) hour. Therefore, a letter carrier will not be allowed to commence duty on the p.m. portion of his or her shift before thirty (30) minutes after his or her evaluated finishing time on the a.m. portion.

[20] The collective agreement also provides that employees must prepare the mail for the entire day in the morning but that when they leave for the morning portion, the mail for the afternoon delivery portion is left in the office. Clause 48.05 governs this obligation:

> **48.05** Processing of mail
>
> (a) Letter carriers serving residential routes will normally prepare the mail for delivery for the entire route in the morning. The letter mail for the afternoon delivery portion will be left in the office to be picked up by the letter carrier after lunch.
>
> (b) Mail required to be processed at noon and intended for the p.m. portion of the route is to be delivered on that day.

[21] Employees are also to return to their emanating installation following the completion of their morning delivery, and they cannot commence their afternoon portion prior to the official starting time in the afternoon. These requirements are set out in clause 48.08 of the collective agreement:

> **48.08** A.M. Finishing Time
>
> (a) Letter carriers are to return to their emanating installation at noon immediately following the completion of their a.m. delivery duties for the purpose of washing up and recording their a.m. finishing time.
>
> (b) Letter carriers are to record their time of arrival at the postal installation but will not proceed to their work stations and commence duty until their official starting time in the p.m.

[22] The evidence adduced shows that these provisions translate as follows on the ground. Employees begin their shift at 7:00 a.m. and, on their arrival, they prepare the mail that will be delivered during their entire route. They keep with them the first bag of mail for the morning portion of their route as well as the first bag for the afternoon portion of their route. The other bags are picked up at the station around 8:00 a.m. by the Combined Urban Service, which distributes them in various relay boxes located on the route of the letter carriers, who will pick them up during the course of their route. The keys to the relay boxes are given to the employees every morning by Dominique Allard, who is the Local Area Superintendent at the Roberval office.

[23] Employees may not leave the station before 8:30 a.m. to begin delivering the morning portion of the mail. When they leave to do the morning portion of their route, they bring with them the first bag of the morning portion and leave the first bag of the afternoon portion at their office.

[24] When they finish delivering the mail assigned to the morning portion of their route, employees return to the station. Employees have generally finished delivering the morning

portion before noon. However, the meal period is scheduled for 12:00 to 12:30 p.m., and they may not begin delivering the afternoon portion of the mail before 12:30 p.m. Moreover, although they are not required to eat at the station, employees must go back at the end of the meal period to pick up the first bag of their afternoon mail, and they may not begin delivering the afternoon mail prior to the end of the meal period, which finishes at 12:30 p.m. When employees finish delivering the afternoon mail, they must return to the station, and before leaving for the day they are to deposit the keys to the relay boxes that were given to them in the morning, in a box provided for that purpose.

[25] Appendix BB to the collective agreement provides for deviations from Article 48 of the collective agreement. It is the interpretation and scope of this appendix that caused a disagreement between the parties and led to grievances being filed. The relevant provisions are as follows:

> **Appendix BB**
>
> FLEXIBLE MEAL PERIOD
>
> The parties recognize the importance of letter carriers taking their meal break as provided for in the collective agreement.
>
> However, the parties acknowledge that there may be individual circumstances when a letter carrier may choose to not return to the installation for the meal period.
>
> Further, the parties agree that it is preferable to seek voluntary compliance in these matters.
>
> Therefore, the parties agree to the following:
>
> 1.Subject to the provisions set out below and notwithstanding Article 48, a letter carrier whose route provides that he or she must return to the postal installation to have his or her meal may choose not to return and to take his or her meal break elsewhere.

. . .

6. The Corporation may, at any time, require than an employee follow the work rules set out in Articles 14 and 48. In making such decision, the Corporation shall not act arbitrarily, unreasonably or in an unfair manner.

7. This protocol supersedes all arbitration awards and prior agreements between the parties respecting straight throughs.

[26] Ms. Allard testified for the respondents. The evidence shows that, prior to the arbitration award, the Corporation allowed employees who wished to take advantage of Appendix BB to do so without having to expressly cite individual circumstances. The Corporation assumed that employees who chose to not return to the postal installation at noon were making this choice because of individual circumstances. Accordingly, the Corporation did not require employees to make a request or to divulge the specific reasons for which they chose to avail themselves of Appendix BB.

[27] Moreover, the Corporation did not systematically verify whether employees who decided to not return to the postal installation at noon were actually taking their meal period or when they were taking it. This interpretation of Appendix BB therefore allowed employees who decided to not return to the postal installation for the meal period to leave in the morning with their morning and afternoon mail. Employees could also take their meal period immediately after completing their morning delivery. Consequently, it was possible that part or all the mail of an employee's afternoon portion would be delivered in the morning. In short, for the Corporation, employees could take advantage of Appendix BB without having to expressly cite individual circumstances, and when they used it, they benefited from a two-pronged flexibility: (1) they could take their meal period wherever they chose and were therefore not required to return to the postal

installation for their meal period and (2) they could take their meal period when they wished and thus not necessarily from 12:00 to 12:30 p.m.

[28] The Union did not agree with the interpretation of Appendix BB adopted by the Corporation. The evidence on this issue consisted of the testimony of Éric Girard, who was the Vice-President of Local 277 Haut-du-Lac, and Manon Gagné, who was the President. The evidence showed that, in the Union's opinion, Appendix BB permits employees who cite individual circumstances to not return to the postal installation for the meal period and to eat wherever they choose, but they must comply with the meal period schedule, which is from 12:00 to 12:30 p.m. The Union submits that the application of Appendix BB does not therefore permit employees to advance their meal period or to begin delivering the mail assigned to the afternoon portion of their route prior to 12:30 p.m. It was this disagreement that led to the grievances.

B. *Arbitration Award*

[29] At paragraph 1 of her award, the arbitrator summarized the nature of the dispute between the Union and the Corporation. The paragraph reads as follows:

> [TRANSLATION]
>
> [1] In these grievances, the union alleges that the employer failed on several occasions to comply with the collective agreement at the Roberval and Mistassini offices by permitting employees to begin the afternoon portion of their route prior to their official starting time in the afternoon. Therefore, the employer did not comply with Articles 14, 48 and Appendix BB of the collective agreement, which adversely affected the employees and the union.
>
> [Underlined in the arbitration award]

[30] The arbitrator summarized the evidence at paragraphs 4 to 10 of the award. Among other things, she noted that one of the Union's witnesses, letter carrier Pierre-Marc Bouchard, had stated that letter carriers were delivering the afternoon portion of their route in the morning and during the meal period. The arbitrator also noted that Ms. Allard, who testified for the Corporation, stated that letter carriers made a personal choice to not return to the postal installation for the meal period. She added that Ms. Allard also said that if she had required employees to return to the postal installation for the meal period, they would have had a two-hour break before the meal period because they finish their morning delivery between 10 and 10:30 a.m. Ms. Allard also indicated that letter carriers are paid for eight hours a day, regardless of the time required to do their work.

[31] The arbitrator then set out the relevant provisions of Articles 14 and 48 of the collective agreement. At paragraph 11 of her award, she summarized the respective position of the parties as follows:

> [TRANSLATION]
>
> [11] Counsel for the union submits that the employer breached the collective agreement by allowing employees to deliver the afternoon portion of their route in the morning. Counsel for the employer asked the following question: "*Why ask letter carriers to spend two hours at the office without doing anything*?" She referred to the evidence, which shows that letter carriers finish the morning delivery between 10 and 10:30 a.m. They would therefore be doing nothing for two hours if the employer required them to return to the office for lunch, which is scheduled from 12:00 to 12:30 p.m. Letter carriers took advantage of Appendix BB of the collective agreement to choose to not return to the office for the meal period. According to counsel for the employer, that Appendix allows for deviation from all the rules in Articles 14 and 48 of the agreement.

[32] After reviewing the various provisions of Articles 14 and 48, the arbitrator set out her understanding of these provisions as follows:

> [TRANSLATION]
>
> [15] It is clear from all the above clauses that letter carriers on foot are to return to their emanating installation at noon immediately following the completion of their morning delivery duties (clause 48.08(a)) and that they cannot deliver the afternoon portion of their route in the morning. The earliest they can begin delivering that portion is 30 minutes after the evaluated finishing time on the morning portion (clause 48.03(b)).

[33] The arbitrator then dealt with Appendix BB of the collective agreement and indicated at paragraph 16 of the award that this appendix provides for a deviation from Article 48 [TRANSLATION] "when, because of individual circumstances, a letter carrier chooses to not return to the postal installation for the meal period".

[34] The arbitrator then spent some time defining the expression "individual circumstances" and concluded that this expression referred to a fact specific to a person. She noted that [TRANSLATION] "in order for a letter carrier to be able to choose to not return to the postal installation for the meal period, there must therefore be a fact that is specific to that person" (paragraph 19 of the award).

[35] The arbitrator then found that the Corporation was not verifying whether employees had individual circumstances, which contravened Appendix BB, which requires that an employee have individual circumstances in order to take advantage of it. She held that no circumstance specific to employees had been put into evidence and that the evidence demonstrated instead that the employees' choice was connected to how long it took them to deliver the morning portion of

their route, which is a fact that is not personal. She determined that finishing the morning delivery early did not constitute a circumstance specific to employees.

[36] Accordingly, the arbitrator concluded that the Corporation had breached the collective agreement by permitting employees to not return to the postal installation for the meal period even though they did not meet the requirements set out in Appendix BB to make this choice, that is, having individual circumstances. She added that because of this permission granted by the Corporation in violation of the collective agreement, the employees had delivered the afternoon portion of their route prior to the official starting time in the afternoon. The arbitrator's reasoning is at paragraphs 22 and 23 of the award:

> [TRANSLATION]
>
> [22] I conclude that the employer violated the collective agreement by permitting letter carriers to not return to the postal installation for the meal period even though they did not meet the requirement set out in Appendix BB to make this choice, i.e. individual circumstances.
>
> [23] Because of the permission granted by the employer in violation of Appendix BB of the collective agreement, letter carriers delivered the afternoon portion of their route before the official starting time in the afternoon (clause 48.08(b)) or before 30 minutes after their evaluated finishing time on the morning portion (clause 48.03(b)), and they did so with the knowledge of the employer, which did not intervene to ensure compliance with the collective agreement.

[37] The disposition of the arbitrator's award reads as follows:

[TRANSLATION]

FOR ALL THE REASONS SET OUT ABOVE:

[25] **I ALLOW** grievances 277-10-00013, 00016, 00019, 277-12-00001, the parties having agreed to apply my decision to grievances 277-10-00012, 00017, 00020, 277-12-00002;

[26] **I FIND** that the employer breached Appendix BB of the collective agreement by permitting letter carriers to choose to not return to the postal installation for their meal period even though they did not have individual circumstances that would allow them to make that choice;

[27] **I FIND** that, because of the employer's breach of Appendix BB of the collective agreement, letter carriers began delivering the afternoon portion of their route before the official start time in the afternoon or before 30 minutes after their evaluated finishing time on the morning portion, and they did so with the knowledge of the employer, which permitted the breach of clauses 48.08(b) and 48.03(b) of the collective agreement;

[28] **I ORDER** the employer to cease this practice, which is contrary to the collective agreement;

[20] I WILL REMAIN SEIZED of all the grievances to resolve disagreements that may arise in the application of my decision and to determine the quantum, if necessary.

IV. **Interpretation of the arbitration award by the parties**

[38] The evidence clearly shows that the parties were not reading the arbitration award in the same way, and there is no evidence leading me to think that either party acted in bad faith.

[39] The Corporation understood from the arbitration award that it was breaching the collective agreement because it was permitting employees to avail themselves of Appendix BB without citing individual circumstances. The Corporation therefore stopped assuming that

employees who decided not to return to the postal installation for the meal period had made this choice because of individual circumstances, and it agreed to apply Appendix BB only to employees who made the request by citing individual circumstances. Ms. Allard indicated in her evidence that the parameters in Articles 14 and 48 applied from then on to all employees with the exception of those who had asked to benefit from Appendix BB and had cited individual circumstances. Ms. Allard also stated that she was checking to ensure that employees who were not benefiting from Appendix BB were complying with the schedule.

[40] The evidence showed that some employees had, in fact, asked the Corporation if they could avail themselves of Appendix BB for individual circumstances. The union opposed the filing of the employees' written requests because, in the absence of evidence from the persons who made those requests, they were hearsay. This objection was dismissed. The employees' written requests were not evidence of their contents (for example, the fact that Ms. X cited a particular circumstance in her written request does not establish the truth of the circumstance cited by Ms. X), but they were admissible to establish that Ms. Allard received requests from the employees in question, that the requests referred to individual circumstances and that the Corporation considered that the circumstances cited were individual circumstances in the sense that Arbitrator Gagnon intended.

[41] Moreover, the Corporation continued to interpret Appendix BB as permitting employees who took advantage of it for individual circumstances to take their meal period wherever and whenever they chose. From the Corporation's point of view, the privileges arising from the application of Appendix BB were not changed by the arbitration award. The Corporation

interpreted Appendix BB prior to the arbitration award, and has continued to interpret it since the arbitration award, as permitting a complete deviation from Articles 14 and 48 of the collective agreement. Thus, in the Corporation's view, employees to whom Appendix BB applies may leave the postal installation in the morning with their mail for the morning and afternoon portions of their routes. Those employees have to do their morning deliveries, and when they finish, they may take their 30-minute meal period regardless of the time they finished their morning deliveries. Those employees may then begin their afternoon deliveries regardless of the time they end their meal period.

[42] Accordingly, the respondents submitted that they had complied with the arbitration award because all the employees who, according to the Union, had contravened the schedule set out in the collective agreement had made requests in which they cited individual circumstances and therefore were not required to wait until 12:30 p.m. to begin their afternoon route.

[43] The Union reads the arbitration award differently. First, the Union understands from the arbitration award that the Corporation could not assume that employees had individual circumstances unless they formally cited individual circumstances. This aspect is consistent with the Corporation's interpretation.

[44] In addition, the Union considers that the arbitration award also confirmed that, where Appendix BB applies to an employee, it permits the employee to take his or her meal period where the employee chooses but in compliance with the meal period, which must be from 12:00 to 12 30 p.m. In the Union's view, the only privilege arising from the application of Appendix

BB is not being required to return to the postal installation for the meal period. Hence, employees who benefit from Appendix BB because of individual circumstances may leave the installation in the morning with their afternoon mail but may not begin delivering their mail assigned to the afternoon portion of their route prior to 12.30 p.m.

[45] The Union contends that the arbitrator implicitly endorsed its interpretation of Appendix BB in the arbitration award. It maintains that it is clear from the award that the arbitrator understood that the crux of the dispute was that the Corporation permitted employees to begin delivering the mail assigned to the afternoon portion of their route in the morning. The Union submits that it is also clear from Appendix BB that the only deviation permitted is in the place where the meal period is taken and that it is obvious that the Appendix does not permit advancing the time at which they begin delivering the afternoon mail.

[46] For their part, the respondents submit that the scope of the arbitration award is not as clear as the Union suggests and that their interpretation is reasonable. They maintain that they cannot be found guilty of contempt of court in this context.

[47] The evidence establishes that certain employees did not leave their afternoon mail at the office and did not wait until 12:30 p.m. to begin their afternoon route. The evidence also shows that all those employees had made requests to the Corporation, citing individual circumstances. Thus, if the Corporation's interpretation is accepted, the respondents did not breach the arbitration award because all the employees who deviated from the schedule in the collective agreement had cited individual circumstances under Appendix BB. On the other hand, if the

Union's interpretation is accepted, the respondents did contravene the arbitration award because the Corporation permitted employees to begin their afternoon route prior to 12:30 p.m. even though Appendix BB does not permit deviating from this rule. Therefore, it is necessary to determine whether the award clearly decided in favour of one interpretation over the other.

V. **Analysis**

[48] I find that the arbitration award is not sufficiently precise regarding the scope and interpretation of Appendix BB and especially regarding the conduct that the Corporation and the two respondents had to adopt with respect to the extent of the privileges granted to the employees who benefited from Appendix BB.

[49] I agree that part of the award is clear. It is obvious that the arbitrator determined that the Corporation had breached the collective agreement because it allowed all employees to take advantage of the benefits derived from Appendix BB without verifying whether the employees had cited individual circumstances that would justify availing themselves of the deviating provisions of the Appendix. It is clear from the arbitration award that the arbitrator determined that the Corporation's practice of assuming that employees who did not return to the postal installation for the meal period were making that choice because of individual circumstances did not comply with Appendix BB. The arbitrator stated that the evidence did not show that the employees had cited individual circumstances and that ending delivery of the morning mail early did not constitute an individual circumstance.

[50] The evidence shows that the Corporation ceased this practice and that the only employees who can now benefit from Appendix BB are those who have made a request and have cited individual circumstances. The evidence also indicates that the Corporation deals with employees' requests by applying the definition of the expression "individual circumstances" set out in the arbitration award.

[51] I agree with the Union that the component linked to the existence or non-existence of individual circumstances did not resolve the entire dispute raised in the grievances because the crux of the problem was the interpretation of the benefits derived from the application of Appendix BB. The dispute included the issue of the scope of the deviations permitted by Appendix BB. Apart from the issue of individual circumstances, the dispute concretely raised the issue of whether Appendix BB is limited to permitting employees who benefit from it to take their meal periods at a location of their choice or whether it also permits them to choose the time at which they may take their meal period.

[52] The Union submits that it is implicit in the arbitration award that the arbitrator endorsed its interpretation of Appendix BB. With respect, I do not concur.

[53] I recognize that the arbitrator correctly set out the dispute between the parties and the respective positions of the parties, but these references in the arbitration award are not sufficient to conclude that the arbitrator interpreted the scope of the deviations permitted by Appendix BB or that she endorsed the interpretation proposed by the Union.

[54] In addition, the arbitrator did not expressly address the scope of the deviations from Articles 14 and 48 of the collective agreement set out at Appendix BB. The reasons and the disposition of the arbitration award clearly state that Appendix BB can apply only where an employee has individual circumstances. The arbitrator did not, however, expressly address the extent of the latitude enjoyed by employees to whom Appendix BB legitimately applies. The arbitrator did not specify whether the application of Appendix BB resulted in a complete deviation from Articles 14 and 48 or whether the only benefit derived from it related to the place where the meal period could be taken.

[55] It is possible that the arbitrator decided that it was not necessary for her to address the interpretation of the deviations permitted by Appendix BB because she had already determined that the Corporation had breached the collective agreement by applying Appendix BB in circumstances that did not permit its application. Therefore, once the arbitrator determined that the Corporation had erred by applying Appendix BB, it was not necessary, to dispose of the grievances, that she rule on the benefits that would have resulted from the application of Appendix BB had it been applied with regard to the employees who met the requirements to avail themselves of it. This hypothesis would explain why the arbitrator did not expressly deal with the scope of the benefits derived from Appendix BB.

[56] It is also not impossible that the arbitrator wanted to implicitly determine the scope of the benefits derived from the application of Appendix BB, but if that is the case, the arbitration award is clearly too imprecise to conclude that she intended to endorse the interpretation proposed by the Union. The Union submits that it is obvious that Appendix BB allows only

employees who benefit from it to not return to the postal installation to take their meal period and that even Mr. Rhainds acknowledged that Appendix BB should not be used to leave early.

[57] With respect, that is not what the evidence showed. Ms. Allard stated that Mr. Rhainds had indicated that the benefit of Appendix BB should not be used by employees solely to leave early and that employees had to present individual circumstances specific to them. Moreover, the Union objected to the admission of Mr. Rhainds' comments because he did not testify and those comments were reported by Ms. Allard. Ms. Allard's testimony on Mr. Rhainds' comments was admissible to establish what she had understood from Mr. Rhainds' comments, and her testimony does not support a finding that Mr. Rhainds understood from the arbitration award that the arbitrator had adopted the interpretation of Appendix BB proposed by the Union.

[58] In the arbitration award, the arbitrator stated that finishing the delivery of the morning mail early was not a circumstance specific to an employee. The fact that an employee must have individual circumstances to be able to benefit from Appendix BB does not, however, negate the fact that the application of Appendix BB will result in the employee ending his or her work day before 3:00 p.m.

[59] In addition, the Union has not satisfied me that the interpretation adopted by the Corporation to the effect that Appendix BB results in a departure from Articles 14 and 48 of the collective agreement in their entirety is unreasonable. I am also not of the opinion that the interpretation adopted by the Union is unreasonable.

[60] In any event, it is not for the Court to usurp the arbitrator's role and to interpret the provisions of the collective agreement and determine the extent of the deviations permitted by Appendix BB. However, it appears that a disagreement about the scope of the arbitration award arose between the parties after the award was rendered, and I find that, *a priori*, neither of the two interpretations is unreasonable.

[61] I consider that the arbitration award does not give any insight into whether and why the arbitrator interpreted the scope of the deviations permitted by Appendix BB and that it does not clearly dictate how the respondents were to interpret Appendix BB when they applied it to employees who had actually cited individual circumstances. In the absence of a specific reference in the reasons or the disposition of the arbitration award, I find that the arbitration award is not sufficiently clear and precise to give rise to a finding of contempt of court. There remains an ambiguity as to whether or not the arbitrator dealt with the scope of the deviations permitted when Appendix BB is applied. In addition, if the arbitrator dealt with it implicitly, I consider that her award is not sufficiently precise in this regard to ground a finding of contempt of court.

[62] I find, as I found in *Canada Post Corporation*, at para 38, that the comments of Justice Cattanach in *International Brotherhood of Electrical Workers, Local Union No. 529 v Central Broadcasting Co.*, [1997] 2 FC 78 at para 58, 82 apply in this case:

> 58 . . . When the Board's order is filed and registered with this Court it is for the purpose of enforcement by the processes of this Court. Viewed realistically, even when filed and registered in this Court the order remains the order of the Board. Because the order of the Board is final and not subject to question or review by any court, except in accordance with section 28 of the Federal Court

> Act, it is not the function of a judge of the Trial Division to amend the order of the Board to make that order enforceable. The order of the Board, even when filed and registered under section 123, remains inviolate. That, in my view, is the clear intention of Parliament as expressed in section 122 of the Canada Labour Code. In my view, the proper forum in which to amend an order of the Board is the Board itself and I expressed that view, to which I still adhere, on several occasions to counsel for the applicant during the course of the hearing of the motion. It is not the function of the Trial Division to anticipate what the Board may have meant as expressed in its order and to substitute what it thinks the Board may have meant to do, but did not do, by amending the Board's order accordingly. To do so would be to usurp the function of the Board.
>
> . . .
>
> 82 If this Court is to punish a person for not carrying out an order of the Board, which, by virtue of section 123 of the Canada Labour Code, becomes an order of this Court for the purpose of enforcement when filed and registered, that order must direct what is to be done in clear and unambiguous terms and this, for the reasons I have given, the Board has failed to do.
>
> [Emphasis added.]

[63] I recognize that, despite the arbitration award, the parties are still at an impasse in terms of the scope of the benefits that flow from Appendix BB and the deviations it permits from Articles 14 and 48 of the collective agreement, but, in my opinion, this impasse cannot be resolved through this contempt of court proceeding.

[64] For all these reasons, this application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT IS that the contempt of court proceeding be dismissed with costs in favour of the respondents.

"Marie-Josée Bédard"

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-422-14
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PLACE OF HEARING:	MONTRÉAL, QUEBEC
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JUDGMENT AND REASONS	BÉDARD J.
DATED:	MARCH 20, 2015

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