

Case Name:
**Vancouver (City) Board of Parks and Recreation
v. Canadian Union of Public
Employees, Local 1004 (SR Grievance)**

**IN THE MATTER OF an Arbitration
Between
City of Vancouver, Vancouver Board of Parks
and Recreation (the "Employer"),
and
Canadian Union of Public Employees, Local 1004 (the "Union")**

[2009] B.C.C.A.A.A. No. 138

No. A-104/09

**British Columbia
Collective Agreement Arbitration**

Panel: Mark J. Brown (Arbitrator)

Award: November 23, 2009.

(19 paras.)

Labour Arbitration -- Process and procedure -- Grievances -- Settlement.

The parties sought clarification of a provision in a settlement agreement. The grievor was a paper picker. She was disciplined for inappropriate conduct and insubordination and ultimately terminated from her employment. A settlement agreement was entered into which provided that the grievor be called in for 15 eight hour shifts prior to or after the normal May to September paper picker season. The issue was whether the settlement agreement obligated the employer to provide the grievor with 15 eight hour shifts prior to or after the normal May to September paper picker season on an ongoing basis, or whether the employer needed to do so on a one time only basis.

HELD: Grievance allowed. The grievor was not entitled to work special train events. The alternate shifts were to be assigned on an ongoing basis and not just a one time event in 2008.

Appearances:

Gregory J. Heywood, for the Employer.

G. James Baugh, for the Union.

AWARD**1 ISSUE**

1 In a grievance dated January 3, 2007, the grievor (referred to in this decision and a previous decision as "SR"), claimed that she had "been excessively disciplined in two (2) letters dated Dec 6th, 2006 from Alison Dempsey including no available shifts with Train Events".

2 The grievor is a paper picker in Stanley Park and works the normal paper picking season from May to September. She also picked up extra shifts on the special train events (Ghost train in October and Christmas train in December).

3 At an arbitration in April of 2008, the parties reached the following Settlement Agreement:

The grievance dated January 3, 2007 shall be resolved on a without prejudice basis as follows:

- 1 The Employer shall call in SR for 15 eight hour shifts prior to or after the normal May to September Paper Picker season. The work shall involve paper picker or alternate in the sanitation department. SR shall be given at least 48 hours notice, or a maximum of one weeks notice of call in.
- 1 The two letters dated December 5, 2006 on SR's personnel file shall be amended as follows:
 - 1 The amendments proposed by the Employer in a letter dated June 14, 2007 shall be incorporated.
 - 1 The "inappropriate conduct" letter shall be amended by placing a period after the word "substantiated" at the top of page 3; and delete the balance of the sentence.
 - 1 The "insubordinate behaviour" letter shall be amended by amending the last sentence of the second last paragraph on page 4 as follows:

"You have shown an inability to do so and therefore the parties have agreed that (sic) will not work any further shifts with the train and you will be provided with alternate shifts in sanitation".

1 In the event of any further perceived acts of harassment or inappropriate conduct from a co-worker, the parties acknowledge that the grievor can consult with the Union or other advisors prior to initiating any formal or informal complaint with the Employer, providing a decision is made on a timely basis whether to pursue a complaint or not.

1 With the exception of the fact that SR will not be scheduled to work on the train, the settlement is confidential. SR nevertheless may discuss the terms of settlement with direct family, the Union and Union Counsel.

4 SR was terminated by the Employer in October of 2008. In an Award dated September 21, 2009, I reinstated SR and substituted a five day suspension without pay. I remained seized of the matter if the parties could not sort out monies owing.

5 In a letter dated October 23, 2009, I was advised that a dispute over a provision in the April 2008 Settlement Agreement had arisen. The issue was whether the Settlement Agreement obligated the Employer to provide SR with 15 eight hour shifts prior to or after the normal May to September paper picker season on an ongoing basis, or whether the Employer needed to do so on a one time only basis.

6 The parties agreed to deal with the matter by way of written submission. The agreed upon submission process was completed on November 5, 2009. Following that date, I received further submissions from the parties regarding the scope of the Union's final reply. Given my analysis set out below, it was not necessary to consider the submissions received after November 5, 2009.

1 DECISION

7 I have reviewed the authorities cited by Counsel; however, I do not intend to review them in this decision.

8 The Union argues that SR's seniority and pertinent Collective Agreement provisions allow SR to access the shifts on the train in addition to her normal paper picking work. In exchange for not pursuing her rights to work on the trains on an ongoing basis, the Settlement Agreement obligates the Employer to provide 15 eight hour shifts in sanitation on an ongoing basis. The Union argues that there is no temporal limitation to the provision of the alternate shifts. Reading the Settlement Agreement in context, the Union argues that it cannot be read to mean that in exchange for giving up all future train shifts, SR agreed to a one time only 15 eight hour shift addition to her normal schedule.

9 The Employer argues that there is no doubt that the removal from SR from the train is a permanent removal. On a plain reading of the Settlement Agreement, the Employer argues that the language in the discipline letter merely refers to the obligation to schedule alternate shifts in sanitation. The description of that obligation is dealt with comprehensively in point #1 of the Settlement Agreement, which results in the 15 hours being provided on a one time only basis.

10 I agree with the Employer that the removal of SR from the trains is a permanent one. The original "insubordinate behaviour" letter stated in part that SR "will not be provided with any further auxiliary shifts with the train events".

11 The Settlement Agreement amended the letter to read in part that SR "will not work any further shifts with the train and you will be provided with alternate shifts in sanitation".

12 It is not disputed that SR, absent the Settlement Agreement, would have been entitled to shifts on the trains. In exchange for agreeing with the amended contents of the discipline letter, the issue is whether the parties agreed that the 15 eight hour shifts were to be scheduled every year or only once.

13 I conclude that the situation must be viewed in its entirety and that the issue can be decided on a plain reading of the Settlement Agreement read as a whole.

14 In December of 2006, SR was issued with the discipline letter in question. It removed her from all future train shifts. The grievance was filed in January of 2007, but not set down for hearing until April of 2008. By that time SR had missed all train shifts for October and December of 2007.

15 At the arbitration in April of 2008, the parties agreed to mediate a resolution to the dispute. The Settlement Agreement is framed on a go forward basis (i.e. it does not compensate in any way for shifts missed in 2007).

16 I do not read the Settlement Agreement as a whole as limiting the removal from the train and the 15 alternate shifts as a 2008 issue only. In the discipline letter, SR is removed from the trains permanently, and "will be provided with alternate shifts in sanitation". The removal from the trains cannot be read to be a permanent situation, and then read the alternate shift assignment as a one time event for 2008 only.

17 Point #1 sets out when the alternate shifts are to be assigned, which is "prior to or after the normal May to September paper picker season". There is no limitation to 2008 only. Requiring the shifts to be assigned outside the normal paper picking season also ensured that the shifts were additional shifts, as the train shifts would have been.

18 Point #1 also sets out the number of shifts which was calculated as the shifts that would have worked on the train had SR been assigned to those events.

19 Accordingly, I conclude that reading the Settlement Agreement as a whole and reviewing its plain language, SR's removal from the trains is permanent and the alternate shifts are to be assigned on an ongoing basis not just a one time event in 2008.

Mark J. Brown

Dated this 23rd day of November, 2009

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---- End of Request ----

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