In the Matter of an Arbitration

Between

GardaWorld [employer]

And

IAM, District 140 [union]

And

In the Matter of October Monthly Review

Before: M. Brian Keller, arbitrator

Stefan Prabhu, for the employer

Tayeb Lharti, for the union.

Hearing by videoconference October 21, 2021. Further submissions made orally and by video conference on various dates

The union filed a number of grievances alleging that the employer has violated the applicable overtime provisions of the collective agreement in not paying employees at overtime rates for hours worked in excess of 40 hours per week. It is agreed between the parties that the policy grievance was filed on behalf of 14 employees.

I have considered the provisions of the collective agreement, the documents filed by the parties, as well as the oral and written representations made to me. It is my determination, that the grievances are well-founded and, therefore, succeed.

The parties jointly agreed, as indicated above, that there are 14 grievors dealt with by this award. They further agreed, in an Excel document sent to me, who the grievors are and the amount payable to each of them in the event the grievance succeeds. Consequently, the employer is Ordered to pay each of the grievors the amount provided in the Excel document, less normal deductions, within 30 days of the date of this award.

As I have determined that the employer has violated the applicable overtime provisions in the collective agreement, it is further Ordered that the employer is to cease and desist its existing practice dealing with the issue raised by the grievances and is to abide fully by the applicable provisions of the collective agreement.

I remain seized to deal with any issues arising from this award, including, but not limited to, the payment to individual grievors and any future issues relating to this issue in the event that the union alleges that the employer is not abiding by the applicable overtime provisions of the collective agreement.

Ottawa this 12th day of December, 2021

M. Brian Keller, arbitrator

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Grievance SC 15616

The Union alleges that the employer changed the rule for recalled screeners from layoff who had been away for more than 30 days. It alleges that the actions of the employer violated article 22 of the collective agreement which references Company Rules.

The employer, in response, stated that the rule change was initiated by CATSA and that, as the clients of CATSA, they were required to follow their rules. It further indicated that the training was "blended", and was only temporary.

Article 22 gives wide latitude to the employer and allows them to establish, maintain, and enforce or rescind, amend or change reasonable rules and regulations, provided such rules and regulations are not in conflict with the provisions of this Agreement. The training requirement falls, in my opinion, squarely within the rights reserved to the employer under article 22.

To the extent that the employer may not have informed the union of the new testing requirement, they should have pursuant to article 22.2, and are required to do so in the future.

The grievance is dismissed.

Ottawa this 15th day of November, 2021

M. Brian Keller, arbitrator

Grievance SC-15621

The Union alleges that the employer breached an agreement to deal with the promotion of TTLs out of seniority order.

On a careful review of the promotions made, it is my opinion, and I so find, that there is no violation of either the collective agreement or whatever agreement was reached between the union and the employer.

The grievance is dismissed.

Ottawa this 15th day of November, 2021

M. Brian Keller, arbitrator

Grievance SC 15591

When layoffs occurred, a number of laid-off employees made a request for their vacation pay. The employees had been notified of their layoff status effective January 17, 2021.

The provisions of the Canada Labour Code do not apply as there was no termination of employment. The collective agreement, however, has specific provisions with respect to the payout of vacation. The relevant provision is article 13.3, which provides that up to 50% of the vacation weeks will be paid out yearly upon employee's request. It further provides that the payment will be made during the last period of vacation taken by employees.

According to the employer, employees were notified of their impending layoff status 30 days prior to January 17, 2021, and were given an opportunity to request their vacation payout. It claims that any requests received during that period were honoured.

If a claim was made by an employee and that claim was not honoured by the employer, it shall be honoured immediately, if so requested by the employee. To that extent, the grievance is allowed.

I remain seized as required.

Ottawa this 15th day of November, 2021

M. Brian Keller, arbitrator

Grievance SC 15593

The employer provided layoff notice to be effective January 17, 2021. Full-time screeners who were affected were offered part-time status on a temporary basis effective that same date. Consequently, those employees held full-time status only from January 1, 2021 until January 17, 2021.

Article 28.3 of the collective agreement governs how sick leave is accumulated and carried over from one year to the next. First, it provides that sick day benefits will only be available to full-time employees. Consequently, no part-time employees, including those who status was changed as of January 17, 2021 were entitled to accumulate sick days as of that date.

Two, the accumulation of sick days is on the basis of one day for each three full calendar months worked. Accordingly, the number of days worked as full-time employees were not sufficient to accumulate any sick days.

Three, sick days cannot be carried over from one year to the next. Those employees who were full-time on December 31, 2020, were entitled to be paid accumulated sick days by January 30, 2021.

Once the status of the full-time employees was changed to part-time, their rights to accumulate sick leave ceased. However, if accumulated sick leave was not paid as required by the collective agreement, they are so entitled.

The parties are to meet to determine if any employees is entitled to the pay out as described above. In the event the parties are not able to conclude this matter it will be remitted to me for determination.

To that extent described above only, the grievance is allowed.

Ottawa this 15th day of November, 2021

M. Brian Keller, arbitrator

Grievance SC 14822

The Union alleges that the employer changed the long-standing practice at the workplace regarding on the clock, paid change time for NPSV (non-passenger screening vehicles).

On at least three occasions over the last few years the employer has put employees on notice that they are to be ready to report for duty when punching in. That rule does not appear to have been enforced. While, contractually, the employer has the right to promulgate such a rule, in the instant case the problem arises because the rule has never been enforced.

Accordingly, the employer is estopped for the remainder of the collective agreement from enforcing its rule. It may do so, however, at the end of the current collective agreement unless otherwise agreed by the parties.

Effective seven days following the date of this award, the pre-existing practice shall prevail.

The grievance is allowed as provided above.

Ottawa this 15th day of November, 2021

M. Brian Keller, arbitrator

Grievance SC 15554 and 15609

The collective agreement provides the rules for work schedules. There is no guarantee as to the number of 40- hour schedules. It provides that there shall be the maximum of 40- hour schedules possible, but subject to a number of factors. It requires the employer to have more 40- hour shifts than part-time shifts, but does not provide any clarity, except that the amount of 40- hour bids would remain the same as at the last shift bid as long as the budget for hours remains the same as at the last shift bid.

The result is that the employer has significant flexibility and is constrained only by what is provided for specifically in article 8.5.

The one remaining constraint is that a part-time employee is one who works less than 24 hours per week on a regular schedule. The corollary is that any part-time employee who works 24 hours per week or more on a regular schedule is not a part-time employee but, rather, a full-time employee and entitled to all the benefits as such.

The employer is required to follow the provisions of the collective agreement in terms of scheduling the number of hours for employees and in terms of their classification, having regard to what is written above.

I remain seized as required.

Ottawa this 15th day of November, 2021

M. Brian Keller, arbitrator