

Implementation award

**IN THE MATTER OF
AN INTEREST ARBITRATION**

BETWEEN:

OPSEU

and

LCBO

Before: William Kaplan
Sole Arbitrator

Appearances

For the LCBO: Paul Boniferro
McCarthy Tetrault
Barristers & Solicitors

For OPSEU: Don Eady
Paliare Roland
Barristers & Solicitors

Jodi Martin
Paliare Roland
Barristers & Solicitors

The matters in dispute proceeded to a hearing in Toronto on March 21, 2017.

Introduction

On February 10, 2017, an award was issued. That award must be placed in context. It was issued following a lengthy and complicated mediation/arbitration. That mediation/arbitration arose following the settlement of an HRTO complaint on the eve of its hearing. The award sought to carefully balance the competing interests of the parties. In the aftermath of the issue of that award, two implementation issues arose. The parties had specifically requested that I remain seized to deal with any implementation dispute, and that dispute proceeded to a hearing held in Toronto on March 21, 2017.

The Issues

The parties sought clarification on two issues, it being agreed at the hearing that a third one – whether the Sunday premium had been eliminated for all retail employees – had been resolved. The Sunday premium was eliminated for all retail employees. With respect to the remaining two issues, both parties made detailed submissions, all of which have been carefully considered.

The Award

The award provided the following:

Sunday Premium

Eliminated effective April 1, 2017 for PFT CSRs and Retail POS/Help Desk employees. Parties directed to amend Article 7 of the collective agreement so as to provide that PFT CSRs and Retail POS/Help Desk employees working on Sundays will be scheduled on a rotational basis so that no one in either of these groups will work more than one (1) Sunday in every four (4) to a maximum of thirteen (13) in a fiscal year. Moreover, no PFT CSR or Retail POS/Help Desk employee will be scheduled to work a Sunday directly following a Saturday that is their regular scheduled day off. A PFT will have two (2) consecutive scheduled days off in the week they work a Sunday.

Agency Stores

Effective date of award, and notwithstanding LOU re Agency Stores, for every agency store that is repatriated the employer may open a new agency store.

Issue One

Whether Sunday was now to be scheduled as a regular day of work

As noted above, the Sunday premium was eliminated for all retail employees effective April 1, 2017. Prior to that date, approximately twenty percent of the full-time employees worked on Sunday and enjoyed the premium. The award, therefore, introduced scheduling protections for full-time employees. The award remitted the actual negotiation of those new scheduling provisions to the parties so that they could agree on them, and on consequential amendments to the collective agreement. The only reason the protections were introduced was because Sunday was to become, with the elimination of the premium, a regular workday. The parties were *directed* to amend Article 7 to give effect to the fact that the regular workweek is now Sunday through Saturday and to incorporate the newly awarded protections.

Unfortunately, a dispute arose and I am confirming what was set out in the earlier award. Sunday is, with the elimination of the premium, a regular workday for all retail employees. The union's submissions on this point, if accepted, would have almost completely negated the impact of the change rendering it almost meaningless. As Sunday is now a regular workday, Sunday work is not, and cannot, be voluntary. Sunday is the third busiest day of the week and the employer sought as its main priority in the mediation/arbitration that it be treated as a regular work day allowing it to schedule a mix of employees without attracting any premium (other than overtime where appropriate). The award then introduced protections for full-time employees

who were losing an important benefit because of that change. The award is a simple and straightforward as that.

As earlier observed, although it bears repeating, the awarded provision was the result of an extended mediation/ arbitration process and it was one that sought to carefully calibrate the outcome. The employer's proposed collective agreement provisions dealing with this issue only, as set out in its brief submitted at the March 21st hearing, are, therefore, awarded as either necessary to give effect to the award, or because they are made necessary for housekeeping, or because deletions are now necessary because certain provisions have become moot, for example the Letter of Agreement – Sunday Openings. This in no way amends or supplements the award: it gives direct effect to it. The parties could have and should have done so themselves (including necessary housekeeping changes) as a result of the direction given in the initial award. This award merely implements that direction. As discussed at the hearing, nothing in this award affects overtime provisions as they are otherwise engaged.

Issue Two

Impact of the awarded provision on existing Letter of Agreement Re: Agency Stores

The award could not be more clear. It indicates that notwithstanding the provisions of the Letter of Agreement Re: Agency Stores, the employer can open a new agency store if it repatriates an existing agency store. This is an entitlement separate and apart from what is set out in the Letter of Agreement Re: Agency Stores. The purpose of the provision was to provide additional relief not to circumscribe what was already in place, and to do so in an extremely modest, digestible and fair-minded fashion. The Letter of Agreement Re: Agency Stores, with all of its many protections for the union,

and restrictions on the employer, continues. The parties are, accordingly, directed to incorporate the specific language of the award in a separate Letter of Agreement Re: Repatriation and to include it in their collective agreement.

Conclusion

It was agreed at the hearing, and at the request of the parties memorialized here, that nothing in this award in any way affects the ability and entitlement of either party to make bargaining proposals in the current round. At the request of the parties, I continue to remain seized with respect to the implementation of my award.

DATED at Toronto this 27th day of March 2017.

“William Kaplan”

William Kaplan, Sole Arbitrator