

SEP - 5 2008

IN THE MATTER OF AN ARBITRATION

BETWEEN:

IPSCO SASKATCHEWAN INC.

COMPANY

AND

**UNITED STEELWORKERS, LOCAL 5890
UNION GRIEVANCE - GROUP**

UNION

AWARD

Arbitrator Kenneth A. Stevenson, Q.C.

Held in Regina: August 15, 2008.

For the Union Michael J. Park

For the Company Larry LeBlanc, Q.C.

Award Date: September 2, 2008.

AWARD

I. INTRODUCTION

1. The parties agree that I have been properly appointed as a single arbitrator with jurisdiction to hear and determine the issues raised by the Union's Group Grievance dated October 15, 2007 filed on behalf of three (3) employees. The material parts of the grievance read as follows:

Nature of Grievance: On Monday Oct. 8/07, the recognized Thanksgiving statutory holiday, four employees from "C" shift were working on maintenance issues in the 24" ERW finishing mill. The regularly scheduled crew to work this day shift was "D" shift. The company posted notice on Oct. 4/07 that the 24" finishing will not be working the stat. holiday at all. No one from the regularly scheduled "D" shift was asked to come in to work overtime on this day even though it was their shift to work (regularly scheduled shift).

Article Violation: Article 8.11 (General Provisions), Article 9.01, Article 10.01, Article 10.03, Article 10.07, all other articles, acts, legislation that are applicable.

Settlement Requested: "D" shift electrician, the two senior employees on "D" shift paid time and one half for twelve hours (since it was their regular shift).

II. FACTS AND ISSUES

2. The grievance questions the propriety of the Employer's selection of employees to work a twelve-hour shift on Thanksgiving Day, Monday, October 8, 2007. Thanksgiving Day is a paid holiday under the Collective Agreement.

3. In October, 2007, the 24" ERW consisted of two main departments, the welding line and the finishing line. The welding line normally operated seven days each week with one twelve-hour shift and a reduced staffing of two employees on the night shift. The finishing line was normally operating seven days each week on two twelve-hour shifts, staffed by four rotating employee teams ("A", "B", "D" and "E" Teams), consisting of approximately eleven employees each. On Wednesday, October 3, the Employer posted a notice to its employees pursuant to Article 10.01 concerning scheduled operations for Thanksgiving Day. The notice provided that both the 24" ERW welding line and finishing line "***WILL NOT BE working***"

on Thanksgiving Day, Monday, October 8. The notice provided that the only employees scheduled to work on Thanksgiving Day were the spiral finishing and spiral DJ at a reduced crew level, as well as some maintenance employees.

4. On Thanksgiving Day four employees from the finishing line "C" Team worked from 6:00 a.m. to 6:00 p.m. performing repairs and maintenance on the 24" finishing line which was not in production. Based on the scheduled rotation, the "C" Team would have been scheduled to work the night shift on Monday, October 8 from 6:00 p.m. to 8:00 a.m., Tuesday. The grievance claims that the Employer violated the Collective Agreement when it brought four "C" Team employees to work during a time that on a normal scheduled rotation would have been a shift worked by the "D" Team. The grievance is filed on behalf of an electrician and two production employees from the "D" Team.

III. RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT

Article 8.11 Shift Schedules in Excess of Eight (8) Hours

Implementation and Application

This Agreement sets out the conditions that shall apply for the institution of shift schedules greater than eight (8) hours.

It is understood and agreed that the provisions of this Agreement shall only apply to shift schedules greater than eight (8) hours

The respective Department Shift/Overtime Committee shall determine the shift schedules to be worked and failure to agree upon a shift schedule will result in a reversion to the provisions under the Basic Agreement. The Company's right to implement shift schedules and the Union's right to grieve shall not be inhibited by this Agreement.

For the purposes of this Agreement the implementation or termination of any work schedule shall not result in the payment of any overtime hours or any other premiums which would otherwise be applicable.

A day is a twenty-four (24) hour period beginning with the start of the employee's shift. The basic work day shall consist of consecutive hours established under this Agreement covering "SHIFT SCHEDULES IN EXCESS OF EIGHT HOURS", broken only by the established lunch periods.

General Provisions

1. Overtime

- (1) The Departmental Shift/Overtime Committee will deal with any overtime problems within their respective departments as they occur.

Any employee willing to work on his designated dead shift will place his name on a list provided for such purpose on a month to month basis. On a bi-weekly basis, employees willing to work overtime will place their names on an overtime list. Failure to obtain satisfactory lists shall result in the lists being forwarded to the Departmental Shift/Overtime Committee to obtain mutually agreeable lists for coverage. Inability to obtain necessary personnel for coverage will jeopardize this Agreement.

(in part).

3. Paid Holidays

- (i) Where a paid holiday falls on a scheduled shift, an employee may request that day off, provided that application is made at least 72 hours in advance of the holiday. The Company will advise when paid holidays are to be worked at least 72 hours in advance of the holiday. The Company will make an effort to replace the employee requesting the holiday off.
- (ii) Where a paid holiday falls on an employee's day off and the employee does not work on that holiday:
- (a) The employee shall be paid on a sum equal to eight (8) hours straight time pay, and
- (b) As per the present Collective Agreement, the employee's work shall be reduced by eight (8) hours and he shall be paid accordingly.
- (iii) An employee who works on his day off on any of the listed paid holidays shall be paid at the rate of two (2) times his standard hourly wage rate for the normal duration of his shift in addition to his pay for the listed holidays. Hours worked in excess of his normal shift on that paid holiday shall be paid at three (3) times his standard hourly wage rate.
- (iv) Where a paid holiday falls on an employee's scheduled day of work:
- (a) An employee shall be paid a sum equal to his standard hourly wage rate for the normal duration of his shift.
- (b) The employee shall be paid on a prorated basis for all hours worked on that paid holiday. For example:

Shift (Hour)	Overtime Rate
12	1.500
10	1.750
8	2.000 (not applicable)

- (c) Hours worked in excess of the normal hours for that shift shall be paid at the rate of three (3) times his standard hourly wage rate.

Article 9 – Overtime

Article 9.01

The Company shall give notice of overtime as far in advance as is practical. All overtime work shall be voluntary.

Article 9.09 – Overtime Distribution

- (a) Rotating Overtime

The Company shall attempt to rotate and spread overtime work as evenly as possible among the employees in the department in which the overtime occurs. It is understood that permanent employees shall have preference in the selection of overtime.

- (b) Call Book for Overtime – Production and Maintenance Employees Only

Any employee who would be willing to work overtime shall be required to place their name in an overtime book provided for such purpose by the Company.

Each shift or department shall maintain an overtime book. Such a book shall be accessible to the employees and/or Union Representatives in the department at all times.

Article 10 – Paid Holidays

Article 10.01

The following shall be considered as paid holidays:

New Year's Day, Good Friday, Victoria Day, Dominion Day, 1st Monday in August, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day and New Years Eve, regardless of the day upon which they are observed or celebrated. All such holidays will be treated as those legislated in the Labour Standards Act of Saskatchewan. Should any of the above-mentioned holidays fall on an employee's scheduled day off, he shall be granted one extra day without pay on his annual vacation.

Article 12 – Seniority

Article 12.02 – Seniority and Job Opportunity

- (a) 1. Production and Maintenance Employees Only

The parties recognize that job opportunity and security shall increase in proportion to length of service. It is therefore agreed that (subject to Article 12.01) senior employees shall be entitled to preference in all cases of job posting, transfer, lay-off, vacations, and rehiring after lay-off.

(in part).

Article 12.13

(a) Lay-off Because of Breakdown

When a breakdown of equipment or a lack of material or work occurs and an employee is sent home as a result thereof, such employee may be sent home without regard to seniority, provided that such total time lost by any such employee shall not exceed three (3) working days in any one calendar month. If an employee(s) is required to work, the most senior qualified person(s) on that particular crew will remain.

IV. POSITIONS OF THE PARTIES

Position of the Union

5. It is the Union's position that on the normal schedule rotation, the Grievors would have been scheduled to work the hours and shift during which the questioned overtime was worked. Because they would have been so scheduled, they are entitled to be assigned any work available during the relevant shift. Mr. Park says that an employee scheduled to work on a paid holiday is entitled to specific benefits. These include the right to request the day off (8.11.3) or to receive compensation for the paid holiday and premium rates for all hours worked (8.11.3(iv)). An employee scheduled to work on a paid holiday will be required to work unless he requests the day off. The Grievors did not request the day off.

6. Mr. Park submits that the Employer's decision to have the employees on the 24" finishing line not work the Thanksgiving Day paid holiday is tantamount to a lay-off due to a shortage of work. In the standard 24/7 operations of the Employer, the only rationale for the Employer to not work on Thanksgiving Day was its determination that there was a work shortage. In such circumstances, the Employer is obliged to recognize the seniority provision (12.02) and ought to have offered the overtime work on Thanksgiving Day to the Grievors who were the most senior qualified persons on the crew that would, on a normal rotation, have been at work when the work in question was performed. Mr. Park says that the

application of these provisions entitle the Grievors to the hours of repair and maintenance work performed by others on Thanksgiving Day. The Union says that in these circumstances, applying Article 12.13, that the 24” finishing employees did not work because of a shortage or lack of work and when work was available during the day shift on Thanksgiving Day, the particular crew that would have been working, if not sent home (for the paid holiday), has a proprietary right or claim to work done during what would otherwise have been their scheduled shift.

7. The Union requests an award of damages in favour of the three (3) Grievors in amounts which each would have earned if he had worked the twelve-hour shift on October 8, 2007. Mr. Park says that as a result of the Employer’s actions, the Grievors lost a day of work which they cannot regain by being offered a further opportunity to work an overtime shift. The Union suggests that the Employer’s actions were not necessarily taken in bad faith, but were certainly unfair to the Grievors. The Union says there is no practical way to provide the Grievors with an in-kind new overtime opportunity equivalent to the loss on the Thanksgiving Day paid holiday. This is so because on any subsequent paid holiday, the Grievors would either be working as scheduled or would have to be assigned work which should properly be performed by another employee thereby depriving that other employee of his work.

Position of the Employer

8. The Employer says that its actions on October 8, 2007 were in compliance with its obligations under the Collective Agreement. In accordance with Article 8.11.3(i), the Employer gave more than sufficient notice of its work schedule for the Thanksgiving Day holiday. The decision to operate or not operate is that of the Employer. Notice was given that the Employer would not operate most of the mill, including the 24” finishing line, where there would be no production. The Employer acknowledges that it did assign some repair and maintenance work to four finishing line employees from the “C” Team. It says such work was properly assigned to take advantage of the Employer’s limited opportunity to effect repairs in a normal 24/7 schedule.

9. The Employer says that the Collective Agreement recognizes a number of paid holidays, including Thanksgiving Day which the parties agree are to be “...*treated as those legislated in the Labour Standards Act of Saskatchewan*”. As such, the paid holiday should be considered and treated as a holiday or day of rest. The parties have agreed that the Employer will provide at least 72 hours advance notice if a paid holiday is to be worked. In this instance, the Employer gave notice that most of its employees would not work on Thanksgiving Day as they would otherwise have been scheduled.

10. The Employer says that having made its decision not to operate the 24” finishing line on Thanksgiving Day, the assignment of overtime during that day is governed by the normal overtime assignment provisions in the Collective Agreement. These provisions do not provide for a crew to have a preference to, or a priority or proprietary claim to any overtime available on a paid holiday. Such a right does not arise by implication, but must be found in precise language of a collective agreement. The Employer says the assignment of overtime was made in accordance with Article 9.09. There is no evidence nor a suggestion by the Union that the overtime assignment was improper or not in accordance with Article 9 which provision does not provide for the assignment of overtime work on a paid holiday to those employees for whom it otherwise would have been a scheduled day of work.

11. The Employer says there is no evidentiary or arbitral basis to support the Union’s suggestion that the observance of the Thanksgiving Day holiday is a lay-off or tantamount to a lay-off because of a lack of work. The Employer’s decision not to operate on Thanksgiving Day was simply a decision to observe the holiday and, in no way, could it be considered a temporary discharge or dispensation of services or temporary severance of the employment relationship. The Employer urges that Article 12.13 has no application to the observance of a paid holiday, rather, it is intended to and contemplates a temporary lay-off arising in emergent type circumstances.

12. While strenuously submitting that the Grievance ought not to succeed, the Employer says that if I should determine that there was a breach of the Collective Agreement, the only

appropriate remedy would be an in-kind one. The Employer says if it was mistaken in the application of the overtime provisions, then there should be no award of a monetary compensation for the claimed overtime where the employees were not required to render service.

V. DISCUSSION, ANALYSIS AND DECISION

13. The issue to be determined is whether the Employer breached the Collective Agreement when it utilized four employees from the “C” Team to perform twelve hours of repair and maintenance work between the hours of 6:00 a.m. and 6:00 p.m. on October 8, 2007. The issue might also be stated as, does the Collective Agreement provide employees with the right to the work performed on a paid holiday during what would have been the employee’s scheduled shift?

14. The parties agree that pursuant to the normal scheduled rotation, the “D” Team would have been scheduled to work the hours in question if that day had not been a paid holiday on which the Employer decided not to operate. The Union acknowledges that the Employer has the right to schedule its employees and in particular, to decide whether or not the Thanksgiving Day holiday was to be worked.

15. A notice given on Wednesday, October 3, advised the 24” finishing line employees (and most other employees), that the Thanksgiving Day was not to be worked. The Collective Agreement provides: *The Company will advise when paid holidays are to be worked at least 72 hours in advance of the holiday.* This provision places an onus on the Employer to provide notice if its intention is other than to honour the paid holiday as a day of rest. I understand that in recent times during the 24/7 operation, the Employer may have given such notices.

16. No evidence was presented by the Union to support its submission that the Employer’s decision not to work on Thanksgiving Day was due to a lack of, or shortage of work. The Employer did not present any evidence at the Hearing. There is no evidentiary basis on which I can conclude or make an inference that Article 12.13 would be applicable in

these circumstances, such that the grievors were “sent home” or not required or permitted to work because of a “lack of...work”. The only evidence before me is that the Employer decided to honour Thanksgiving Day as a paid holiday and not to require its employees to work on the holiday.

17. I do not accept the Union’s position that the Employer’s decision to honour the Thanksgiving Day holiday by not operating the Mill should be found to be tantamount to a lay off. To reach such a conclusion would be contrary to the recognized nature of a paid holiday in employment and arbitral jurisprudence, this Collective Agreement and *The Labour Standards Act of Saskatchewan*. There is no evidence of a reduction of the workforce and the status of the employees was unaffected. The Collective Agreement contemplates that a paid holiday will be honoured. It is only if the Employer gives the required notice that employees will be required to work on the holiday. The Collective Agreement contemplates that an employee scheduled to work a shift on a paid holiday may request the day off and the Employer will make an effort to replace the employee. This reflects an intent to honour the paid days off, yet to recognize operational needs.

18. Work performed by an employee on a paid holiday, is generally considered to be overtime work and is paid at the required premium rate. This is true for the subject Collective Agreement. No evidence was presented as to which premium rate was paid to the employees who did work on Thanksgiving Day.

19. Article 8.11.3(ii) addresses the rights and compensation of an employee who does not work on a paid holiday falling on his “day off”. Article 8.11.3(iii) provides for the rate of pay for such an employee who works on a paid holiday which is his day off. The rights and compensation entitlements for an employee whose “scheduled day of work” falls on a paid holiday are addressed in Article 8.11.3(iv). I am satisfied that Thanksgiving Day, 2007 fell on the Grievors’ scheduled day of work. The Employer’s decision that the “D” Team employees “will not be working” the paid holiday, does not, in this Collective Agreement in the context of a paid holiday, convert the day into a “day off” for these employees. As such the Grievors were entitled to be paid their standard hourly rate for the normal twelve hours of

their shift. Had the Grievors worked on Thanksgiving Day, each would have been entitled to the appropriate premium for all hours worked.

20. Having concluded that Article 12.13 has no application in this matter, I must determine if the Grievors were otherwise entitled to the overtime assignment on October 8, 2007. Article 9.09 addresses overtime distribution. There is no evidence, and it was neither grieved nor argued by the Union, that the overtime assignment on October 8, in the 24” finishing line, was improper, having regard to the rotation and spreading of overtime as required by Article 9.09.

21. The Union claims that an employee has a proprietary right to have any work performed on a paid holiday assigned to the employee who, under an operational schedule shift rotation would have worked at the time in question. Brown and Beatty, *Canadian Labour Arbitration*, (4th Ed), at para 5:3220 addresses proprietary rights to overtime assignments as follows:

Legislative enactments aside, it is generally agreed that unless there are specific provisions in the agreement to the contrary, or the assignment to a particular employee would be unsafe, or where an estoppel operates, employees do not have any right to have overtime work assigned to them, or to determine the amount of such overtime hours. Rather, overtime is perceived as simply one manner in which management may have its work performed. Thus, unless the agreement provides otherwise, it is assumed that management is free to have such work performed by reallocating it, or by rescheduling operations, recalling employees, or by instituting temporary transfers or promotions of personnel. Indeed, there appears to be a general consensus that management’s ability to assign the work in such ways, rather than have it performed on an overtime basis, is not restricted by a provision in the agreement requiring it to distribute overtime equitably amongst the employees who normally perform the work. Arbitrators have insisted, however, that the reorganization of work not be carried out arbitrarily or in bad faith...

The Union was unable to identify in the Collective Agreement any provision establishing such a right except for its claim as to the application of Article 12.13.

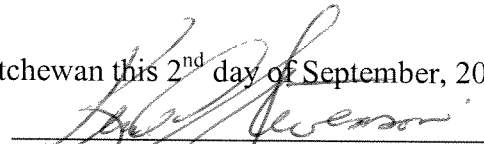
22. There is no suggestion of, nor evidence of bad faith or discriminatory action by the Employer, although the Union does say the Employer’s actions were “unfair”. I understand why the Grievors may feel or believe that they were entitled to the overtime assignment of an

entire shift performed on a paid holiday during what was their normal scheduled shift. The Employer did not offer any reason why it chose to assign this overtime work to the members of the "C" Team. However, any right to such work must be based on the Collective Agreement and established by the evidence.

23. The Employer's decision not to work, or to have any employees work, or be scheduled on the 24" ERW finishing line on October 8, is acknowledged to be within the Employer's discretion. Accordingly, the Grievors were entitled to the benefits provided by Article 8.11.3(iv). However, those benefits do not include a proprietary right to work performed on the paid holiday during the scheduled shift they would have worked, if the Employer had advised that Thanksgiving Day was to be worked.

24. For the foregoing reason, the Grievance is dismissed.

DATED at Saskatoon, Saskatchewan this 2nd day of September, 2008.



Kenneth A. Stevenson, Q.C.
Arbitrator.