[CUPW Translation]

ARBITRATION TRIBUNAL

CANADA
PROVINCE OF ONTARIO

Date: September 20, 2018

BEFORE ARBITRATOR: MAUREEN FLYNN

THE CANADA POST CORPORATION
Hereinafter referred to as “the Corporation”, “CPC” or “the employer”

and

THE CANADIAN UNION OF POSTAL WORKERS
Hereinafter referred to as “the Union” or “CUPW”

Collective Agreement: Collective Agreement for Rural and Suburban Mail Carriers (RSMCs) between the Canada Post Corporation (CPC) and the Canadian Union of Postal Workers (CUPW) – Expiry date: December 31, 2017, hereinafter referred to as “the collective agreement”

ARBITRATION DECISION

(In the matter of a Pay Equity Review Process for the Rural and Suburban Mail Carriers)

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1. INTRODUCTION

[1] In the present case, I issued my first arbitration award on May 31, 2018. I then ruled on several issues in dispute, including the comparator group for rural and suburban mail carriers ("RSMCs") and permanent relief employees ("PREs"), namely the letter carrier group. It was also decided that these jobs are of equal value[1]. In addition, it was determined that the comparative method of direct compensation used by the Union's consultant was more appropriate or fair than that proposed by the Employer's consultant. However, this question was referred back to the parties so they could determine how the comparative method based on a derived employment rate for RSMCs could be corrected or improved.

[2] The parties have chosen to continue the discussions with my assistance as mediator/arbitrator, in accordance with the Memorandum of Agreement signed by the parties on September 1, 2016. The parties met thirteen times in my presence during the 90-day mediation/arbitration period.

[3] At the last mediation/arbitration session, on August 30, 2018, the parties confirmed they had resolved in principle the following issues:

- Additional compensation of 0.08 cents for every piece of neighbourhood mail delivered between January 1, 2016 and January 15, 2018.
- Coverage under the long-term disability insurance plan.
- Terms and criteria for accessing the following leaves of absence: Marriage, Birth and Adoption Leave, Leave for Other Reasons, Court Leave, Personnel Selection Leave, Examination Leave and Career and Development Leave, as well as monetary compensation for the retroactive period.
- Reimbursement of the British Columbia Health Premium for the retroactive period and the future.
- Terms and criteria for accessing the Isolated Post Allowance for the retroactive period and the future.

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[1] See paragraph 532 of the award *Canada Post Corporation and Canadian Union of Postal Workers (group grievance)*, 2018 QCTA 266.

- Terms and criteria for accessing the $20.00 glove allowance for the retroactive period and the future.
- Terms and criteria for accessing the displacement lump sum.
- Terms and criteria for accessing the rest period allowance for the retroactive period and the future.
- Time and monetary value per personal contact item (2.75 minutes) and adjustment for the purpose of the pension plan;
- Time value per lock change (2.31 minutes) and for the delivery of each new set of keys, and adjustment for the purpose of the pension plan;
- Life-insurance coverage before retirement, for the retroactive period and the future;
- Compensation allowance paid to On-Call Relief Employees (OCREs) from January 1, 2016 to December 31, 2018 and in the future.
- Abolition of the zones as of the signing of the collective agreement.

[4] Also, at the end of this last meeting, confident that they would be able to settle everything quickly, the parties were supposed to discuss certain terms and conditions of implementation and sign an agreement before the hearing scheduled for September 12, 2018. Thus, although the parties agreed to include the time value per personal contact items for the purpose of the pension plan for the retroactive period and the future, they had to discuss certain terms and conditions, including the required approach with the Office of the Superintendent of Financial Institutions and the consequences of a partial or complete refusal. They were also to discuss the schedule of the retroactive payments that the Corporation must make, and the terms and conditions surrounding the retroactive payment of certain premiums owed by employees in return for their eligibility to some benefits. Finally, on September 12, 2018, the Tribunal was informed that the parties were unable to finalize an agreement.

[5] Thus, at that meeting, the undersigned granted an extension, until September 19, 2018 at 5:00 p.m., for the parties to conclude the said agreement on the points settled in principle, the objective being the ratification of the parties' agreements.

[6] On September 19, 2018, at the end of the day, counsels informed me that the parties had not signed a memorandum of understanding, due to a dispute over four peripheral clauses highlighted in yellow. I am not aware of all the details of their dispute. However, counsels assure me that the parties have definitively settled the points listed above and described in sections 1 to 30 inclusively, as well as section 34 of the latest draft agreement in English reproduced in Appendix "A" of this award. In addition, the parties agreed to form an implementation committee.

[7] Given the agreement reached by the parties on several contentious and complex issues, it is in the interests of both parties that this Tribunal ratify the agreements as they stand and as described in sections 1 to 30 and section 34 of the English version of the draft agreement.

[8] Finally, the parties presented their proposals on the issues that they clearly did not resolve in mediation/arbitration, namely:

- Direct wage gap for the retroactive period and the future;
- Post-retirement benefits (including dental plan), i.e. whether the eligibility date of January 1st, 2016 should be corrected.
- Annual leave, i.e. whether the gap between the two groups should be compensated in time or by the payment of monetary compensation;
- Pre-retirement leave, i.e. whether the leave should be compensated by the payment of monetary compensation or in time, and from what date eligibility accumulates;
- Adjustment of PRE compensation, i.e. whether they should benefit from the working conditions enjoyed by full-time relief letter carriers;
- Maintenance of pay equity, namely whether this notion falls within my jurisdiction and if so, what remedy can ensure it.

2. ANALYSIS AND DECISION

[9] For each issue in dispute, we will, as the case may be, summarize the applicable rules of law, relevant evidence, the parties' claims and their respective latest proposals, and come to a decision.

Direct wage gap

[10] It goes without saying that this issue is the most complex and was the subject of much of the evidence heard as part of the first award and in the discussions during the mediation/arbitration process. As reported in the May 31, 2018 award, the complexity stems from differences in the compensation methods of the two comparable groups (RSMCs and letter carriers), and from differences in the allocation of workloads and time measurement systems or estimated volume for each route assigned to each RSMC and letter carrier.

[11] Before starting the analysis of the parties' latest proposals, a reminder of some critical legal guidelines is required, as they constitute the framework for analysis. The *Canadian Human Rights Act* (the *Act*) is considered fundamental and quasi-constitutional because of the fundamental nature of the rights it protects. Thus, it must be interpreted in a broad and liberal way, in light of its objectives and context, in this case the eradication of gender-based wage discrimination. Once discrimination has been demonstrated, the applicable standard is that of "reasonable reliability":

> "[215] [...] since perfect gender neutrality is probably unattainable and pay equity is not susceptible to precise measurement, "one should be satisfied with reasonably accurate results based on what is, according to one's sense, a fair and equitable

resolution" of a wage gap between men and women performing work of equal value."[2]

[12] Finally, in addition to these elementary considerations, there are the following:

> "[653] From these more general principles, the Undersigned retains the following as essential to the analysis of either party's methodology: the direct wage compensation methodology must be analysed in a flexible, case-by-case, approach that complies with the intention and purpose of the Act and the Guidelines. However, the data must still be correct, and the job rate has to be calculated as accurately as possible, in a manner that is least disruptive to the collective agreement and that aligns with the compensation practices of the parties. To this end, similarly to what is done with the job evaluation outcome, the results must be tested against the evidence to ensure they correspond to the realities of the workers. Thus, it is through this lens that the Tribunal shall evaluate the appropriateness of each consultant's methodology."[3]

[13] In this case, as previously reported, the undersigned has decided that a method comparing the hourly rate of letter carriers with a derived wage rate for RSMCs is the most reliable method among those discussed during arbitration and she has referred this issue back to the parties. While respecting the guidelines set out in the award of May 31, 2018, the parties therefore explored how this method could be improved and lead to a relatively reliable or fair result.

[14] On the issue of management systems and comparative methodology, the undersigned has retained the following from all the evidence presented in arbitration:

> "[680] The use of a wage rate based on RMS hours has been a point of contention of the utmost importance for both parties. In his October report, Mr Durber used the so-called RSMC "hourly rate" and multiplied it by eight RMS hours per day as his basis to evaluate what he called a full-time daily hourly rate of pay; he deemed that the Corporation was erring in its reservations concerning the RMS hours and that, in any event, the latter hours were as inaccurate as the LCRMS hours. On the contrary, CPC and its consultant have argued that RMS hours cannot be relied upon by the Union to obtain an "hourly rate" equivalent to the LC, since it too unreliable and inaccurate.
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> [681] A great deal of evidence has been adduced by both parties regarding the components and reliability of both systems. The Tribunal, after careful consideration, has retained the following as essential in dealing with that issue, which shall be presented alongside the Undersigned's conclusions on the matter.

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[2] Excerpt from the decision *Canada Post Corporation and Canadian Union of Postal Workers (group grievance)*, supra note 1, para 457. *PSAC* v. *Canada Post Corp*, 2010 FCA, para. 215. Justice Evans cited another decision on pay equity: *PSAC* v. *Canada (Treasury Board),* (1996) 29 C.H.R.R. Decision 36.
[3] *Canada Post Corporation and Canadian Union of Postal Workers (group grievance)*, supra note 1, para. 653.

[682] On the LC side, the Corporation relies on the LCRMS, which is an extremely detailed and sophisticated system used to build routes of around eight daily hours for the approximately 12,000 full-time LCs and the approximately 900 part-time LCs. Every activity is timed to the second and other inputs allow to adjust for mail volume, POC coverage, walking distances, the optimal delivery sequence, etc. With all those elements accounted for, the system produces routes that should, on average, require eight hours per day for the LCs to complete. Because LCs are paid for eight hours if their route is assessed to last at least six hours, building eight hours route is important to maximize productivity. For CPC, this system is highly reliable and can be trusted to produce accurate results.

[683] However, the evidence shows that the system is far from perfect. LCs can finish their route earlier or later than its intended finish time, which can require that the employees work overtime. In fact, overtime has been steadily increasing over the years. The variations can be attributed to many factors: seasonal peak demands, time of the week, mail and parcel volume fluctuations, weather conditions, delayed trucks, etc. As recognized by the Corporation's witnesses, the LCRMS is not designed to account for these variations and cannot react to them. It is a system that is based on averages and is not predictive, on a daily or even weekly basis, of time actually worked by LCs.

[684] Another factor that influences the accuracy of the LCRMS is the fact that volume counts are not done regularly by the Corporation; yet, consideration for volume has been repeatedly lauded by CPC's representatives throughout the hearing as a hallmark and distinguishable feature of the LCRMS. Likewise, some of the time values have not been updated in decades.

[685] Also, there are several constraints which the LCRMS cannot adapt to, such as the total number of POCs to be serviced for a LC depot. Consequently, 94% of LC routes are assessed to last between seven to nine hours daily, meaning that despite the sophistication of the LCRMS, some routes are nevertheless over or under-assessed.

[686] The LCRMS does not evaluate workload for a predictable environment, the high variability in the work means that the LCRMS eight hours do not necessarily equate to eight hours actually worked in practice. Furthermore, the eight-hour day includes 55 minutes of paid breaks and a 7% fatigue rate to account for the employee's personal fatigue and usual work delays, such as washroom breaks. It has been recognized that such situations arise, but no evidence has been adduced to precisely quantify the time paid but not worked.

[687] Finally, it was showed that the LCRMS is a very costly and litigious system. CPC spends $10M annually on the maintenance of the system and $3M for route restructures, while 11 national and 400 regional grievances have been filed since 2011 concerning route restructures. CPC representatives have recognized that the Corporation is considering replacing the actual system with one that can account for fluctuations in ways that the LCRMS cannot.

[688] Overall, the evidence shows that the LCRMS is a very intricate system that allows the Corporation to maximize daily productivity, but that system is not as accurate as the Corporation would want to portray it. As indicated by Ms. Haydon in her reports, the LCRMS is truly a unique system in its sophistication.

[689] On the RSMC side, no comparable time-based system exists. Nevertheless, there is a time dimension to the work of RSMCs. The latter each receive company documentation pertaining to their route, the Schedule A, which includes approximate times to sort and deliver mail each day. The Schedule A is designed by CPC, which retains control over the assessment of time values and, as such, the time estimated to complete one's route. The estimated time to complete one's route excludes time for variable pay. The Schedule A forms part of the RSMC job description as per article 27.01 of the collective agreement.

[690] Undeniably, the estimated time, as the name suggests, is not a precise calculation of the employee's time required to do the work. To reinforce that notion, the Corporation has recently added plus or minus fixed 25 minutes range to the estimated time, no matter the length of the route. As shown by the approximate 2,205 routes whose RMS hours are above the available delivery time, RMS hours clearly do not always equate to actual hours worked, similarly to the LCs.

[691] The time studies conducted by the parties show that some RSMCs finish early while others finish later than their estimated time required; the intensity of the variance is not dramatic either. Mr. Durber, in his reply report, showed that the majority, 66% to be exact, of the RSMC routes are assessed to last between 5.1 and 8 RMS hours daily. Once again, the same pattern, although it is less pronounced, can be observed on the LC side, where 94% of route last between 7 and 9 hours.

[692] Despite that variability, RMS hours are not totally disconnected with the time needed to complete a route as CPC argues. Both Mr. Sinclair and Ms. Whiteley have recognized that when building a new route or during a restructure, the Corporation leaves a two-to three-hour gap to allow RSMCs to complete their variable work and to have room for growth. In cross-examination, Mr. Sinclair stated that the average RMS hours were 6.1 for new routes. Therefore, there is a correlation between RMS hours and the actual time needed to complete one's route and CPC is aware of that comparability and relies on it.

[693] This gap in RMS hours is left because the Corporation must comply with the Canada Labour Code maximum hours of work when restructuring routes. This is in line with what the Canada Labour Code prescribes at its sub-section 169 (2) for work environments with irregular hours:

> "Averaging
>
> (2) Where the nature of the work in an industrial establishment necessitates irregular distribution of the hours of work of an employee, the hours of work in a day and the hours of work in a week may be calculated, in such manner and in such circumstances

> as may be prescribed by the regulations, as an average for a period of two or more weeks."

[694] Likewise, annual inspections of RSMC routes, done yearly or bi –annually, include several questions pertaining to time: When is the mail available? What is the normal start time of the RSMC? What is the normal departure time of the RSM? What is the normal arrival time at the RSMC's final designated delivery point? These questions indicate that time does matter to the Corporation and RSMCs alike: the latter have a mail available time at which they usually start their day and they have a final time at which mail must be brought back. CPC manuals on the subject underline the importance of the annual inspection not only for the Corporation but also for the accuracy of an RSMC's pay.

[695] Additionally, Ms. Whiteley and Mr. Sinclair have both stated or admitted that when the Corporation updates time values, time required to do the work is considered. One cannot help but wonder why CPC would update time values, including on its own volition following a change in activity values, if they are considered to be completely inaccurate? Furthermore, despite the claimed disconnect between time values and activity values, CPC representatives have used an "hourly rate proxy" during negotiations with the Union. The parties have also negotiated the increase or decrease of time values, thus reflecting that the Corporation cares about their relative representativeness of the work completed.

[696] The RMS may not be as complex as the LCRMS, but both systems generate, to some extent, the same kind of issues, which is not surprising given the similarity of the work done by both RSMCs and LCs. Fluctuations in the work is an intrinsic aspect of both jobs and results in the same problems. Actual time worked is an elusive concept for RSMCs as well as for LCs, since neither works under a system that is designed to evaluate it perfectly. While the LCRMS may be closer to that reflection, both systems are nevertheless based on averages.

[697 As mentioned above, an hourly wage basis is the most common form of compensation in unionized workplaces. However, it is rare that a company uses and maintains such an expensive and sophisticated tool as the LCRMS to assess the needs of production. Most rely on management's knowledge and experience of the job, as is the case for RSMCs. Those estimates are not considered unreliable and those companies are able to maintain a competitive production level.

[698] The RMS hours are also used in a number of ways by the Corporation, which Mr. Bickerton listed, in part, in his will-say. It can be summarized in the following way:

- The Letter 1 agreement, part of the collective agreement, in which CPC agrees to restructure routes in excess of 60 RMS hours;
- Overtime premium is paid using RMS hours;
- The Designated holiday pay premium is paid using RMS hours (article 16.03 of the collective agreement);

▪ In the collective agreement's Appendix D, the Union Education Fund, RMS hours are used;

▪ Pension and benefits eligibility are determined using RMS hours;

▪ Statutory benefits and compliance, including, but not limited to, overtime compliance;

▪ The RSMC's boot allowance is paid using a ratio of RMS hours;

▪ The hours used in the Corporation's Injury Frequency Report are RMS ones.

[699] Mercer consultants have also used the RMS hours to determine the allowance rates for their calculations of the Isolated Post Allowance." [4]

[15] And, in light of this assessment, the Tribunal concluded as follows:

« Conclusions

[700] For all of the above-mentioned reasons, it seems appropriate to rely on the RMS hours as a time component to establish a job rate for RSMCs in this pay equity review. Basing the time component on an hour is the most common denominator that allows to compare RSMC wages to the LC hourly rate.

[701] Despite the intrinsic inaccuracy of the RMS time, the Corporation has extensively relied on it for very important aspects of RSMC work, including overtime provisions, pension and benefits eligibility, and the Schedule A, which forms the most important RSMC work tool integrated into the job description in the collective agreement. It is a measure of time that is supported by a range of parameters aimed at maintaining its relevance: time range in the Schedule A, annual inspections, two-week studies, time values updates, final tender point, etc.

[702] In any event, an RMS hour-based job rate appears to be the most reliable measure of comparison and the only means available for the parties to use as a reference point. Furthermore, it is part of the RSMC work and it is the usual tool the parties use for so many aspects of RSMC working conditions and work organization.

[703] Nevertheless, given the previous findings, it is evident that the derived hourly job rate must be perfected and adjusted to provide reasonably accurate results. The question remains: how can the RMS time be adjusted to more accurately portray the work done by RSMCs? Should a percentage correction be applied? Should the base salary used in the direct compensation evaluation be the same as the salary used for establishing the cost of indirect compensation? Would the use of a sample of "full-time equivalent" LC and RSMC routes produce more accurate data (for instance, 6 to 8 hours routes)? Unfortunately, not enough data

[4] *Canada Post Corporation and Canadian Union of Postal Workers (group grievance),* supra note 1.

> and facts have been presented to the Tribunal to allow the Undersigned to make that determination with confidence.
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> [704] It flows from the above that the RSMC job rate can be compared, with the necessary adjustments, to the LC job rate on an hourly basis. From all the evidence adduced and the reports of the experts, it appears to be the most reliable common denominator available to estimate a wage gap. As established previously, neither the Act, the Guidelines, nor the case law require the methodology to be perfect, only that it yield reasonably accurate results by using correct data.
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> [705] As we shall see in the forthcoming section on what should be included in direct wages, the methodology and the calculations must be adjusted to yield more accurate results based on correct data. »

[16] It was also decided that the RSMCs derived salary rate should be adjusted to take into account the compensation paid, in particular, for personal contact items and lock changes.[5]

[17] Before starting the analysis of the parties' proposals, I believe it would be important to recall the fundamental basis of the RSMC compensation system.

[18] The actual wage of RSMCs includes the annualized total of the activity component, of the variable allowance and of the sort allowance described in Appendix "A" of the RSMC Collective Agreement. Activity values are divided into three categories: sortation, delivery and drive time values. Sortation and delivery values are compensated according to the presumed action: for example, sorting for a residence or delivery to a community mailbox (CMB). Driving time values factor in the kilometres travelled. The amount per kilometre is determined by the number of points of call (POCs) per kilometre for the route. For instance, for a route with 9.9 POCs or less per kilometre, $0.3948 is paid per kilometre travelled, while for a route with 10 to 24.99 POCs per kilometre, the amount paid is $0.4933.

[19] The values for these activities appearing in the collective agreement are not determined in a vacuum or in a totally arbitrary manner. The parties establish them by referring in particular to a common denominator, namely a derived wage rate, which was $19.73 on January 1st, 2016. However, this rate does not appear anywhere in the collective agreement, although it is well known to the parties and the RSMCs. Time values for activities are also not specified in the collective agreement. Some were decided on by the parties, others not. Thus, the values negotiated during this process for activities related to variable activities will not appear in the collective agreement. And, although there is a link between these three components (time value per activity or for driving; monetary value for activities and a derived wage rate), only one of them is reproduced in the collective agreement, namely the one related to the monetary value of activities.

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[5] See paragraphs 733 to 740 of the award *Canada Post Corporation and Canadian Union of Postal Workers (group grievance)*, supra note 1.

[20] As a result, the Employer may unilaterally, during the course of a collective agreement, modify the time value of an activity, without however affecting the actual wage of a RSMC. It should be noted that the Employer has not exercised this prerogative to date.

[21] Finally, it should be noted that the time value is, however, decisive in the initial assessment of the estimated time of each RSMC route, just as in a restructure, and this assessment, as we have seen, determines the accessibility to, and application of, certain working conditions (pension plan, amount paid for boots, etc.) to which will be added the amount relating to the rest allowance agreed by the parties in the context of this process.

[22] It goes without saying that the determination of a route inevitably requires an assessment of the volume of work or of the number of points of call, and the latter makes it possible to estimate an average time duration per route, whether for RSMCs or for letter carriers. However, the Employer has greater flexibility in determining a route for RSMCs because it is not required to pay them 8 hours for each day of work, as is the case for permanent full-time letter carriers.

[23] Also, as we will see shortly, the volume or workload assigned to RSMCs and letter carriers is at the heart of the dispute between the parties for the purpose of defining the direct wage gap. The Employer claims that there is a link between workload or volume and the time worked. This statement is undeniably true. The Employer also argues that the volume of an RSMC route, as well as the estimated time required to complete it, has not, to date, been a key factor in determining the salary of RSMCs, since they are essentially paid on a piecework basis.

[24] Thus, the Employer argues that the time value in Schedule "A" of RSMC routes must be adjusted because the notion of time is a crucial factor in this process, especially since the comparative method is based on a notion of time in the form of an hourly rate and its multiples during a regular workday. In the Employer's opinion, this adjustment is necessary, especially since the Letter Carrier Route Measurement System (LCRMS) is more accurate than that of the RSMCs' (RMS). With these few reminders in mind, let us now take a closer look at the parties' latest proposals.

The parties' proposals

The Union

[25] It should be pointed out that, at the outset, the Union has always considered that one hour of the RSMC system, called the RMS[6], is equivalent to one hour of the letter carrier system, called the LCRMS[7]. Thus, the difference between the two was, according

[6] Called SGI in French.

[7] Called SMIFF in French.

to the Union, $6.22 per hour on January 1st, 2016, and $9.72 with certain adjustments, some of which were rejected by this arbitration tribunal. These differences did not take into account the value of variable allowances for certain tasks.

[26] It should be noted that on January 1st, 2016, the derived wage rate for the RSMCs was $19.73 and the hourly rate for letter carriers was $25.95.

[27] The Union proposes a weighted direct wage gap of $5.31 per hour for all zones. To this end, the Union used a sample examined during the mediation process and composed of all RSMC routes updated using an optimization software called GeoRoute[8]. This weighted direct wage gap results from the difference between the hourly letter carrier rate of $25.95 on January 1st, 2016 and the RSMC adjusted derived wage rate of $20.64. The derived wage rate of $19.73 has been adjusted to reflect the values agreed by the parties in this process for two variables (PCI and lock change) and has been weighted according to zone. This exercise results in a weighted wage gap of $5.31 per hour. For each of the zones, the adjusted derived wage rate on January 1st, 2016 is as follows – Zone 1: $19.90; Zone 2: $21.53 and Zone 3: $22.49.

[28] The Union considers this difference to be reasonably reliable since it arrives at the same results when it performs the same mathematical operation on another larger sample discussed in mediation[9] and composed of all RSMC routes with estimated daily hours of between 361 and 480 minutes (or 6 to 8 hours). In this case, the Union obtains a weighted average wage gap of $5.29.

[29] Finally, in the event that the Tribunal chooses to retain a percentage to correct RSMCs' work time, the Union proposes to increase this component by 10.4%. It derives this figure from another exercise conducted during mediation using the last sample proposed by the Employer.

The Employer

[30] For its part, the Employer proposes to immediately reduce the time value by 18% in Zone 1 and by 5% in Zones 2 and 3 before adjusting the derived wage rate to $25.95.

[31] The Corporation argues that this solution would offset the gap in volume per hour worked between RSMCs and letter carriers as well as the one resulting from differences between suburban and rural areas.

[32] This comparative method would lead, for example, to the following wage gaps:

[8] This sample was provided by the Employer.

[9] This sample was provided by the Employer.

OFFICE_NAME	SALARY_ZONE	Annual Days	TOTAL_POC	DAILY_MINUTES	"Hourly Rate" Current	Current Wage	RMS Adjustment	RMS after adjustment	New Derived Hourly Rate	New Derived Hourly Rate w/ Wage Increase	New Annual Wage	% wage increase
TANTALLON STN MAIN	1	260.88	793	384.67	$ 19.73	$35,339.32	18.00%	339.73	$ 22.34	$ 25.95	$ 38,331.87	8.5%
AJAX STN DELIVERY CENTRE	2	260.88	784	391.02	$ 21.52	$41,943.33	5.00%	427.09	$ 19.70	$ 25.95	$ 48,188.71	14.9%
CALGARY LCD 35	3	260.88	783	369.45	$ 22.49	$42,107.23	5.00%	413.08	$ 20.11	$ 25.95	$ 46,607.78	10.7%

[33] To that end, the Employer selected a sample composed exclusively of letter carrier routes that could be converted into RMS time values. It therefore selected all letter carrier routes where the latter only deliver to CMBs, where letter carriers and at least seven RSMCs work within the same facility, and where the routes include a minimum of 400 POCs. The final sample includes 615 letter carrier routes. Thus, the Employer argues that by applying RMS time values to the 615 letter carrier routes, it is able to assess whether one hour of the LCRMS is equivalent to one hour of the RSM system.

[34] For the purpose of mathematical calculations, the Employer took into account some of the Union's criticisms in mediation and retained the new negotiated time value for personal contact items (2.75).

[35] The exercise showed that the time value of letter carrier routes is 58 minutes higher on average when converted to the RMS. Therefore, according to the Employer, a downward adjustment of the time recorded in the RMS is required for equity to be achieved. The Employer also considers that the adjustment should take into account the differences in volume between suburban and rural areas. The Corporation summarizes its proposal as follows:

"What this means:

- In Kanata, the 13 LCs who currently have 8 hour routes in LCRMS would be paid for 8 hours and 31 minutes (on average) if converted to RMS tomorrow. In other words, their route would be increased by 5.2% simply by using a different unit of measure to determine work hours (RMS).

- In Boisbriand, the 33 LCs who currently have 8 hour routes in LCRMS would actually be paid for 9 hours and 46 minutes of work if converted to RMS tomorrow. This is an increase of 20.5%.

- Across all 615 routes, the additional time that RMS would add, if there is no adjustment to the hours, is equivalent to an average of $7,000 per route (at $25.95 per hour). This equates to an extra $4 million per year for the 615 routes – with no adjustment for volume or any other factors.

Canada Post's Proposal Achieves Fairness:

- An adjustment of RMS time equal to 12.3%[10] would ensure that LC routes (when converted to RMS) would remain at 8 hours in evaluated time and those would represent equal pay for work of equal value.

- An across the board 12.3% adjustment would have different impacts depending on the zone that the employee is currently working in. For those in Zone 1, the wage increase would be most significant, while in Zone 3 the wage increase would be insignificant. Therefore, the predominant amount of the wage gap dollars would flow to employees who are employed in more rural locations and to those routes which generally have the lowest volume of work.

- As noted above, Zone 1 generally consists of rural routes, with lower volumes. Zones 2 and 3 consist of suburban routes that have higher volumes.

- For this reason, Canada Post proposes a solution that recognizes that the volumes are different for RSMC routes and that takes this into account when allocating the percentage adjustment.

- The proposal is that those rural routes in Zone 1, in which the impact of lesser volumes would lead to a greater adjustment than 12.3%, would receive a one-time adjustment of 18% before increasing their derived hourly rate to be equal to the letter carrier rate.

- In Zones 2 and 3, the RMS adjustment would be smaller to reflect the higher volumes they have. Canada Post's proposal is to adjust each of these groups of employees by 5%. All RSMC activity values would then be adjusted to reflect a derived hourly rate of $25.95. This would ensure that employees in each region receive a significant wage adjustment.

- This option will result in a single national derived RSMC hourly rate that will be equal to the single national LC hourly rate. The result will be an average wage increase of approximately 9.5% for Zone 1, 15.7% for Zone 2 and 9.7% for Zone 3."[11]

[36] Alternatively, the Employer proposes to reduce the wage gap by 50% for Zone 1 and by 25% for Zones 2 and 3. This proposal is based on the fact that letter and parcel volumes are much lower in rural areas than in suburban areas.

Analysis of the Parties' Proposals

[37] The sample on which the Employer based its last proposal was reviewed in mediation, and the Union showed that this sample could not be used as is, since it contained a large number of routes that did not match the average RSMC route profile.

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[10] This is a weighted average of the adjustments for each zone and it reflects the changes agreed to by the Parties during mediation.

[11] Excerpt from Canada Post's book of submissions.

Indeed, that sample contains routes of more than 1,000 points of call (POCs), some of which are located in buildings with a large number of apartments, whereas the POCs average for RSMCs is around 800.

[38] At arbitration, one of my conclusions was that the inclusion of routes that are composed of a large number of POCs and that do not match at all the RSMC route profile disadvantaged RSMCs and did not meet the reliability benchmarks required to measure wage inequity between the two groups.[12] In my opinion, the last comparative method used by the Employer significantly resembles the one developed by its expert, Ms. Haydon. The results vary greatly depending on the parameters that are used. Thus, excluding the routes that disadvantage RSMCs, the Union showed in mediation that, for all practical purposes, no adjustment was required. Then, by correcting other parameters, the Union concluded that if an adjustment had to be made, it would be favourable for RSMCs.

[39] I believe the comparative method used by the employer lacks credibility, especially when assessing the reliability of the results in light of the overall evidence. The parties have produced several studies[13] as evidence to demonstrate their respective claims. The Union sought to demonstrate that the RSMCs' time was underestimated, whereas the Employer attempted to demonstrate the opposite. A careful analysis of the studies and of all of the data shows that neither side is correct. The reality is more nuanced. The overall evidence shows that the estimated time for a large number of RSMC routes is a fair one: some of them are under-estimated and other are over-estimated. Only a tailor-made formula would make it possible to achieve a perfectly equitable adjustment. However, to do this, we would need to re-evaluate each RSMC route's assessed time, and such an operation would be impossible to effect within the timeframes of this pay equity process.

[40] It appears to me that reducing the estimated time for all RSMC routes – which is an important part of RSMC working conditions, not to mention their overall compensation – as requested by the Employer, goes against the purposes of the *Act*. Convincing the Tribunal to amend such an important aspect of RSMC work requires presenting particularly credible and reliable data. Yet in the instant case, the Employer wants to amend the estimated time for all RSMC routes based on a simulation that is not only hypothetical or artificial, but which also lacks credibility.

[41] At the risk of repeating myself, one cannot presume that the RSMCs who share a facility with the 615 letter carriers retained by the Employer have a route with an incorrect assessment, or even an overassessment. On the contrary, it is more likely that their routes are fairly or correctly assessed. I therefore believe that it is totally unfair and inequitable to "artificially" reduce the route times not only for the above-mentioned

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[12] See paragraphs 660 to 669 of the award *Canada Post Corporation and Canadian Union of Postal Workers (group grievance)*, supra note 1, para. 653.

[13] It should be noted that the studies to which I am referring do not include the latest comparative methods submitted by the Union in support of its latest proposal.

RSMCs, but for all RSMC, especially since this reduction would be based on data that clearly disadvantage RSMCs.

[42] It is undeniable that the average volume for letter carriers is higher than the average volume for RSMCs, for the single fact that urban letter carriers work in more densely populated areas. However, this does not mean that the assessed time for all RSMC routes is overestimated or of less value. Thus, in the instant case, seeking to reduce the RSMCs' estimated time based on work volume is tantamount to reducing the value of RSMC work compared to that of letter carriers, despite it having been determined that both jobs were of equal value, based on the four benchmarks provided for under the *Act*.

[43] It should be noted that the assessed RSMC route times vary based on the route that is structured by the Employer, and that this assessed time is factored as is into the Employer's systems, whereas the time paid to a full-time letter carrier is based on an eight (8)-hour period, even in cases where the Employer has structured a six (6)-hour route. It has also been demonstrated that the estimated time for each route does not play out on a day-to-day basis, either for letter carriers or for RSMCs, since the assessed time is based on an average. Thus, with respect to the choice of method, the tribunal also takes into consideration the fact that RSMC schedules are structured more flexibly than those of letter carriers (spread over two weeks, customized hours), and that this flexibility represents a savings, notably in overtime, compared to letter carriers.

[44] Moreover, I believe the Employer's request to reduce the time for all RSMC routes to be inadmissible, since, in fact, estimating each RSMC route's time is one of its prerogatives. In other words, the Employer is asking the Tribunal to correct a situation that the former has tolerated since 2004.

[45] The Union's proposal also changes the gap between the zones in a way that I consider to be arbitrary. I cannot endorse an 18% reduction in delivery time for a personal contact parcel[14] in Zone 1, or a 5% reduction in Zones 2 and 3, when it involves the same action. I consider this significant change in the RSMC compensation model to be contrary to the pre-established rules.

[46] That being said, it is important to remember that the Tribunal must opt for the most reliable comparative method, and one that makes it possible to achieve the objective envisaged by the *Act* in the most equitable manner possible, i.e. correcting the gender-based wage discrimination.

[47] In this case, it is undeniable that the estimated time of many routes is accurate, especially since it is an average. It should be noted that some routes have been restructured and others optimized with the GeoRoute system, and that all routes are reviewed annually. Given the different management methods available to the Employer and the time elapsed since RSMCs first joined the Union (14 years), it cannot be assumed

[14] Set to 2.75 minutes by the parties.

that all average times on all routes in all zones are underestimated or overestimated. It should be recalled that the estimated time for most routes is 6 hours or more per day (4.884 out of 7.437) and this time limit (6 hours) is chosen by the Employer to allow space/time for variables and an increase in volume. The Employer has therefore monitored the estimated time of many of the RSMC routes.

[48] Moreover, if the Tribunal were to adopt the method proposed by the Employer, it would lead to a time reduction for all RSMC routes and, more significantly, for the routes operating in Zone 1. Yet, this zone comprises the majority of RSMCs, and the RSMCs in this zone receive the lowest remuneration.

[49] Also, the Employer's approach breaks away from the wage gap agreed by the parties to justify the current zones. Thus, according to its data, RSMCs in Zone 2 would receive a higher compensation on average than RSMCs in Zone 1.

This distortion in the pay scale agreed by the parties is another reason not to accept the Employer's proposal, especially since this proposal is again based on inconclusive and unreliable data. Claims are not enough. Solid evidence is required.

Conclusion

[50] For all these reasons, the Employer's proposal is rejected, and the Union's proposal is accepted. The latter meets the required level of reliability. The Union's proposed methodology has the merit of respecting not only the objective sought by the *Act*, but also the entirety of RSMCs' working conditions. The methodology and resulting wage gap are easy to understand because they are based on known data, including the derived wage rate and estimated hours in Schedule "A" of each RSMC.

[51] Thus, for the retroactive period, the average and weighted compensation to be paid per hour to all RSMCs is $5.31 on January 1, 2016, resulting in a derived and uniform rate of pay of $25.95, as well as the elimination of the zones as of January 1, 2016. This wage gap and the derived wage rate will also have to be adjusted at the same pace as the letter carriers' rate, from January 1, 2016 to January 31, 2016, February 1, 2016 to December 31, 2016, January 1, 2017 to January 31, 2017, and February 1, 2017 to January 1, 2019, while taking into account the wage increases that were paid to both groups during this period or the one that will be paid, if applicable, retroactively.

[52] Moreover, given the chosen method, a freeze of the applicable time and activity values is necessary during the retroactive period (January 1, 2016 to January 1, 2019) to avoid a risk of inequity. However, the parties may agree, if it turns out to be more just or necessary, to make changes with the understanding that at any time the RSMC derived wage rate and the letter carrier hourly rate must be equal, within the parameters determined in this award and that of May 31, 2018, subject to the current salary progression rules applicable to the RSMCs.

[53] For the future, to the extent that the RSMC compensation model remains the same, it goes without saying that the RSMC derived wage rate must at all times be identical to that of the letter carriers. As of January 1, 2019, the activity values in the collective agreement will have to be adjusted accordingly. Therefore, the parties have three months to negotiate the values and incorporate them into the payroll systems.

[54] As for the terms of implementation not covered by this award or in the agreements of the parties and endorsed by this Tribunal, they are referred to the Implementation Committee.

Post-retirement benefits

[55] In the May 31, 2018 award, the Union requested the Tribunal to order that the calculation of the continuous service date for the purpose of post-retirement benefits start from January 1, 2004. I have not granted the Union's request and have set January 1, 2016 as the retroactive date, which is the date from which eligibility for these benefits will begin for RSMCs:

> "[823] On this issue, the MOU is very specific, the parties chose January 1, 2016, as the date of retroactivity and they have not mentioned the possibility of exceptions. Furthermore, given the significant liability incurred on such a short time for the Corporation, it is highly unlikely that it would have agreed to such a sweeping scope for the retroactivity.
>
> [824] As such, the Union's demand is rejected."[15]

[56] The Union claims that I made a jurisdictional error in setting the starting date for eligibility at January 1, 2016. Its claim is essentially based on the recent Supreme Court decision *Québec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*[16]. Alternatively, the Union alleges that the May 31, 2018 decision is not a final decision since it was issued as part of an ongoing process. Thus, the doctrine of *functus officio* does not apply and the Tribunal may grant its request to review the May 31 decision.

[57] For its part, the Employer objects to the reconsideration of the decision and argues that the doctrinal principles *functus officio* and *res judicata* point in this direction. The issue raised in the recent Supreme Court decision[17] is different from the one in dispute. A retroactive date differs from an amnesty period. In the present case, the Tribunal does not set an amnesty period, but rather determines the date from which the eligibility period provided for in the benefit plans must begin. Several

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[15] See paragraphs 823, 824 and 825 of the decision *Canada Post Corporation and Canadian Union of Postal Workers (group grievance)*, supra 1.

[16] *Québec (Attorney General)* v. *Alliance du personnel professionnel et technique de la santé et des services sociaux,* 2018 CSC 17.

[17] *Ibid.*

Federal Court decisions set a retroactive date of one year prior to the filing of such a complaint. In addition, section 41(1)(e) of the *Canadian Human Rights Act*[18] allows the Commission to dismiss any complaint made within one year of filing.

[58] With respect, I agree with the Employer's claims.

Functus officio

[59] First, the doctrine *functus officio* means "of no further official authority or legal effect."[19] According to this principle, an adjudicator may not re-hear, reconsider or modify his or her decision[20]. However, there are exceptions to this principle. The Honourable Scott, in the *Chopra*[21] decision, based on the *Chandler*[22] case, lists them as follows:

> "[64] Based on *Chandler*, cited above, administrative tribunals have the jurisdiction to reopen a decision for which there is no right to appeal in the following cases: 1) they may always reopen a proceeding if there was a denial of natural justice which vitiates or nullifies it (see *Chandler*, at para 25; and *Nazifpour v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 35 (CanLII) at para 36); 2) "there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation" (the new evidence ground) (*Chandler* at para 22); 3) jurisdictional error (*Chandler* at para 24); and 4) failure to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose (*Chandler* at para 23).
>
> [65] Absent a legislative intent to the contrary, it is clear that an administrative tribunal may reopen a proceeding for a denial of natural justice, a jurisdictional error or a failure to address an issue fairly raised by the proceedings."[23]

[60] The Supreme Court, in *Syndicat des employés de production du Québec*[24], defines a jurisdictional error as an excess of jurisdiction or a refusal to exercise jurisdiction. It is analysed in the light of the provisions conferring jurisdiction[25]. In this case, the Tribunal decided in accordance with the powers conferred upon it by the law.

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[18] *Canadian Human Rights Act,* L.R.C. (1985) ch H-6.

[19] Definition from Merriam-Webster Dictionary.

[20] *Trimble and Bearskin Lake First Nation, Re,* 2013 CarswellNat 316, para. 11.

[21] *Chopra* v*. Canada (Attorney General)*, 2013 CF 644.

[22] *Chandler* v. *Alberta Association of Architects*, [1989] 2 SCR 848.

[23] *Chopra* c*. Canada (Attorney General)*, supra note 20, para. 64-65.

[24] *Syndicat des employés de production du Québec* v. *CLRB,* [1984] 2 SCR 412*.*

[25] *Ibid.,* p. 420-421. See also: *Jacobs Catalyc Ltd* v. *International Brotherhood of Electrical Workers, Local 353*, 2009 ONCA 749, para. 62.

[61] As determined in *Bossé v. Canada*[26], a recent decision does not constitute new evidence[27]. Thus, the arbitrator is not required to reconsider his or her decision following the issuance of a Supreme Court decision.[28]

[62] Finally, although this Tribunal has reserved jurisdiction to decide certain issues in dispute at a later date, the May 31, 2018 decision, with respect to the retroactive date, is final. As Arbitrator Bergeron noted in *Canada Post Corporation v. CUPW*[29], "the grounds for an award embody the disposition".

Res judicata

[63] The *res judicata* doctrine means "a matter finally decided on its merits by a court having competent jurisdiction and not subject to litigation again between the same parties."[30] The principle is that the parties must disclose and discuss all their arguments before the decision is rendered.[31] A party may not ask an adjudicator to reconsider an issue already decided on a ground that should have been raised in a timely manner.[32]

[64] In *CUPE, Local 79 v Toronto (City)*[33], the Court clarified that the doctrine of *res judicata* applies in all circumstances, even when it deals with an issue concerning an individual's quasi-constitutional rights[34]. As with the *functus officio* doctrine, subsequent decisions do not allow for a review of a decision[35]. To make such a conclusion would be contrary to these principles and to the principle of legal stability.

[65] The Supreme Court's decision relied on by the Union was issued on May 10, 2018, three weeks before the May 31, 2018 decision. In this ruling, the Supreme Court upholds the decisions of the lower courts, and the Union could have therefore used the decisions of the lower courts to support its argument. Finally, as previously reported, I believe that this decision deals with a different issue and is not relevant. It should be recalled that the retroactive date is the result of a consensual agreement between the parties.

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[26] *Bossé v. Canada (Attorney General)*, 2017 FC 336.
[27] *Ibid.*, para. 14-16.

[28] *Teck Coal Limited* v. *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local Union No 9346,* 2014 CanLII 5829 (BC LRB), para. 67.

[29] *Canada Post Corporation* v. *CUPW*, 2009 CarswellNat 3464, para. 29
[30] Definition from Merriam-Webster Dictionary.
[31] *Infinity Rubber Technology Group* c. *USW,* 2012 CarswellOnt 3308, para. 10. See also: *Telus Communications Inc* v. *TWU,* 2006 CarswellNat 5615, 158 LAC (4th) 67, para. 37.
[32] *Telus Communications Inc* v. *TWU,* supra note 30, para. 40. See also: *Canada Post Corporation* v. *Snook,* 2015 NLCA 49, para. 38*; Las Vegas Strip Ltd* v. *Tonronto (City),* [1996] OJ No 3210, para. 25.
[33] *CUPE, Local 79* v. *Toronto (City),* 2012 ONSC 1158.
[34] *Ibid.*, para. 51.
[35] *Metro-Can Construction Ltd* v. *R,* 2001 FCA 227, para. 4.

[66] In this case, the retroactive date chosen does not grant an amnesty period to the Employer. Rather, it eliminates wage discrimination against women and establishes a compensation process that is fair, realistic and proportional to the interests of both parties.

Tribunal's finding

[67] For all these reasons, the Union's request is denied and the reference date for calculating eligibility for post-retirement benefits is maintained retroactively to January 1, 2016.

Annual Leave

[68] With respect to the retroactive period, the Union requests monetary compensation, and in respect of the future, the same access to annual leave afforded to letter carriers. It maintains that arbitrators have generally favoured access to the benefit as it provides a way of compensating for the loss in the same manner as the lost opportunity[36].

[69] For its part, the Employer maintains that monetary compensation is, depending on the case, a measure that has been accepted by tribunals[37] and that, in this case, the avenue is available given the elevated cost this measure represents.

[70] A careful reading of the case law reveals that there are two lines of jurisprudence. In *Good Humor-Breyers, Simcoe* [38], arbitrator Kirkwood states the majority line of jurisprudence establishes a kind of presumption favouring in kind compensation, with various exceptions, since it compensates the party in the most adequate way possible without penalizing the Employer:

> "Arbitrators have generally favoured the in kind approach as it not only reflects the nature of the loss and compensates for the loss in the same manner as the lost opportunity while not penalizing the employer, but it avoids compensation without work. I too, view that this is the best approach and accept that there is a rebuttable presumption that in kind remedy ought to be applied subject to the terms of the collective agreement, for the same reasons set out by Arbitrator Weiler. It compensates what the party has lost without penalizing the employer and without providing unjust enrichment to the innocent party."[39]

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[36] See paragraph 96 of the Union's arguments.
[37] See page 5 of the Employer's summary of arguments *Reply of Canada Post to the final proposals of the Canadian Union of Postal Workers.* See also: *Quality Meat Packers Ltd* v. *UFCM*, [1997] OLAA No 472 (WL), para. 35.
[38] *Good Humor-Breyers, Simcoe* v. *U.F.C.W.*, *Locals 175 & 633*, 2003 CarswellOnt4114.
[39] *Ibid.*, para. 47. *Ibid*., para. 48. See also : *Lady Dunn General Hospital*, (1991), 2 P.E.R. 168, para. 32.

[71] Arbitrator Kirkwood goes on to list the exceptions arising out of this presumption: (i) persistent violation, (ii) persistent errors, but which are made in good faith, and (iii) unworkable method[40].

[72] In *Lady Dunn General Hospital*[41], the arbitrator acquiesced to the union's request and granted an increase in vacation days. He found that the employer had not demonstrated that the request would impose too heavy a burden or that it would be unworkable in the case of that company.

[73] Arbitrator Graham, in *Re Assiniboine Regional Health Authority*[42], notes that several awards refer to a presumption favouring in kind contribution. However, he concludes that an individual analysis of each case is preferable. Although there are many advantages associated with leave days[43], this method may be impracticable or ineffective in terms of providing a fair and reasonable solution[44]. Lastly, he asserts that an arbitrator can also choose to combine both approaches, if this approach provides the most effective way of dealing with the loss and damage suffered[45].

[74] In this case, all RSMCs who have accumulated ten years of continuous employment are entitled to four weeks of vacation leave per calendar year without a reduction in actual wages (clause 15.01(b) of the collective agreement). The choice of vacation period depends on the RSMC's work location. If the RSMC works in a postal facility that does not have on-call relief or permanent relief employees on site, they can take their vacation leave at a time of their choosing, but must provide advance notice to the Corporation (clause 15.02 (a)).

[75] As we have seen as part of the first award, RSMCs within a postal facility that does not have relief or on-call relief employees must provide a replacement to cover their absences. In this case, complete access would be four (4) weeks after seven (7) years of continuous employment; five (5) weeks after fourteen (14) years of continuous employment, six (6) weeks after twenty-one (21) years of continuous employment and seven (7) weeks after twenty-eight (28) weeks of continuous employment.

[76] Apart of the high costs arising out of this request, in this case, taking all their vacation weeks could be unrealistic or impracticable for some RSMCs who personally have to find someone to cover for them, especially after a certain point. Being able to choose between asking for monetary compensation or taking their vacation is a way for them to alleviate the difficulties involved in finding coverage.

[77] Given the presumption established in favour of in kind compensation, as well as the direct and indirect costs of the request and the difficulties some RSMCs may encounter in finding

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[40] *Ibid*., para. 48. See also : *Lady Dunn General Hospital*, (1991), 2 P.E.R. 168, para. 32.
[41] *Lady Dunn General Hospital*, supra note 39, par. 32.
[42] *Re Assiniboine Regional Health Authority* v. *Canadian Union of Public Employees, Local 4593,* 2009 CarswellMan 648.
[43] *Ibid*., para. 33..
[44] *Ibid*., para. 19-20
[45] I*bid*., para. 44.

someone to cover for them, it is decided that the employer shall pay all RSMCs financial compensation for the retroactive period extending from January 1, 2016 to December 31, 2018, at a time to be mutually agreed upon between the parties.

[78] For the future, starting on January 1, 2019, all RSMCs shall be entitled to four (4) weeks per annual leave year if they have seven (7) years of continuous employment; five (5) weeks per annual leave year if they have fourteen (14) years of continuous employment; six (6) weeks per annual leave year if they have twenty-one (21) years of continuous employment, and seven (7) weeks per annual leave year if they have twenty-eight (28) years of continuous employment. However, in postal facilities that do not have on-call relief or permanent relief employees, RSMCs may, for the sixth and seventh week of vacation, choose to take that week as vacation or claim monetary compensation.

Pre-Retirement Leave

[79] Under clause 19.12 of the collective agreement between the Corporation and the Canadian Union of Postal Employees [46] (hereinafter referred to as the "urban unit collective agreement"), in addition to vacation leave provided for under that collective agreement, a regular employee who attains fifty (50) years of age and completes twenty (20) years of continuous employment, or attains sixty (60) years of age and completes five (5) years of continuous employment, shall be entitled to be paid a pre-retirement leave of one (1) week in the vacation year in which he or she becomes eligible for such leave and in every vacation year thereafter until the employee's retirement up to a maximum of six (6) weeks pre-retirement leave from the time of eligibility until the time of retirement.

[80] The Union asks that years of continuous employment be counted in the same manner as that used for annual leave, and that access be granted for the future. As for the past, it asks for the payment of a compensatory amount.

[81] The Employer maintains that the date of reference used to determine eligibility for post-retirement benefits should also apply to this leave, and proposes to compensate RSMCs financially for the past and future.

[82] In its report dated January 2018, the Mercer consulting firm assesses the cost of this request as follows:

> "Based on pension date, which includes birth dates and years of service, there are 1,099 RSMCs that are over 60 years of age and have five years of service as of December 31, 2016. Applying the same entitlement as outlined in the Urban Agreement and using the median salary of $39,883 the annual cash value of preretirement leave is thus $842,911."[47]

[83] In its award dated May 31, 2018, the tribunal understood that the employer was asking that the January 1, 2016 retroactivity date also be the reference date used to calculate eligibility

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[46] Collective agreement expiring on January 31, 2018.

[47] Page 5 of the report.

for the sole purpose of post-retirement benefits (medical, dental, etc.), for which the Corporation must set aside funds in its financial planning, since is it a self-insurer.[48] Thus, for the purposes of granting these benefits, the Corporation must be given a period equivalent to that of letter carriers and over which it may set aside the required funds.

[84] Such a financial measure is not required for improvements to preretirement or annual leave. The leave must be granted on the same basis as for annual leave, especially since it amounts to annual leave covered in Article 19 of the urban unit collective agreement, which deals with vacation leave.

For all of the above reasons, the Employer, in respect of the retroactive period, must financially compensate the RSMCs concerned on a date mutually agreed upon by the parties. With respect to the future, starting on January 1, 2019, RSMCs who meet the eligibility requirements shall be entitled to this leave. However, in postal facilities that do not have on-call relief or permanent relief employees, RSMCs shall have the option of taking this leave or asking for financial compensation.

Adjustment of PRE compensation

[86] Appendix "F" of the collective agreement provides the following provisions for the compensation of PREs:

> « 3. (a) Permanent relief employees shall be paid the Appendix "A" activity values and variable allowance of the route being replaced. Unless a corporate vehicle is provided, the appropriate vehicle expense will apply.
>
> (b) When a permanent relief employee is not assigned to a route and being compensated in accordance with paragraph 3 (a), he or she shall receive sixty dollars ($60.00) per day in compensation and be required to perform other duties assigned by the Corporation for a maximum of three (3) hours per day.

[87] The Employer proposes to raise to $90.00 the $60.00 allowance provided for under paragraph 3(b) of Appendix "F" and to maintain paragraph 3(a) of the same Appendix. Therefore, PREs will be compensated on an equal basis with the RSMCs they replaced during the retroactive period. The same conditions remain for the future.

[88] For its part, the Union requests that PRE compensation be equal to that of permanent relief employees covered by the urban collective agreement, which would require amending their compensation and working conditions (for instance, by imposing a minimum of 8 hours per day or by adding a premium). The Union is also requesting that all hours be pensionable.

[89] The undersigned agrees with the Employer's claims. In the instant case, the tribunal concluded that PREs are covered by this pay equity process insofar as their

[48] See paragraphs 793 to 796 of the decision dated May 31, 2018.

salary had to be adjusted in the same way as that of the RSMCs.[49] Thus, the wage adjustment for the latter group does not include access to all the working conditions applicable to permanent relief employees covered by the urban collective agreement. And, moreover, it does not include premiums that were excluded in the award of May 31, 2018. Pay equity does not mean "equal working conditions."

[90] Thus, taking into account the jurisdiction of this Tribunal, the wage terms of the PREs and the operative part of the May 31, 2018 award, as well as the agreements listed in Appendix "A" to this award, the Employer's proposal is accepted. It respects the framework of the collective agreement and is fair in relation to the salary adjustments that will benefit the RSMCs. The wage gap is proportional.

Maintaining pay equity

[91] The Corporation proposes to maintain pay equity as follows:

> "Canada Post is commited to maintaining pay equity once the potential wage gap is eliminated. A fair and equitable method of determining worload for RSMC employees is necessary. To that end, Canada Post is commiting to determine the workload of these employees. In addition, Canada Post will offer to work with the Union to determine work content and define workloads. Today, our Route Management System alone, cannot fulfill this need with accuracy."[50]

[92] Then, Canada Post concludes:

> "Canada Post respects and values the women and men who work as RSMCs. We believe in pay equity, and are committed to upholding it in the CPC workplace. Canada Post's goal in this process has been to ensure that the outcome is fair, supported by the evidence and compliant with the law. In addition, Canada Post was guided by the principle of ensuring that as a Crown Corporation, the result of this process is publicly defensible.
>
> Comparing two very different compensation systems has been challenging. We thank the Union for working diligently with Canada Post to address this complex situation, and we look forward to working collaboratively to maintain pay equity in the future."

[93] The Employer believes the parties should be able to develop and implement by 2022 a new system to estimate the workload of RSMCs.

[94] For its part, in addition to the demands dealt with in this award and in the award of May 31, 2018, the Union requests the future application of clause 35.09 of the urban collective agreement (for the first time) and the adjustment of all activity values under Appendix "A" of the collective agreement in order to achieve a derived hourly rate equal to the salary rate of letter carriers starting on January 31, 2019. The Union is also requesting that all time values be included in the collective

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[49] See paragraph 471 of arbitration decision rendered on May 31, 2018.

[50] Excerpt from Canada Post's book of submissions, page 18.

agreement and that salary increases, if any, granted to letter carriers for the period from January 31, 2018 to January 1, 2019 be granted to RSMCs as well.

[95] The Corporation submits that this Tribunal does not have jurisdiction to deal with this issue, as it exceeds the mandate provided for in the Pay Equity Memorandum of Understanding signed on September 1st, 2016.

[96] In the decision of May 31, 2018, the undersigned concluded that the arbitration tribunal was not dealing with a complaint of general discrimination, but with a complaint of wage discrimination. In determining the wage gap, the undersigned ordered that the time values remain frozen (including those agreed to in this process), at least during the retroactive period. This measure is related to pay equity, especially since the Employer has asked to reduce the said time values. It goes without saying that any intervention of the same nature as of January 1st, 2019 having the effect of directly or indirectly infringing the orders made in the award of 31 May 2018 or in this award is not admissible.

[97] I understand that the Employer is committed to maintaining pay equity as defined in this process and will honour its commitment. Finally, I reiterate that any request that requires a unilateral amendment to the collective agreement and that is not essential to ensure pay equity seems to me to be contrary to the pre-established rules. I therefore reject the Union's request.

[98] Finally, on May 31, 2018, I returned several issues to the parties and the parties settled several contentious issues. The results of their discussions show that the process has been useful. The parties were able to clarify requests, assess their consequences, adjust their positions and agree on more appropriate solutions than those presented at the hearings leading to the first award.

[99] I wish the parties continued success.

FOR ALL THESES REASONS, THE TRIBUNAL:

TAKES NOTE of the agreements described in sections 1 to 30 inclusively, as well as section 34 of the English version of the unsigned Memorandum of Agreement attached hereto as Appendix "A";

ORDERS the parties to comply with it;

MAINTAINS the Union's request for an average and weighted compensation of $5.31 per hour as a direct wage gap;

ORDERS consequently the parties to comply with the payment and implementation procedures described particularly in paragraphs 51 to 54 of this award;

REJECTS the Union's request to reopen the May 31, 2018 decision and maintains the retroactive date of January 1st, 2016 as the eligibility date for the purpose of the post-retirement health plans;

MAINTAINS in part the Union's request pertaining to annual leave;

ORDERS consequently the parties to comply with the terms of compensation and eligibility listed in paragraphs 77 and 78 of this award;

MAINTAINS in part the Union's request pertaining to pre-retirement leave;

ORDERS consequently the parties to comply with the terms of compensation and eligibility listed in paragraph 85 of this award;

REJECTS the Union's request regarding the adjustment of the PRE compensation;

RETAINS the Employer's proposal and accordingly sets the allowance provided for in Article 3(b) of Appendix "F" of the collective agreement at ninety dollars ($90) per hour, for the retroactive period and for the future;

REJECTS the Union's demands regarding the maintenance of pay equity;

ORDERS the parties to amend the provisions of the collective agreement accordingly;

RETAINS jurisdiction to deal with any difficulties in the application and implementation of this award (including the award of May 31, 2018), including any delay.

Maureen Flynn, arbitrator

Counsels for the Union: Janet E. Borowy

Paul Cavalluzzo

Counsel for the Corporation: Karen Jensen

Date of hearing: September 12, 2018

Date of deliberations: September 12, 2018

Our file: MF-1702-31025-FP
Award #276-18

cd/gl cupe1979

APPENDIX “A”

MEMORANDUM OF AGREEMENT
(MOA)

BETWEEN:

CANADIAN UNION OF POSTAL WORKERS and the
RURAL and SUBURBAN MAIL CARRIERS

- and –

CANADA POST CORPORATION

WHEREAS the Parties entered into a Memorandum of Understanding on September 1, 2016 (the “MOU”) for the undertaking of a joint pay equity review process with regard to the Rural and Suburban Mail Carriers (“RSMC”);

AND WHEREAS Arbitrator Flynn issued a decision on May 31, 2018 (the “Decision”), resolving certain issues and remitting other issues back to the Parties for agreement, failing which the arbitration before Arbitrator Flynn will continue;

AND WHEREAS the Parties have thoroughly discussed and considered all outstanding issues in the pay equity review process, and wish to fully and finally resolve some of the differences between them in a manner that complies with the requirements, spirit and intent of the pay equity provisions of the Canadian Human Rights Act, RSC 1985, c H-6 and the Equal Wages Guidelines, 1986, SOR/86-1082;
NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

Neighbourhood Mail

1 RSMCs will be compensated an additional 0.8 cents for every piece of neighbourhood mail for which they were paid between January 1, 2016 and January 15, 2018.

Disability Insurance

2 After the signing of this MOA, Disability Insurance coverage will be provided to routeholders and PREs, on the same terms and conditions as are applicable to Urban members, except as noted in this MOA. This coverage will only be available to employees whose disabilities started on or after January 1, 2016. Any RSMC who is on Extended Disability or Sick Leave Without Pay due to a disability which started on or after January 1, 2016 shall not be disqualified for Disability Insurance coverage by reason only of their absence on those leaves.

3 Any employee who is already on Short Term Disability Leave or Extended Disability Leave as of the date of implementation of coverage must exhaust both of those benefits before claiming Disability Insurance benefits.

4 As of the date of implementation of coverage, Disability Insurance will be provided to route-holders, PREs and Urban members as a standalone rate group of insured employees, with the premiums for this rate group as determined by the insurer. However, the Consultative Committee on Benefits may recommend an alternate appropriate rate group(s) for the Disability Insurance plan.

5 Route-holders and PREs who qualify for Disability Insurance coverage will be required to pay the employee share of the premiums, retroactive to January 1, 2016. The Corporation will pay the employer share of the premiums, less all its costs of the Extended Disability Plan for that period. Employees on Extended Disability Leave will not be required to pay premiums for the period they are on Extended Disability Leave.

Leaves

6 As of January 1, 2019, route-holders and PREs will have access to the following leaves; Marriage Leave, Birth and Adoption Leave, Leave for Other Reasons, Court Leave, Personnel Selection Leave, Examination Leave and Career Development Leave, with the same eligibility requirements as applicable under the Urban Collective Agreement.

7 For the period from January 1, 2016 up to and including December 31, 2018, routeholders and PREs will be provided an equal share of the retroactive value of the leaves identified in section 6 above, using Mercer's annual valuation methodologies in its Report (entered as Exhibit 64 at arbitration), which will be revised to take into account the wage adjustments provided for in Arbitrator Flynn's upcoming Award. The Corporation will make this payment by April 2019.

BC Health Care Premium Contribution

8 As of January 1, 2019, active route-holders and PREs living in British Columbia, shall receive the same contributions to the BC Health Care Premium as the Urban members, under the same terms and conditions applicable under the Urban Collective Agreement.

9 For the period from January 1, 2016 up to and including December 31, 2018, active route-holders and PREs living in British Columbia will receive retroactive payments in respect of the BC Health Care Premium contributions that would otherwise have been made to them according to section 8 above. The Corporation will make this payment by the end of 2018.

Isolated Post Allowance

10 As of January 1, 2019, route-holders and PREs working out of the Isolated Posts listed in Appendix H of the Urban Collective Agreement shall receive the same allowances and benefits as applicable under Article 25 of the Urban Collective Agreement.

11 For the period between January 1, 2016 and the implementation date in section 10 above, those route-holders and PREs working out of the Isolated Posts listed in Appendix H of the Urban Collective Agreement shall receive equal shares of the value of the Isolated Post Allowance identified in section 10 above, using Mercer's annual valuation

methodology in its Report (entered as Exhibit 64 at arbitration). The Corporation will make this payment by April 2019.

Glove Allowance

12 Starting October 1, 2019, route-holders and PREs shall be paid on October 1st of each year a $20.00 Glove Allowance, on the same conditions as applicable under the Urban Collective Agreement.

13 By the end of December 2018, route-holders and PREs shall be paid $60.00 in respect of the Glove Allowance that would otherwise have been paid for 2016, 2017, 2018.

Displacement Lump Sump

14 Effective immediately after the signing of this MOA, when route-holders and PREs are displaced permanently from a working place to another due to a Technological Change, he or she shall be entitled to a lump sum compensation in the same amount and on the same terms described in paragraph 29.11(f) of the Urban Collective Agreement.

Rest Period Allowance

15 Effective January 1, 2019, route-holders and PREs shall receive, on a pro-rata basis, based on RMS hours up to a maximum of 8 hours, a pensionable Rest Period Allowance equivalent to the terms and conditions applicable to Group 2 members under Appendix “A” of the Urban Collective Agreement.

16 For the period between January 1, 2016 up to and including December 31, 2018, routeholders and PREs shall receive retroactive payments in respect of the pensionable Rest Period Allowances that would otherwise have been made to them according to section 15 above.

Personal Contact Items and Lock Changes

17 RSMC routes shall be adjusted to include 2.75 minutes of time in RMS for each Personal Contact Item, retroactive to January 1, 2016. This change to RMS time will have the corresponding effect of adjusting pensionable service for route-holders and PREs. In addition, payments for Personal Contact Items (which will be revised to take into account the wage adjustments provided for in Arbitrator Flynn’s upcoming Award) will be included in pensionable earnings, retroactive to January 1, 2016.

18 RSMC routes shall be adjusted to include 2.31 minutes of time in RMS for each Lock Change. This change to RMS time will have the corresponding effect of adjusting pensionable service for route-holders and PREs. In addition, payments for Lock Changes (which will be revised to take into account the wage adjustments provided for in Arbitrator Flynn’s upcoming Award) will be included in pensionable earnings. If the keys for a Lock Change require delivery to the door, the RSMC will credit the route logsheet with a Personal Contact Item.

Life Insurance

19 Starting January 1, 2019, Life Insurance coverage will be provided to active routeholders and PREs, on the same terms and conditions as applicable to Urban members. Starting January 1, 2019, the Post Retirement Term Life Insurance and Death Benefit will be provided to retired route-holders and PREs who were entitled to and did receive a retirement pension on or after (but not earlier than) January 1, 2016, on the same terms and conditions as applicable to retired Urban members.

20 The estates of any

(i) active route-holders and PREs, and

(ii) retired route-holders or PREs who were entitled to and did receive a retirement pension on or after (but not earlier than) January 1, 2016, who passed away between January 1, 2016 and December 31, 2018, shall receive an equal portion of the sum of:

(a) the value of the pre-retirement Life Insurance coverage for 2016, 2017 & 2018; plus

(b) the value of the Post Retirement Term Life Insurance and Death Benefit for 2016, 2017 & 2018

using Mercer's annual valuation methodologies for these respective benefit coverages (entered as Exhibit 63), which will be revised to take into account the wage adjustments provided for in Arbitrator Flynn's upcoming Award. These payments will be made available by May 1, 2019.

21 The two year eligibility requirement for the Post-Retirement Term Life Insurance and Death Benefit will be waived solely for the purpose of providing the value of these benefits to the estates of retired route-holders and PREs who were entitled to and did receive a retirement pension on or after January 1, 2016 (but no earlier), and who passed away between January 1, 2016 and December 31, 2018, as well as for the purpose of providing post-retirement life insurance coverage to those who retired on or after January 1, 2016 (but not before). Nothing in sections 19-20 shall be interpreted so as to prejudice the Corporation's position before Arbitrator Flynn regarding the commencement of service accrual for the purposes of eligibility for Post Retirement Benefits.

OCREs

22 Upon the implementation of the wage increases that are ultimately decided by virtue of Arbitrator Flynn's upcoming award, On Call Relief Employees (OCREs) who cover RSMC routes will be paid at the lowest progression level for the newly awarded pay rates. Thereafter, the Corporation will compensate OCREs who covered routes since January 1,

2016 for the difference between the wages they had previously been paid and the lowest progression level of the newly awarded pay rates.

These payments for retroactive wages owing to OCREs will be made at the same time as the payments for retroactive wages owing to route holders and PREs.

23 Nothing in section 22 above shall prevent the Union from advancing any demands at collective bargaining regarding OCREs' rates of pay.

Zones

24 This issue will be subject to Arbitrator Flynn's upcoming Award and will be resolved accordingly.

Implementation Committee

25 The parties agree to establish an Implementation Committee to resolve any issues that may arise from the present MOA and Arbitrator Flynn's upcoming Award. The Implementation Committee will meet within two weeks of the issuance of the Arbitrator's upcoming Award. The Implementation Committee will be comprised of two representatives of the Union and two representatives of Canada Post. The terms of reference of the Implementation Committee will be agreed to by the parties within two weeks of the first meeting.

26 The Implementation Committee will work together to monitor and resolve implementation issues as they arise, but when the issue(s) cannot be resolved, the parties will refer it to Arbitrator Flynn, who has retained jurisdiction over the implementation of her awards and over the items in this MOA.

General

27 Any payments contemplated in this MOA shall be subject to all applicable deductions and withholdings.

28 Any payments required to be made by any employee of any premiums, contributions or other amounts owed by the employee, as a result of the issues identified in this MOA or the resolution of the pay equity dispute, will be recovered as a deduction from any payments made to them by the Corporation pursuant to this MOA or Arbitrator Flynn's upcoming award. Any further outstanding amounts that cannot be recovered in this manner will be recovered by deduction on the employee's subsequent pays in the manner described in clause 33.05 of the RSMC Collective Agreement.

29 Notwithstanding anything to the contrary, any undertaking in this MOA which requires an amendment to the pension plan or a supporting document is considered tentative and conditional upon the satisfaction of all regulatory requirements and the receipt of any regulatory approvals, including but not limited to approval of the Office of the Superintendent of Financial Institutions ("OSFI"), failing which such undertaking will become null and void, without impacting the enforceability of anything else in this MOA,

and the Parties will meet to negotiate a suitable alternate arrangement which would satisfy pay equity in accordance with Arbitrator Flynn's Decision. Any undertaking which requires an amendment to the pension plan or supporting document will be satisfied within 9 months after all regulatory requirements have been satisfied and all approvals received.

30 The rights and benefits provided RSMC employees in this Memorandum of Agreement shall be incorporated into the RSMC Collective Agreement. The Implementation Committee established under paragraph 26 above shall address the issue of how best to do this and the language to be used, failing which the Implementation Committee will refer any disagreement to Arbitrator Flynn for resolution. This MOA will expire upon the implementation of its terms, and the incorporation of the rights and benefits herein into the RSMC Collective Agreement.

31 This MOA is entered into in full and final settlement of the issues arising from or related to the pay equity review process under the MOU, other than those issues which were referred back to Arbitrator Flynn for a decision in her upcoming award.

32 There are no agreements, understandings or representations with respect to the issues raised in this MOA other than those which are expressly contained in this MOA.

33 The Parties agree that the implementation of the undertakings set out in this MOA, combined with the Flynn Decision and her upcoming award, will eliminate any genderbased wage discrimination, and the Corporation will be compliant with its obligations under the Canadian Human Rights Act, RSC 1985, c H-6 and the Equal Wages Guidelines, 1986, SOR/86-1082. The Union will not commence, or threaten to commence, any grievance, claim, complaint, action or proceeding related to pay equity issues (including but not limited to a complaint with the Canadian Human Rights Commission) in relation to wage discrimination in respect of any period before the expiry of this MOA.

34 Arbitrator Maureen Flynn will remain seized with respect to the implementation of the undertakings set out in this MOA, including the terms herein regarding the timing of implementation.

Dated this day of , 2018

Canadian Union of Postal Workers / Syndicat des travailleurs et travailleuses

Canada Post Corporation / Société canadienne des postes des postes