IN THE MATTER OF AN ARBITRATION
of a grievance filed by Bill Higgins on
August 6, 2018

BETWEEN:

International Alliance of the Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts Union, Local 906A ("IATSE 906A")

The Union

AND:

Fathers of Confederation Buildings Trust Operating Confederation Centre of the Arts

The Employer

1. The Employer and the Union are parties to a Collective Agreement, effective April 1, 2018 to March 31, 2020. A grievance arbitration hearing was held before me on Thursday, November 1, 2018 at the Confederation Centre of the Arts in Charlottetown, Prince Edward Island. The Union was represented by Barry Vessey, and the Employer was represented by Stephanie Gallant.

2. The grievance presented by Union member Bill Higgins was that "management is not correctly following Article 14 Et al of our collective agreement and demand that they follow the past practice of many years. The language has not changed. Only your interpretation."

3. At the outset, the Employer raised a preliminary issue with respect to the relief sought by the Union, and argued that the Union had not complied with the procedures described in Article 6 of the Collective Agreement. Given the decision I have reached in this matter, it is not necessary for me to deal with this issue.

4. The grievance relates to the effect of working more than five hours as a stagehand at the Confederation Centre during theatre season, and the benefits or compensation which must be provided by the Employer as a result. Article 14 of the Collective Agreement governs this issue, and the Union directed attention to Articles 14.05 and 14.06 specifically.

5. The Union presented three arguments:

   (1) The bonus payment of $3.50 per hour contemplated by Article 14.05 is required to be paid any time a member works more than five hours.
   (2) All members who are required to work more than five hours are entitled to an additional hour of pay at the prevailing rate, a proper meal paid for by management, and a one-half hour period in which to eat the meal, and a bonus of $3.50 per hour for all work performed after the initial five hour period.

(3) Management is required to provide a "proper meal" to eligible workers under Article 14 and recent changes made by the Employer have failed to meet this requirement.

6. Mr. Bill Higgins testified for the Union, and his evidence was supplemented by Barry Vessey. They explained that Article 14 has been in place for many years, but in the summer of 2018, the Employer changed its practices with respect to paying the benefits, including meals, provided by the Article. They reviewed the provisions of Article 14 and provided their understanding of how it is intended to work in practice.

7. The Employer provided evidence through Dean Constable and Kellie Knight. They explained that the Employer had good reason to change its practices with respect to Article 14 and maintained that the changes were discussed with the Union, and are consistent with the wording of Article 14. The representative of the Employer, Ms. Gallant, objected to the third issue raised by the Union, arguing that the content of a "proper meal" was not part of the original grievance. In 2015, the theatre schedule was changed to sometimes have two different shows presented on the same day, and this process resulted in the realisation that Article 14 was not being applied consistently to all members of the Union. A new policy was created after the 2017 season. The witnesses provided their interpretation of Article 14.

8. I listened carefully to the evidence and the arguments, and I have reviewed the exhibits which were presented during the hearing. Article 14 is not well-written, and I understand why the parties do not agree on its application.

9. In deciding this matter, I have endeavoured to apply Article 14 as written. It is not within my power to change or add to the words used by the parties when they entered into the Collective Agreement. I have interpreted the words used in this Article according to their ordinary meanings. I am aware that I may depart from the ordinary meaning of the words to avoid an absurd result, but I have arrived at my conclusion without doing so, because although my interpretation is not consistent with that offered by one of the parties involved in this dispute, the result is not absurd. I have also considered the entirety of Article 14, as it became evident to me that individual paragraphs in Article 14 need the context of the other provisions to make sense of what was intended.

10. Article 14 is confusing, unnecessarily wordy, and vague in parts. The use of exceptions and qualifiers serves to detract from the meaning of the provisions, rather than to clarify.

11. I have decided to deny the Union's grievance, for the reasons outlined below. The Union presented some evidence of past practices by the Employer, most particularly in relation to the issue of what is a proper meal, but I have decided that I do not have sufficient evidence to make a decision on the basis of past practice. The fact that the theatre schedule changed only in the past several years, and the Employer has been striving to work through the staffing requirements since that time, coupled with the sparse evidence with respect to past practices, leads me instead to rely on the specific language in Article 14. In relation to the "proper meal" issue, the evidence before me establishes that there had been a change in the

number of options made available to stagehands, but it did not convince me that the more-limited options provided by the Employer are not "proper" meals. More to the point, I have no evidence before me to help me determine what a "proper" meal is. I will comment that I believe it is important for workers to receive good meals in order to do a proper job, but I will say no more on this topic.

12. Article 14 of the Collective Agreement is comprised of 11 clauses. For the purposes of this decision, only clauses 14.01 through 14.06 are relevant.

13. Clause 14.01 creates the standard work period of 4.5 consecutive hours and 14.02 allows the work period to be extended up to five hours, in special circumstances. The implication from these provisions is that a worker will not work more than five hours without a break.

14. Clause 14.03 confirms this, but adds a reference to a meal break, and sets conditions on when working more than 5 hours will be allowed. 14.03 is also made subject to certain exceptions, those described in Articles 14.05 and 14.06:

> 14.03 Working more than five (5) hours without a meal break will be permitted only when absolutely necessary and with the permission of the Business Agent of I.A.T.S.E. Local 906A, except as provided in Articles 14.05 and 14.06.

15. The basic rule in 14.03 is that working more than 5 hours without a meal break is not permitted. However, 14.03 itself allows that rule to be not applied:
    (1) when absolutely necessary, and
    (2) with the permission of the Business Agent of the Local.

16. In addition to those two requirements which must be satisfied to avoid the basic rule, 14.03 is also subject to two exceptions, created in Articles 14.05 and 14.06, which clarify that 14.03 does not apply to the situations described:

> 14.05 Section 14.03 does not apply when on a specific show call or combination of show and changeover; any time over five (5) hours will be paid at the prevailing rate plus a bonus of $3.50 per hour.
>
> 14.06 Section 14.03 does not apply when on days when two performances are scheduled and it is impossible for the personnel involved to have a full one hour meal break, a bonus of one extra hour's pay at straight time and a proper meal will be provided for each person paid for by Management. One-half hour will be allowed for employees to eat this meal.

17. In my view, it is not possible for a worker to work more than 5 hours without a meal break if Article 14.03 is inapplicable.

18. Significantly, Article 14.04 creates the basic rule to be applied where 14.03 operates, and states that a bonus and a proper meal will be provided to anyone who works more than five consecutive hours (and gets half an hour to eat). But the Article begins with the words "Except as provided under section 14.05, 14.06 and 14.07", which means that this basic rule does not apply to the situations described in those sections. The rule to be applied is as stated (or "provided") in sections 14.05, 14.06 and 14.07:

> 14.04 Except as provided under Section 14.05, 14.06, and 14.07, if the number of consecutive worked hours exceeds five (5), as provided in Section 14.03, there will be a bonus of an additional hour's pay at straight time and a proper meal will be provided for each person and paid for by Management. One-half hour will be allowed for employees to eat this meal.

19. Article 14.04 confers a benefit on a worker who works more than five consecutive hours. However, as noted, it is subject to exceptions, and the reference to working five consecutive hours is stated to be "as provided in section 14.03". As will be seen, this phrase is important, because the exceptions referred to in 14.04 specifically state that "section 14.03 does not apply".

20. By its express wording alone, Article 14.05 means that the basic rule stated in 14.03 does not apply where a worker is on a specific show call or combination of show and changeover. Instead (which is implied by the use of a semi-colon in 14.05), the worker who works a specific show call or combination of show and changeover will be paid at the prevailing rate plus a bonus of $3.50 per hour. The benefit described in 14.04 does not apply because 14.03 does not apply.

21. This is what a worker is entitled to, not the bonus and something else, because Article 14.04 says "Except as provided" the basic rule in 14.04 applies. The Article does not say "in addition to" or any words to that effect. The beginning words in 14.04 mean that a worker <u>either</u> gets what 14.04 gives <u>or</u> he or she gets what Articles 14.05, 14.06 and 14.07 give (depending on the situation).

22. The exception in 14.05 applies only in two situations – when the worker is on a specific show call, or is working a combination of show and changeover. In either of those situations, the effect of section 14.03 is removed, and replaced by the words following the semi-colon: "any time over five (5) hours will be paid at the prevailing rate plus a bonus of $3.50 per hour."

23. There is no mention of a meal, and the stipulation about a meal break in 14.03 is removed by the first words in 14.05.

24. I conclude that Article 14.05 serves to provide extra pay (a bonus) to workers who work more than five hours on a specific show call or a combination of show and changeover.

25. Article 14.06 is similar to Article 14.05 in that it begins by saying that the basic rule in 14.03 does not apply to days where two performances are scheduled and it is not possible to have a full hour meal break. The basic rule is that working more than five hours without a meal break is not permitted. In other words, under Article 14.06, a worker can work more than five hours without a full meal break, and he will receive the benefit outlined in 14.06, that is, a bonus of one extra hour's pay at straight time and a proper meal, paid by management, and a half hour to eat the meal. Article 14.03 does not apply because Article 14.06 expressly states that.

26. As a result, working more than 5 consecutive hours entitles a worker to an additional hour's pay at straight time, and a paid-for, proper meal, but not in the situations described in Articles 14.05, 14.06, and 14.07.

27. I will try to use common sense to discern what was intended by the clauses in Article 14 without being overly influenced by the express language in the Articles:

    14.01 – A worker can work 4.5 consecutive hours, then get one hour off

    14.02 – Special circumstances might allow five consecutive hours of work

    14.03 – Usually, a worker will get a meal break after five hours, but that rule can be changed when absolutely necessary, if approved
    - Except for 14.05 and 14.06

    14.04 – If a worker works more than five consecutive hours, the worker gets a bonus and a proper meal, and half an hour to eat it
    - Except for 14.05, 14.06 and 14.07

    14.05 – Describes the benefit for working a specific show call or combination of show and changeover (bonus of $3.50 per hour over five hours), but says nothing about a meal

    14.06 – Describes the benefit for working two performances where impossible to take one hour break (bonus of one hour's pay straight time and a proper meal, with one-half hour to eat it).

28. The entitlement to a paid-for meal is created by 14.04, but that clause does not apply to 14.05 or 14.06, for the reasons previously outlined. Having said this, Article 14.06 is almost identical to 14.04, and creates the same benefit, but in a situation where 14.03 does not apply.

29. I cannot accept the Union's contention that the bonus of $3.50 per hour applies to all instances where workers work more than five hours. The implication from Article 14 in its entirety is that the bonus is an exception, to be paid only for show calls and combinations of show calls and changeovers.

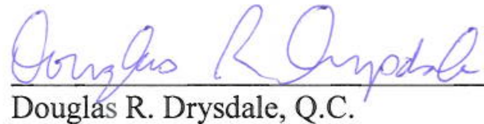
30. The Union also contends that Article 14.05 has two parts which are independent from one another, but this cannot be the case when you consider that Article 14.03 creates a general rule and 14.05 is an exception to that. In the context of the whole article, I interpret 14.05 to mean "where Article 14.03 does not apply because of a specific show call or combination of show call and changeover, a bonus of $3.50 per hour will be paid for work of more than five hours."

31. I have some sympathy for the Union because my interpretation of 14.05 and 14.06 means that workers who work more than five hours in some situations will get a meal (see 14.04), while others will get a significant pay bonus, but no meal (14.05). However, I am forced to conclude that this is correct because of the specific language in 14.03, 14.04, 14.05 and 14.06, which clearly indicate that 14.05 and 14.06 are exceptions to the general rules, and must stand by the wording of the benefits in those two clauses. The second Union argument (see Exhibit 1, page 2) ignores the "except" languages in those clauses, and it is that language that determines the issue.

32. As noted above, I decline to decide the issue of whether the Employer has failed to provide proper meals, due to lack of evidence.

33. In all of the circumstances, the grievance is denied.

DATED this 30th day of November, 2018.



Douglas R. Drysdale, Q.C.