

Case Name:

**International Alliance of Theatrical Stage Employees,
Moving Picture Technicians, Artists and Allied Crafts
of the United States, its Territories and Canada,
Local 58 v. Exhibition Place (Malloy Grievance)**

**IN THE MATTER OF an arbitration
AND IN THE MATTER OF the grievance of Dan Malloy
Between
International Alliance of Theatrical Stage Employees,
Moving Picture Technicians, Artists and Allied Crafts
of the United States, its Territories and Canada,
Local 58 (the "Union"), and
The Board of Governors of Exhibition Place (the
"Employer")**

[2005] O.L.A.A. No. 535

82 C.L.A.S. 350

File No. A/Y501059

Ontario
Labour Arbitration

R.D. Howe (Arbitrator)

Heard: Toronto, Ontario, September 13, 2005.

Award: September 16, 2005.

(5 paras.)

Appearances:

Bernard Fishbein, Counsel, Gordon Graham, Bill Hamilton, Gerry Penic and Dan Malloy, for the Union.

Richard (Sandy) Douglas, Director of Human Resources and Emily Douglas, for the Employer.

AWARD

1 The issue to be determined in these proceedings is the extent of the Employer's obligation to make payments to the grievor, Dan Malloy, in relation to July of 2005, under paragraph 3 of the following Letter of Understanding, which was signed by the parties' representatives on June 3, 2005:

LETTER OF UNDERSTANDING

BETWEEN:

THE BOARD OF GOVERNORS OF EXHIBITION PLACE

("Exhibition Place")

-and-

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF
THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL 58

("The Union")

WHEREAS Exhibition Place and the Union are bound to a Collective Agreement which covers the Ricoh Coliseum;

AND WHEREAS the previous tenant of Ricoh Coliseum, the Roadrunner Hockey team, has terminated its lease at the Ricoh Coliseum leaving the Coliseum vacant;

AND WHEREAS in these circumstances Exhibition Place has therefore requested relief from its obligation to provide employment for a House Technician at the Ricoh Coliseum;

AND WHEREAS a new tenant will take over the Ricoh Coliseum on July 1, 2005, but until that point in time, there is no planned activity at the Ricoh Coliseum;

THEREFORE the Union and Exhibition Place each agree with the other:

1. The current House Technician at the Ricoh Coliseum shall be laid off effective from May 10, 2005 until July 1, 2005.
2. In the event that there is activity at the Ricoh Coliseum between May 10, 2005 and July 1, 2005, the House Technician shall be employed (or paid) for a minimum of twenty (20) hours per week, and if the work extends for more than a three (3) day period, then the House Technician shall be employed (or paid) for a minimum of forty (40) hours per week.
3. Effective July 1, 2005, the House Technician will be reinstated to his previous position at the Ricoh Coliseum in which he is guaranteed a thirty-seven and one-half (37 1/2) hour work week for forty-four (44) weeks per year.
4. This Letter of Understanding is enforceable pursuant to the grievance and arbitration provisions of the Collective Agreement.

2 The grievor received no pay or hours of work from the Employer for the first two weeks of July of 2005. Although he was available to return to work at the Ricoh Coliseum on the first day of July, the Employer did not call upon him to do so because it had no work for him to perform at that location until July 18, 2005. During each of the last two weeks of that month, the Employer provided him with less than thirty-seven and one-half hours of work and pay.

3 The Union interprets paragraph 3 of the Letter of Understanding as guaranteeing the grievor a thirty-seven and one-half hour work week for each of the four weeks in July of 2005. The Employer, on the other hand, interprets that paragraph as guaranteeing only that during the year of 2005 the grievor will be paid for a minimum of 1650 hours of work, a number which its Director of Human Resources described as having been "arrived at by multiplying the guarantee amount of 44 weeks & 37.5 hours".

4 Paragraph 1 of the Letter of Understanding relieved the Employer of its obligation to provide employment to the grievor as a House Technician at the Ricoh Coliseum from May 10, 2005 until July 1, 2005, by providing for him to be laid off during that period. Paragraph 3 required the Employer to reinstate the grievor to that position effective July 1, 2005, and specified that "he is guaranteed a thirty-seven and one-half (37 1/2) hour work week for forty-four (44) weeks per year" in that position. That guarantee requires the Employer to do more than merely ensure that the grievor is paid for at least 1650 hours of work per year. If that had been all that the parties intended

to guarantee, they could easily have included words to that effect in the Letter of Understanding. The specific words which they chose to include must be given full and fair weight, and their plain and ordinary meaning. Thus, in order to comply with paragraph 3 of the Letter of Understanding, the Employer must give the grievor a thirty-seven and one-half hour work week for forty-four weeks per year in his position as the House Technician at the Ricoh Coliseum. However, nothing in the language contained in paragraph 3 stipulates that any of those forty-four 37 1/2 hour weeks must necessarily be given to the grievor during July of 2005. It merely requires that they be given to him within the time frame for which that paragraph provides. (Since a number of matters regarding that time frame, including when it commenced and the effect, if any, which the May 10 to July 1, 2005 lay-off has upon it, were not fully addressed at the hearing of this matter, those matters will not be determined in this award.)

5 I shall remain seised for the purpose of deciding any relevant matters which the parties are unable to resolve (including the aforementioned matters regarding the time frame contemplated by paragraph 3 of the Letter of Understanding, and the matter of whether the Employer has given the grievor forty-four 37 1/2 hour weeks within that time frame, to the extent that those matters impact upon any obligation which the Employer may have under paragraph 3 of the Letter of Understanding to make payments to the grievor in relation to July of 2005).

qp/d/qlsld