



Communications, Energy and Paperworkers Union of Canada
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Ontario Region

November 10, 2011

Memo

To: CEP members working at Bell Technical Solutions

Re: Home Dispatch Arbitration Award dated November 8, 2011

Arbitrator Herman issued an award (attached), that determined that the Home Dispatch Policy of Bell Technical Solutions is null and void. The Arbitrator made several findings including the fact that time spent performing duties at the commencement of a shift was compensable work and ought to be paid.

The arbitration dealt with only one grievance of an individual. A further hearing date has been requested to deal with the issue of damages, and the further questions that have been raised due to this decision; these questions include the remaining individual grievances that have been filed, the National Policy grievance and further actions that are required to resolve this long standing issue.

While these issues are still proceeding before the Arbitrator, all members of CEP are encouraged to respect the status quo and to continue work as they have prior to the award and until these matters are finally resolved.

Should you have any questions please contact your local executive or National Representative and keep them apprised of any other situations that may occur.

In solidarity,

Barb Dolan
Administrative Vice President

BD:lmc/cope-343

Attach.

cc: National Representatives servicing BTS
BTS locals

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BELL TECHNICAL SOLUTIONS INC.

(the "Employer")

-AND-

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

(the "Union")

**AND IN THE MATTER OF THE GRIEVANCE OF DAVE WILSON CONCERNING
HOME DISPATCH**

ARBITRATOR

ROBERT J. HERMAN

APPEARANCES

FOR THE EMPLOYER

**SARAH CROSSLEY
ALAIN LAROCQUE
LAURA LEE HAMILTON
MARY CATHERINE LAJOIE
T. J. CLARKE
JACOB CAWKER**

FOR THE UNION

**MICHEIL RUSSELL
MIKE LAMBERT
DAVE WILSON
SHAWN COWAN**

**HEARINGS IN THIS MATTER WERE HELD ON DECEMBER 15, 2009, AND MAY 27,
SEPTEMBER 13, NOVEMBER 9, DECEMBER 14, 2010 AND JULY 5, 8, AND 15, AND
SEPTEMBER 1, 2011**

AWARD

1. The grievor, Dave Wilson, alleges that the Employer, Bell Technical Systems (“BTS”) is violating his rights “via the Home Dispatch Policy by not paying him for all work performed after going on shift and logging into the FWFm system, and the Employer has threatened progressive discipline for non-compliance.” The grievance asserts breaches of the Collective Agreement and the Ontario *Employment Standards Act*.

2. Eight similar grievances filed by other employees were also referred to me for arbitration, all of them objecting to changes BTS proposed to its Home Dispatch Policy (“HDP” or the “Policy”). The hearing into the individual grievance of Dave Wilson proceeded first, with all other grievances deferred until a decision in this matter issues. The instant Award deals only with the Wilson grievance.

3. In opening statements, the Union, the Communications, Energy and Paperworkers Union of Canada (“CEP”), submitted that the new HDP was an unreasonable policy, was in breach of the Collective Agreement, was not uniformly applied, and was in breach of Part III of the *Canada Labour Code* (the “Code”) (although the grievance as filed alleges a breach of the Ontario *Employment Standards Act*, subsequent to its filing the Employer was found to be governed by federal labour

relations legislation, so the allegation was amended to refer to the relevant federal legislation).

4. Most of the BTS employees in the bargaining unit are technicians who perform installation and repair of residential and commercial telecommunications equipment. Prior to 1996, this work was performed for customers of Bell Canada by employees of Bell Canada, one of whom was the grievor. He was an hourly employee, and was required to be at the Bell Canada Work Centre by the start of his shift or tour each day. He drove his own vehicle to the Work Centre on his own time, and once his shift started, he obtained his assignments for the day, loaded the company vehicle assigned to him with any required material and supplies, performed the mandatory circle safety check on his vehicle (the “circle check”), and then embarked upon his service calls for the day. All these tasks (other than arriving in his own vehicle at the Work Centre) occurred at or after the start of his shift, and the grievor and other repair technicians were paid for time spent from start of shift until they returned the company vehicle to the Work Centre at the end of their shift.

5. In 1996, Bell Canada established Entourage Technology Solutions (“Entourage”) to take over these repair and installation functions, and a large number of Bell Canada technicians, including the grievor, were hired by Entourage. Some time shortly after their commencement of employment with Entourage, the technicians were directed to begin working out of a different Work Centre, this one located on Wright Street in St. Catharines.

6. After their move to the new Work Centre, technicians were asked sometime in 1996 or 1997 to drive company vehicles to and from the Work Centre each day and to take them home with them at end of shift. The company considered this practice to be of benefit both to it and to the technicians. The company explained at the time that allowing this would provide some additional benefit for technicians, since their wages and benefits at Entourage were lower than they had been at Bell Canada, as well as alleviating a company problem about having insufficient facilities to provide enough secure overnight parking spots for the company vehicles. The technicians who began driving company vehicles home after their shifts (one of whom was the grievor) were generally required to drive them back to the Work Centre at the start of their shift the next day, where they would again receive their work assignments, perform circle checks, make sure they had necessary material in their trucks, and proceed to their first call, and return to the Work Centre at end of shift before driving home in the company vehicles. On limited occasions a technician would drive directly home at end of shift with the company vehicle, without first reporting back to the Work Centre. The technicians taking company vehicles home each night continued to be paid only for work performed from the start of shift to end of shift at the Work Centre, or until the end of their shift even if they drove directly home from their last assignment. Those technicians who preferred not to drive a company vehicle to and from their homes were not required to do so, and they continued to travel to the Work Centre each day on their own, where they received their assignments, performed circle checks and loaded their vehicles with

material as needed. Although the Work Centre location changed sometime in 1997 or 1998, the practice in this respect did not.

7. In 2000, technicians were provided with laptop computers and the “FWFM” system for logging in to receive assignments was introduced. Instead of the previous practice whereby technicians received their assignments directly from dispatchers or by picking up printed work assignment sheets, technicians were now to “FEP in”; i.e. plug in laptops to a telephone jack, log in on-line and download work assignments directly on to the laptop. The written HDP at the time stated that employees must be at the site of their first activity on time for the beginning of shift each day and that generally speaking their first activity would involve visiting a customer. The Policy noted that travel to and from the employee’s residence must be completed outside of working hours, but that there would be an allowance for FEP in time up to a maximum of 15 minutes. The written Policy did not reflect actual practice, though, as generally speaking technicians still drove to the Work Centre each day at start of shift in the company vehicles they had taken home the night before, rather than directly to their first customer. At the Work Centre they then went through the FEP in procedure, received their assignments, performed circle safety checks, loaded up any required material, and drove to their first assignment. The time taken to FEP in varied, depending on a number of factors, such as availability of phone jacks, difficulties in obtaining a dial tone and downloading, complexity of assignments, but the time needed for this operation was typically in the 10 to 20 minute range. At end of shift, generally technicians would return to the Work

Centre and jack in to a telephone line and log out for the day. They continued to be paid from when their shift started at the Work Centre until they logged out at the conclusion of their shift, so that for technicians taking company vehicles home, they travelled to and from the Work Centre at beginning and end of shift on their own time.

8. The practice began to develop where technicians would FEP in at their homes without first attending at the Work Centre at beginning of shift, would receive their assignments and perform circle checks while still at home, and then would drive from home directly to the first job of the day. Management was aware of this “home dispatch” practice by many technicians, including the grievor, and either encouraged the practice or did not object to it, as it considered the practice to be of mutual benefit. If a significant number of technicians did not have to get their assignments from the Work Centre, the problem of an insufficient number of jacks at the Work Centre for all the technicians to log in at the same time was alleviated, and often it was a shorter drive for a technician to drive directly from home to first customer, rather than drive to the Work Centre first and then drive to the first customer. As the company paid for gas, oil and maintenance on the company vehicles taken home each night, dispatching technicians from their homes accordingly often meant reduced fleet maintenance costs for the company. In turn, as technicians were allowed the use of the company vehicle for driving to and from work, this practice reduced for the technician the costs of gasoline, oil, and maintenance on their own vehicles.

9. Despite this new home dispatch practice, the written HDP at the time still

required employees to be at their first activity by start of shift, although it no longer explicitly provided for a maximum of 15 minutes FEP in time at the beginning of shift. The grievor was paid from when he would FEP in at his home at the start of his shift time until he would FEP out at end of day. He was therefore paid for a number of duties performed at his house before he left home to drive to his first customer as well as for driving time to his first job. For those shifts where he drove directly home from the last customer, he logged out at home and was paid for time taken to drive home. For those shifts where he first returned to the Work Centre before heading home, he logged out at the Work Centre and was not paid for time taken to drive home.

10. In 2004, Entourage introduced "SEFAS", a new voice-activated system over telephone lines that accessed the FWFM dispatch program, and as the laptops were no longer needed, technicians turned them in. By this time many technicians were home dispatched. These technicians, including the grievor, would generally phone in and access SEFAS from their homes, receive their assignments, perform the circle check at their homes, and then drive directly to their first jobs. Periodically during the day, home dispatched technicians would phone in again to update SEFAS and have their assignments updated. The grievor generally drove directly home from his last job and then phoned in to log out. Technicians who were home dispatched in this manner were paid from log in to log out each day, with the result that they were paid for time taken to log in, to obtain assignments, to perform circle checks, to drive to and from the first and last jobs each day, and to log out.

11. In 2005, BTS became the Employer, as Bell Canada again reorganized the entity that provided installation and repair. BTS did not initially implement any changes to dispatch procedures, including home dispatch practice, and the transition was seamless insofar as the technicians were concerned.

12. In January 2007, however, BTS issued a Directive, which amended the HDP. The evidence is inconsistent as to whether the company intended the revised Policy to be implemented as of January or April 2007, but in balance it appears that at the time it did not expect that the new Policy would immediately be fully implemented. The new Directive or HDP required a technician to arrive at the first job at the beginning of shift, and stated that the employee must plan for sufficient time to go to the first job and to return home outside working hours. The Directive required that an employee live less than 40 kilometres from his usual Work Centre. Employees who lived more than 40 kilometres away and were already home dispatched could continue to be home dispatched but others could not be home dispatched if they lived more than 40 kilometres from the Work Centre. The Policy contained no allowance for FEP in or log in time, nor did it indicate that there were exceptions to the requirement to be at the first job by start of shift. It did not refer to concepts of what were later described by the company as a Primary Dispatch Area or Secondary Dispatch Area. As with HDP directives issued previously by Entourage, the new BTS HDP was inconsistent with the practice of the grievor (and of a number of other technicians), whereby the grievor would not be at his first job by start of shift, but would instead FEP in from home at start of

shift, perform a circle check, then drive to the first job and return home by end of shift (rather than leave his last customer at shift end time) and FEP out once at home, and still be paid from log in to log out time.

13. Home dispatched technicians continued to act as they had without incurring discipline or receiving reduced compensation.

14. After initial publication in January 2007, the new Policy was discussed by management with the Union, and it quickly became apparent that the Union and many technicians were opposed to the revised Policy. A second version was provided to the Union for discussion purposes in February 2007, and the Union advised the company that it was not and would not be part of the process of writing what it considered to be a company policy.

15. At a meeting held in April 2007, the revised HDP was explained to technicians by the Operations Manager for the region in which the grievor worked. In response to a question about where a technician had to be if the first job was some distance away, the Manager responded that the employee had to be crossing into the area where the job was located at beginning of shift. However, it appears undisputed that the revised HDP was nevertheless not fully implemented in April 2007.

16. On April 17, 2007 the instant grievance was filed, and on or around that date the eight other similar grievances referred to in paragraph 2 above were filed. At a meeting with his Operations Manager after the filing of the grievance, the grievor was

told that he had to be at his first customer by start of shift and to leave his last customer around the end of his shift, at least if he was going home from there and not to the Work Centre. At least initially, the grievor did not change his practice but continued to be a home dispatched technician who would FEP in from home at start of shift and FEP out at shift end after his return home, and who was paid for his entire shift. As of the date he testified, the grievor continued to be paid both for travel time to his first job, even though he would drive there in the company vehicle from his home after the start of his shift, and for travel time to his home during his shift hours. The Employer continues to pay for gas, maintenance and insurance of the company vehicle used by the grievor.

17. The Primary Dispatch Area ("PDA"), a term referred to earlier, is described by the company as a geographic area in which a technician will customarily be assigned customers each day. A technician's Secondary Dispatch Area ("SDA") is the more remote contiguous geographic area where a technician may also be expected to be assigned to jobs. The written April 2007 HDP does not use these terms, nor was the grievor provided with the geographic parameters of his PDA and SDA before the filing of the grievance. To some extent the company made the Union aware of these concepts, for in June 2007 it wrote to the Union that home dispatched employees had to be at their first job "in their profiled area" by 8:00 a.m.

18. The company realized that some aspects of its HDP needed to be revised or at least clarified for better communication and understanding by the Union and the technicians. Effective July 9, 2007, BTS modified the HDP again (the "July 2007

HDP”) to make clear that being home dispatched was entirely voluntary and that any technician was entitled to turn in the company vehicle and report instead to the Work Centre each day at start of shift. The July 2007 HDP states that an employee must be “on time for their first appointment at the beginning of his/her shift in his/her dispatch area. Most of the time this will be a customer location however at other times his/her first appointment may be at a company office . . .” It does not specify whether an employee is required to log out at the location of the last customer and then drive home or log out after arriving home, but since the Policy requires an employee to “remain on the job available for work until the very end of his/her shift”, it is implicit that logging out will take place at the location of the last customer just before the employee begins to drive home.

19. Employees were sent letters in early August 2007 that emphasized the voluntary aspect of the Policy and that enclosed copies of the July 2007 HDP. Employees were asked to decide within 5 days whether they accepted the HDP rules or whether they preferred to return their company vehicles to the garage.

20. In its response to the grievance, the company wrote that the Policy states that employees must be in their “profiled area” by start of shift. The specific terms “Primary Dispatch Area” and “Secondary Dispatch Area” were not, however, used by the company in the July 2007 HDP.

21. In 2008, laptops were once again provided to technicians, to permit them access

to a new web-based dispatch system introduced by the Employer (the Technician Web Interface, or “TWT”, system). Technicians were now to log in to the web, follow prompts and obtain information about the day’s first assigned job, and log in again periodically during the work day to update the system and get new assignments.

22. The July 2007 HDP has not been further revised since that time, although by email sent to employees and Managers in July 2011, the Employer noted that confusion about the Policy continued. The email repeated that the policy was voluntary, and stated that the Employer wished to clarify its expectations in regards to the start of tour for home dispatched technicians. The email states that if the first job of the tour is within a technician’s PDA, then the technician is expected to be at that job by start of tour. If the first job is outside the PDA of the technician, s/he is expected to be “travelling and crossing the outer boundary of his/her primary dispatch area en route to their first job by the start of his/her tour.” The Employer wrote that it was currently in the process of updating its Home Dispatch Policy to ensure the Policy makes these clarifications clear. This was the first written statement from the Employer that refers to the terms “PDA” or “SDA”.

Submissions

23. Although the July 2007 HDP and the July 2011 clarification email referred to in the preceding paragraph post-date the filing of the grievance, the parties agree that I should consider the sustainability of the Policy as it currently exists, not as it existed in

April 2007 when the grievance was filed.

24. In general terms, the Union submits that the HDP is an unreasonable management rule or policy, is in breach of various provisions of the Collective Agreement and in breach of certain provisions of the *Code*. It asserts that part of the bargain for technicians when they moved from Bell Canada to Entourage and from there to BTS was that they would get to drive company vehicles to and from work each day, and be paid for the travelling time or other work performed for the company from start of shift at their homes. The Employer attempted to change this agreement, maintains the Union, when it revised the HDP to require travel time on the employee's own time, and to require FEP-in and out and circle checks on the employee's own time. The HDP is unreasonable in that it requires employees to perform work on their own time without pay, and is in breach of Articles 15, 16, and 17.01 of the Collective Agreement in this respect. Together these articles stipulate the regular and premium rates of pay for hourly paid employees such as the technicians. The effect of the HDP is to require employees to work without paying them for their work, for they are required to FEP in, after which they have begun their working day. The HDP requires that they then perform circle checks and drive to their first jobs on their own time, as well as FEP out and drive home from their last job on their own time. This practice is in breach of the Collective Agreement for wages are not being paid for hours worked. Garage dispatched employees are paid for time to FEP in and perform circle checks. The Union submits that apart from being in breach of the Collective Agreement, the new Policy would

nullify the previous agreement with employees that they could take company vehicles home and be paid for the time. The *Code* is breached, submits the Union, insofar as Section 169 of the *Code* sets out standard hours a day of work at 8 hours per day and per week at 40 hours per week, and Section 174 requires the payment of premium overtime rates beyond those hours. The grievor did not agree to work in excess of the *Code* stipulated maximum hours, nor did he receive any pay, let alone the required premium pay, for hours worked from when he would FEP in until he arrived at his first job or at the border of his PDA, in breach of the *Code* in this respect. In addition to declaratory relief nullifying the HDP, the Union seeks compensation for the grievor for hours worked without compensation.

25. In response, the Employer submits that the HDP is a reasonable management policy, benefitting both management and employees. The company asserts that home dispatched technicians are not performing “work” when they FEP in or FEP out, and are not performing “work” when they perform circle checks and drive to and from customers at the beginning and end of shift. In any event, asserts the Employer, the time taken to FEP in and perform a circle check is inconsequential and should not be considered work for the purposes of compensation. In the further alternative, the HDP provides a greater right or benefit than the wage provisions of the *Code*, and as such is permitted by the *Code* pursuant to Sections 168 (1.1) and (1), for the HDP saves wear and tear and the costs of gas, oil and maintenance on the technicians’ own vehicles that would be incurred if they had to use their own vehicles for driving to and from work each day.

Further, the time spent commuting to and from the first and last job of the day cannot be considered “work”, and is therefore not compensable. Lastly, argues the Employer, absent specific language in the Collective Agreement, which is not present here, a requirement to pay compensation should not be inferred.

Decision

26. An employer is entitled to unilaterally implement a policy affecting employees covered by a collective agreement, provided the terms of the policy are not inconsistent with statutory law or any provision of the Collective Agreement, and provided they are reasonable (see, for example, *Re KVP Co. and Lumber and Sawmill Workers Union, Local 2537* (1965) 16 L.A.C. 73).

27. The BTS HDP, as clarified by the Employer during testimony from BTS witnesses and in its email of July 2011, requires a home dispatched employee to be at the first customer of the day by start of shift where the customer lives within the PDA of the technician in question, and to be at or around the border between the employee’s PDA and SDA by start of shift when the first customer is located within the technician’s SDA. At the end of the shift, the Policy requires that the home dispatched technician not begin driving home from the last customer or from the Work Centre (if the technician has first returned to the Work Centre) until the shift has ended.

28. Technicians do not receive their assignments for the following day prior to the end of shift the day before but are required to FEP in or log in at the beginning of each

day to get at least their first assignment or customer for the day. Since home dispatched employees are required to FEP in from their homes in order to receive their first assignment and must perform circle checks from home, and only after this leave home to drive to their first job, and since they are also required to be at that first job or around the border of their PDA by start of shift each day, home dispatched technicians are required to perform all these functions on their own time without pay.

29. When a technician FEP's in and receives assignments for the day and performs circle checks of the company vehicle, and FEP's out at end of shift, the technician is performing work that is compensable. Both the nature of these tasks and their historical treatment leads to this conclusion. Logging in is the process by which technicians receive their work for the day and performing a circle check of the company vehicle is the process by which technicians ensure that their company vehicles are safe to drive. These are tasks required by the Employer and technicians could be disciplined for their failure to perform them. Garage dispatched technicians, who drive in their own vehicles to and from the Work Centre each day and perform the same tasks at the Work Centre, are paid for the time taken to perform these same activities. And for a number of years until the instant dispute arose, despite written Home Dispatch Policies that stated otherwise, home dispatched technicians were also paid for the time they spent to log in to the company dispatch system at the time, to receive assignments, to perform circle checks, and to log out at end of shift. These functions are properly characterized as "work" and they continue to be treated by the Employer as compensable work when

performed by garage dispatched employees.

30. Even if the time taken to perform these tasks was inconsequential, the nature of the tasks in question would still lead to the conclusion that the performance of these functions is compensable work. However, the time taken is not inconsequential, for the 10 to 20 minutes per day on average required to FEP in and receive assignments, to perform circle checks, and to FEP out at end of shift, is not negligible, either on a daily or cumulative basis.

31. With respect to the argument that the HDP provides home dispatched employees with a “greater right or benefit” than do the wages provisions of the *Code*, assuming that the relevant section of the *Code* applies, I am unable to conclude that the Policy provides a “greater right and benefit”, since under the HDP employees are not compensated at all for some of the “work” they perform whereas they are entitled to be compensated for this work according to the terms of the Collective Agreement.

32. Although the time spent in logging in and out and performing circle checks is compensable work time, generally speaking, the time taken to drive to and from the first and last customer of the day or the Work Centre would not be. While the company practice of paying home dispatched technicians for this time in the past might establish that the company would be estopped from changing the practice for a time, the evidence is not sufficient to establish that there is a binding agreement between BTS and the Union and/or the technicians by which the company is required to continue to

compensate technicians for their time when driving to and from work each day. There are no provisions in the Collective Agreement that stipulate that travel time to and from work is compensable work time. Garage dispatched employees are not paid for this time. The fact that technicians are using company vehicles to drive to and from work each day does not convert what is generally considered to be a non-work function, driving to and from work, into “work” for which employees must be compensated. Regular daily driving to and from work, in contrast to the actions of logging in or out and performing circle checks, is not customarily or presumptively considered to be “work”. Typically in other work settings, employees are not compensated for the time taken to get to and from work each day.

33. The situation here is quite different than was present in *Re Canadian National Railway and Canadian Telecommunications Union* ((1978) 17 L.A.C. (2d), Adams). In that case the grievors were directed to drive to a different city to perform a one day job, and the drive there took approximately five hours. As the Arbitration Board stated: “the term ‘work’ includes time spent by an employee in travel to a distant location for the purpose of carrying out his or her particular function. *While, generally speaking, an employee is not “at work” until he actually arrives at his office, plant or job site*, we accept that time spent travelling to an unusual and distant location at the employer’s request falls within the ordinary and accepted meaning of the term ‘work’” (emphasis added). Here, the grievor is not asked to be within his SDA by start of shift, only at or near the boundary of his PDA, and at least within his PDA, it cannot be said that the

Employer demands that he travel to an “unusual and distant location” to begin the work day.

34. If the company did in fact fail to compensate technicians for the time taken in the performance of the tasks of logging in and out and performing circle checks each day, it would be in breach of those provisions of the Collective Agreement that require employees to be paid for work performed and that stipulate rates of pay for such work; specifically, Articles 15, 16 and Appendix “A”. I make no finding of actual breach at this point, though, since it became evident during final submissions that there may remain some dispute over how the HDP has actually been applied to the grievor during the interval since he filed the grievance. It may be that the grievor has been properly compensated for all time worked to date despite the provisions of the HDP.

35. The requirement in the HDP that home dispatched employees FEP in and out and perform circle checks on their own time is unreasonable because such a requirement would be in breach of the Collective Agreement. As well, it is unreasonable because its effect is that garage dispatched employees continue to be paid for the performance of the very same work for which home dispatched employees are not paid. It is unreasonable for a unilaterally imposed policy to have the effect that one group of employees get paid for certain work while another group of employees in the same classification do not get paid for performing the same work.

36. The fact that being home dispatched is voluntary and that any home dispatched

employee can elect to convert to be garage dispatched does not render the unreasonable policy reasonable, given the basis described above for the finding that the HDP is unreasonable. A policy that is unreasonable because it contains provisions or has aspects that would be in breach of the collective agreement or be discriminatory in a material respect if implemented does not become reasonable because it is voluntary. At least in the context present here, consent by an individual employee does not make the Policy reasonable.

37. Given the conclusions reached above, it is unnecessary (at least at this stage of the proceeding) to address the arguments involving the provisions of the *Code*.

38. As I have found the HDP to be unreasonable, it cannot stand. Because there are a number of different ways for the Employer to seek to amend the Policy and because it is management's prerogative to draft policy (subject to the provisions of the Collective Agreement and legislation, and to challenge by the Union), the appropriate remedy is not for me to attempt to rewrite the HDP. Rather, I declare the HDP to be null and void.

39. As to the claim for compensation for the grievor, in an Interim Award dated August 9, 2010, I dealt with a number of objections raised by the Employer. One of those objections was that the issue raised by the grievance was moot, since there was no claim for damages, no discipline imposed, and in any event, the policy under attack had been replaced. With respect to this preliminary objection, the Interim Award noted:

Whether the Grievance is Moot

14. Although the grievance as filed seeks as remedy “full redress, including remuneration of all lost wages”, at the hearing the Union advised that it understands that the Employer has not implemented the new HDP at least insofar as changing the previous practice of how employees on home dispatch are paid, so that as yet the grievor has not suffered any financial losses due to the new HDP. Accordingly, noted the Union, as long as the Employer does not implement any parts of the new policy to which objection is made, the grievor will not be seeking any financial compensation as a remedy. The Union also advised that there has been no discipline imposed upon the grievor to date related to the introduction of the new HDP.

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17. The issue is whether there remains a live and real issue between the parties in this grievance. Although the Employer asserts that working from home dispatch under the new policy is voluntary, this is not an agreed fact and the Union disputes this factual assertion. And even if it should be determined that working from home dispatch under the new HDP is entirely voluntary, the Union maintains that the new HDP still breaches the Collective Agreement and/or the *Code*.

18. Further, while the grievor has suffered no loss in income to date, it is asserted that is solely because the Employer has not yet implemented the part of the HDP that would cause any such loss. The lack of actual loss to date does not, therefore, reflect the lack of a live issue between the parties. As well, the grievance as filed states that progressive discipline for non-compliance with the policy has been threatened, and the Employer does not undertake that there will be no discipline in the future for non-compliance with the new policy. These allegations of threatened discipline are alone sufficient to establish that a dispute remains alive between the parties.

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40. As noted above, there may be dispute over whether the Collective Agreement has actually been breached and/or over whether the grievor has suffered any financial loss as a result of the application of the revised HDP, as well as over whether the Union is entitled to pursue a claim for damages given the previous understandings of the parties

and my Interim Award. At this point, I remit all remaining matters to the parties, and remain seized for any issues arising out of the grievance and this Award, including all remedial issues.

Dated at Toronto this 8th day of November, 2011

A handwritten signature in cursive script, appearing to read "R. Herman", written in black ink.

Robert J. Herman - Arbitrator