ARBITRATION TRIBUNAL

CANADA
PROVINCE OF ONTARIO

Date: September 20, 2018

BEFORE THE ARBITRATOR: MAUREEN FLYNN

CANADA POST CORPORATION
Hereinafter, “the Corporation” or “CPC” or “the Employer”

And

CANADIAN UNION OF POSTAL WORKERS
Hereinafter, “the Union” or “the CUPW”

Collective Agreement: Collective Agreement, covering rural and suburban letter carriers, between Canada Post Corporation and the Canadian Union of Postal Workers – Expired December 31, 2017
Hereinafter, “the Collective Agreement”

ARBITRAL AWARD

(In the case of a rural and suburban letter carrier pay equity review process)

276-18 S/A

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1. INTRODUCTION

[1] I rendered an initial award in this case on May 31, 2018. At that time, I settled several questions in dispute, including the group to which the rural and suburban mail carriers (referred to as "RSMCs") and permanent relief employees (referred to as "PREs") should compare themselves, namely letter carriers. It was also decided that these jobs are of equal value[1]. It was further determined that the direct compensation comparison method used by the Union's expert was more adequate or fair than the one proposed by the Employer's expert. However, this matter was referred to the parties so that they could determine how said comparative method, based on a derived job rate for RSMCs, could be corrected or improved upon.

[2] The parties elected to continue talks, with my assistance as mediator/arbitrator, in conformity with the memorandum of understanding agreed to by the parties on September 1, 2016. The parties met 13 times in my presence over the 90-day mediation/arbitration period.

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

- Additional compensation (0.8 cents) for each piece of Neighbourhood Mail delivered between January 1, 2016 and January 15, 2018.
- Long-term disability insurance coverage.
- Terms, conditions and accessibility criteria for the following leave periods: marriage leave, birth and adoption leave, leave for other reasons, court leave, personnel selection leave, examination leave and career development leave, as well as monetary compensation for the retroactivity period.
- Reimbursement for the British Columbia Provincial Health Care Premium for the retroactive period and future.
- Terms, conditions and accessibility criteria for the isolated post allowance for the retroactive period and future.
- Terms, conditions and accessibility criteria for the $20 glove allowance for the retroactive period and future.
- Terms, conditions and accessibility criteria for the displacement lump sum.
- Terms, conditions and accessibility criteria for rest period allowance for the retroactive period and future.
- Time and monetary value per personal contact items (2.75 minutes) and the adjustment for retirement plan purposes;
- Time value per lock change (2.31 minutes) and for each delivery of new keys, and the adjustment for retirement plan purposes;
- Pre-retirement life insurance coverage for the retroactive period and future;

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

- Compensation for remuneration paid to on-call relief employees (OCRE) from January 1, 2016 to December 31, 2018 and for the future.
- Elimination of zones when the Agreement is signed.

[4] At the outcome of this last meeting, the parties, confident that they could resolve everything quickly, also were to discuss certain terms and conditions and sign an agreement between then and the predetermined hearing date of September 12, 2018. Thus, although the parties agreed to include the time for personal contact items in the retirement plan for the retroactive period and future, they had to discuss some terms and conditions, including the process required 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 had to make and the terms and conditions regarding retroactive payment of certain premiums owed by employees in return for their eligibility for benefits. Finally, on September 12, 2018, the tribunal was informed that the parties were unable to finalize an agreement.

[5] The Undersigned therefore immediately granted an additional extension to finalize said Agreement on the items resolved in principle by September 19, 2018 at 5:00 p.m., the objective being to confirm the parties' agreement.

[6] On September 19, at the close of business, the solicitors informed me that the parties had not signed a memorandum of agreement because of a dispute regarding the four peripheral clauses highlighted in yellow. I am not fully aware of the ins and outs of their dispute. However, the solicitors tell me that the parties have definitively resolved the items listed above and described in articles 1 to 30, inclusively, and 34 of the latest draft Agreement in English, reproduced in Appendix "A" to this award. They also agreed to form an implementation committee.

[7] Given the agreement between the parties on several disputed and complex items, it is in both parties' interest that this tribunal uphold the agreements as they are, and as described in articles 1 to 30 and 34 of the English version.

[8] Lastly, the parties presented their proposals with regard to the issues they have clearly not resolved in mediation/arbitration, namely:

- The direct wage gap for the retroactive period and future;
- Post-retirement benefits (including the dental plan), i.e. whether or not the eligibility date of January 1, 2016, is to be corrected.
- Annual leave, i.e. whether the gap between the two groups is to be compensated by time or by payment of financial compensation;
- Pre-retirement leave, i.e. whether said leave should be indemnified by payment of financial compensation or by time, and from what date eligibility accrues;
- Adjustment of PRE compensation, i.e. whether the latter should enjoy the same working conditions as the full-time relief letter carrier employees;
- Pay equity maintenance, i.e. whether maintaining pay equity falls under my jurisdiction and, if so, what remedy can ensure it.

2. ANALYSIS AND DECISION

[9] For each subject in dispute we will, depending on the case, summarize the applicable rules of law, the relevant elements of evidence, the parties' claims, their latest respective proposals, and then decide.

Direct wage gap

[10] This subject is naturally the most complex and comprises a major portion of the evidence heard as part of the initial award and mediation/arbitration discussions. As stated in the May 31 award, the complexity arises from differences in methods of compensating two comparable groups (RSMC and letter carriers) on the one hand, and differences in assigning workloads, measuring time and estimating volumes for each route assigned to each RSMC and letter carrier on the other.

[11] Before analyzing the parties' latest proposals, a reminder of certain essential legal guidelines is necessary, since they constitute the analysis framework. The *Canadian Human Rights Act* (the Act) is considered fundamental and quasi-constitutional due to the fundamental nature of the rights it protects. It must therefore be interpreted broadly and liberally in light of its objectives and context, in this instance eradicating gender-based wage discrimination. Once discrimination is shown, the 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] Lastly, the following also complements these elementary considerations:

> "[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 analyzed 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 stated, the Undersigned decided that a method comparing the hourly rate for letter carriers with a derived pay rate for RSMCs is the most reliable method among those debated in arbitration, and the undersigned referred this matter to the parties. The parties, respecting the guidelines dictated in

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[2] Extract from the *Canada Post Corporation and Canadian Union of Postal Workers (collective) award*, previously cited note 1, para 457. *PSAC* v. *Canada Post Corp*, 2010 FCA, para. 215. Judge Evans cited another pay equity award: *PSAC* v. *Canada (Treasury Board),* (1996) 29 C.H.R.R. Award 36.

[3] *Canada Post Corporation and Canadian Union of Postal Workers (collective grievance)*, previously cited note 1, para. 653.

the May 31 award, explored how said method could be improved upon to lead to a relatively reliable or fair result.

[14] On the matter of management systems and comparative methodology, the Undersigned upheld the following elements from 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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> [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-hour routes is important to maximize productivity. For CPC, this system is highly reliable and can be trusted to produce accurate results.
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> [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.
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> [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 repeatedly been 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.
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> [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 and nine hours daily, meaning that despite the sophistication of the LCRMS, some routes are nevertheless over or under-assessed.
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> [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 shown 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 2,205 approximate 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 8.0 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 subsection 169 (2) for work environments with irregular hours:

> "Averaging
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> (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, conducted 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 availability 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 kinds 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 and 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 appraisal, 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 and facts have been presented to the Tribunal to allow the Undersigned to make that determination with confidence.

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

> [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 further decided that the derived RSMC wage rate should be corrected to take into account the compensation paid for personal contact items and for lock changes.[5]

[17] Before analyzing the parties' proposals, I believe it is important to recall the basis of the RSMC compensation system.

[18] RSMC pay, as such, includes the annualized total of the activities component, variable assignments and sorting assignments indicated in Appendix "A" to the RSMC Collective Agreement. Activity values are divided into three categories, namely sorting, delivery and drive time values. Sorting and delivery values are remunerated based on the presumed action; e.g., sorting for a residence or delivery to a community mailbox (CMB). Drive time values take kilometres travelled into account. The amount per kilometre is determined by the number of points of call (POC) per kilometre for the route. For example, for a route having 9.9 POC or less per kilometre, $0.3948 is paid per kilometre travelled; for a route having 10 to 24.99 POC per kilometre, the amount is $0.4933.

[19] The values of these activities appearing in the Collective Agreement are not determined out of thin air or in a wholly arbitrary manner. The parties define them by referring to a common denominator – a derived wage rate – which was $19.73 on January 1, 2016. However, this rate does not appear anywhere in the Collective Agreement, even though it is well known to the parties and RSMCs. The activity time values do not appear in the Collective Agreement either. Some were settled on by the parties, while others were not. As a result, those negotiated as part of the present process for activities related to the variable work will not appear in the Collective Agreement. And, although a relationship exists between these three components (time value per activity or for driving; monetary value for activities and derived wage rate), only one of the latter is reproduced in the Collective Agreement, namely the one relating to monetary value for activities.

[20] Consequently, the Employer can unilaterally modify an activity time value in the course of the Collective Agreement without affecting the actual wage of an RSMC. We should note that the Employer has not taken advantage of this prerogative to date.

[21] Finally, recall that the time value is determinative in the initial evaluation of each RSMC's route time estimate, as is the case during a restructuring and, as we have seen, determines access to and application of certain working conditions (retirement plan, amount paid for boots, etc.) as well as the rest period allowance agreed upon by the parties as part of the present process.

[22] Naturally, determining a route inevitably requires an evaluation of work volume or number of points of call, and the latter is used to estimate an average length of time per route for RSMCs or letter carriers. However, the Employer enjoys greater flexibility in determining a route for RSMCs, as it is not required to pay them eight hours for each working day as is the case for permanent, full-time letter carriers.

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

[23] Also, as we will soon see, the volume or workload assigned to RSMCs and letter carriers is at the heart of the dispute between the parties for the purpose of determining the direct wage gap. The Employer claims that there is a relationship between workload or volume and time worked. This affirmation is undeniably true. It also contends that the volume on an RSMC route and, consequently, the estimated time to cover it, has not been a determining factor to date in setting RSMCs wage, since they are essentially paid on a piece-rate basis.

[24] The Employer thus claims that the time values shown in RSMC route "A" Appendices need to be corrected, since time represents the capital factor in the framework of the present process, especially since the comparative method is based on a concept that uses an hourly rate and its multiples over the course of a normal working day. In the Employer's opinion, such a correction is vital, since the letter carrier route management system (LCRMS) is more accurate than that of the RSMCs (RMS). With these things in mind, let us now take a closer look at the parties' latest proposals.

The parties' proposals

The Union

[25] Recall that, originally, the Union always considered an hour based on the RSMC system – referred to as RMS[6] – equivalent to an hour based on the letter carrier system referred to as LCRMS[7]. According to the Union, the difference between the two as at January 1, 2016 was $6.22 an hour and $9.72 with certain adjustments, some of which were rejected by the present arbitration tribunal. These differences did not take the value of variable allocations for some tasks into account.

[26] Note that on January 1, 2016, the derived rate for RSMCs was $19.73 and the hourly rate for carriers was $25.95.

[27] The Union is proposing a weighted direct wage gap of $5.31 an hour for all zones. For this purpose the Union used a sample, examined in mediation, consisting of all RSMC routes updated using an optimization software package called Georoute[8]. This weighted direct wage gap is the result of the difference between the letter carrier rate of $25.95 as of January 1, 2016 and the RSMC corrected derived wage rate of $20.64. The $19.73 derived wage rate was corrected to take into account the values agreed upon between the parties as part of the present process for two variables (personal contact items and lock changes), and was weighted based on zones. This exercise resulted in a weighted wage gap of $5.31 an hour. The corrected January 1, 2016, derived wage rates for each zone are as follows: Zone 1: $19.90; Zone 2: $21.53 and Zone 3: $22.49.

[28] The Union believes that this gap is reasonably reliable, since they get the same results when the same mathematical operation is carried out on another larger sample discussed in mediation[9], namely that of all RSMC routes with estimated daily work times ranging from 361 to 480 minutes (or 6 to 8 hours). The Union obtains a weighted average wage gap of $5.29.

[6] In French, SGI.
[7] In French, SMIFF.
[8] Sample provided by the Employer.
[9] Sample provided by the Employer.

[29] Lastly, should the tribunal choose to award a percentage to correct the RSMC times, the Union proposes to increase this component by 10.4%. This figure was drawn from another exercise carried out in mediation based on the latest sampling proposed by the Employer.

The Employer

[30] The Employer is proposing an immediate time value reduction of 18% in Zone 1 and 5% in Zones 2 and 3 before adjusting the $25.95 derived pay rate.

[31] The Corporation maintains that this solution would compensate for the difference in the volume of hours worked between RSMCs and letter carriers, and the differences resulting from variances between suburban and rural regions.

[32] For example, this comparative method would result in the following wage gaps:

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 accomplish this, the Employer chose a sample composed exclusively of letter carrier routes that it could convert into RMS times. The Employer thus sorted out all letter carrier routes where the letter carriers only delivered to CMBs, where said letter carriers and at least seven RSMCs worked in the same facility, and in which the routes included at least 400 POC. The final sample included 615 letter carrier routes. The Employer claims that, by applying RMS system time values to the 615 letter carrier routes, this exercise evaluates whether one LCRMS system hour is equivalent to one RMS system hour.

[34] For the purposes of the mathematical calculations, the Employer took into consideration some criticisms made by the Union in mediation and adopted the new time value negotiated for personal contact items (2.75).

[35] On average, the exercise showed that the time value converted in RMS is 58 minutes greater than the time determined by route. Consequently, according to the Corporation, a downward adjustment of the time recorded in the RMS system is required, otherwise, it believes equity will not be achieved. The Corporation also believes that the adjustment should be done taking the volume differences between suburban and rural regions into account. In other words, 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 25% for Zones 2 and 3. This proposal is based on the fact that the volume of letters and parcels is much smaller in rural regions than in suburban areas.

Analysis of parties' proposals

[37] The sample on which the Employer based its latest proposal was examined in mediation and the Union showed that this sample could not be used as is, since it covered a large number of routes that did not fit the average RSMC route profile. In fact, the sample included some routes comprised of 1,000 POC or more, some of

[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] Extract from the Corporation's argument.

which delivered in buildings with a large number of apartments, while the average POC for RSMCs is around 800.

[38] In the context of the arbitration, I concluded that including routes with a high number of POC that absolutely did not represent the RSMC route profiles was prejudicial to the latter, and did not meet the reliability criteria required for measuring pay inequity between the two groups.[12] In my opinion, the latest comparative method used by the Employer is significantly similar to the one developed by its expert, Ms. Haydon. The results vary greatly depending on the parameters used. As a result, by excluding the routes prejudicial to the RSMCs, the Union has shown in mediation that no adjustment was necessary, for all practical purposes. By correcting other parameters, the Union then concluded that if any adjustment was needed, it would be in the RSMCs' favour.

[39] The comparative method used by the Employer does not appear to be very credible to me, especially when I assess the reliability of the results in light of the evidence as a whole. The parties placed several studies in evidence[13] to demonstrate their respective claims. The Union wanted to show that the estimated times for the RSMCs were underestimated, while the Employer was trying to demonstrate the opposite. When one carefully analyzes the studies and all the data in evidence, one concludes that neither party is right. The reality is more nuanced. All the evidence shows that the estimated time for a good number of the RSMC routes is fair, but that some are underestimated and others overestimated. As a result, only a tailored measurement formula would allow a perfectly equitable adjustment. However, doing so would require a re-evaluation of the estimated time for each RSMC route, and such an operation would not be possible to carry out within the time frame of the present pay equity process.

[40] It therefore appears to me to be contrary to the objectives of the Act to reduce the estimated work time for all RSMC routes, as the Employer is asking, as it represents a major component of their working conditions, namely their overall compensation. To convince a tribunal to modify such a major work component, particularly reliable and credible data would have to be presented but, in this case, the Employer is asking to modify the estimated time on all RSMC routes based on a simulation that is not only hypothetical and artificial, but not very credible either.

[41] At the risk of repeating myself, one cannot assume that RSMCs who share a facility with the 615 letter carriers selected by the Employer have routes with inaccurate or even overestimated times. On the contrary, it is highly unlikely that their routes are fair or well evaluated. It therefore appears to me to be completely unfair and inequitable to "artificially" reduce the route times, not only for these RSMCs, but for all RSMCs, since such a reduction would be carried out based on data clearly not in the RSMCs' favour.

[42] Undeniably, the average letter carrier volume is higher than the average RSMCs' volume, simply due to the fact that an urban letter carrier is working in a denser environment, but that is not to say that the estimated times for all RSMC routes

[12] See paragraphs 660 through 669 of the *Canada Post Corporation and Canadian Union of Postal Workers (collective grievance) award*, previously cited note 1, para. 653.
[13] Note: the studies I am referring to do not include the latest comparative methods submitted by the Union in support of their latest proposal.

are overestimated or worth less. So, in this case, trying to reduce the estimated time for the RSMCs based on workload is equivalent to diminishing the value of the RSMCs' job in comparison to that of letter carriers, while it has been decided that both jobs were of equal value based on the four criteria established by the Act.

[43] Recall that the estimated times for the RSMC routes varies according to the route defined by the Employer, and that this estimated time is accounted for in the Employer's systems, whereas the time paid to full-time letter carriers is fixed at eight hours per day, even in cases where the Employer has created a six-hour route. It has also been shown that the estimated time for each route is not respected on a daily basis either by letter carriers or RSMCs, since the estimated times are based on an average. So in choosing a method, the tribunal also takes into account the fact that arranging RSMC working hours is more flexible than arranging letter carrier hours (spread over two weeks, customized hours), and that this flexibility represents a savings with respect to letter carriers, particularly in terms of overtime.

[44] The Employer's request to reduce all RSMC route times also seems objectionable since determining the estimated time for each RSMC route falls in fact within the Employer's prerogatives. In other words, the Employer is asking the tribunal to correct a situation it has tolerated since 2004.

[45] The Union proposal also modifies the difference between zones in a way that seems arbitrary. I cannot defend the idea that, henceforth, the personal contact item time[14] should be reduced by 18% in Zone 1 or 5% in Zones 2 and 3, while the same action is involved. Lastly, this significant modification to the RSMC compensation model appears contrary to the pre-established rules.

[46] That said, it is important to remember that the tribunal has to choose the most reliable comparative method that will achieve the objective of the Act – correcting gender-based pay discrimination – in the most equitable manner.

[47] In this case, it is undeniable that the estimated time for a good number of routes is fair since it is an average. Recall that some routes were restructured, others optimized using the Georoute system, and all routes are revised annually. Given the different management methods available to the Employer and the time elapsed since the RSMCs became unionized (14 years), it cannot be assumed that all average times for all routes in all zones are either underestimated or overestimated. Recall that the estimated time for the majority of the routes is fixed at six hours or more per day (4,884 out of 7,437) and that this time limit (6 hours) was chosen by the Employer in order to leave room for variables and an increase in volume. The Employer therefore controlled the estimated time for a good number of RSMC routes.

[48] Furthermore, were the tribunal to choose the method proposed by the Employer, it would effectively reduce the times for all RSMC routes and, more significantly, those RSMC routes in Zone 1 – the zone that includes the majority of the RSMCs and those that are the lowest paid.

[49] The Employer's method also reaches a result inconsistent with the wage gap agreed upon between the parties to justify the existing zones. As a result, according to

[14] Fixed at 2.75 min. between the parties.

his data, the Zone 2 RSMCs would receive a higher average indemnification than the RSMCs in Zone 1.

This distortion in the compensation scale agreed upon between the parties is another reason not to accept the Employer's proposal, since it is based on unconvincing and not very credible 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, since it meets the required level of reliability. The methodology has the merit of not only meeting the objective sought by the Act, but also the entire set of RSMC working conditions. The methodology and resulting wage gap are easy to understand, because they are based on known data, including the derived pay rate and estimated times of each RSMC route, as shown in each RSMC's Schedule "A".

[51] Therefore, for the retroactive period, the average and weighted compensation to be paid to all RSMCs is $5.31 per hour as of January 1, 2016, resulting in a uniform derived wage rate of $25.95, and the elimination of zones as of January 1, 2016. This wage gap and derived wage rate shall also be adjusted at the same rate as that of the letter carriers, namely from January 1, 2016 to January 31, 2016; from February 1, 2016 to December 31, 2016; from January 1, 2017 to January 31, 2017; and from February 1, 2017 to January 1, 2019, taking into account any salary increases paid or to be paid to the two groups over this period, as the case may be, retroactively.

[52] Also, given the chosen method, the applicable time and activity values will be frozen during the retroactive period (January 1, 2016 to January 1, 2019) to avoid inequity. The parties may, however, mutually agree to make some modifications if doing so appears to be fairer or necessary, with the understanding that the derived pay rate for RSMCs and the hourly rate for letter carriers must be equal, in accordance with the parameters determined in this award and that of May 31, 2018, all subject to existing and applicable RSMC salary progression rules.

[53] For the future period, to the extent the RSMC compensation measurement model remains the same, the derived pay rate shall naturally be identical to that of the letter carriers at all times. Thus, on January 1, 2019, the Collective Agreement activity values will have to be adjusted accordingly, which leaves three months to negotiate them and incorporate them into the payroll systems.

[54] Application terms and conditions not covered by this award, or in the parties' agreements upheld by this tribunal, are delegated to the implementation committee.

Post-retirement benefits

[55] In the May 31, 2018 award, the Union asked the tribunal to order continuous service date calculations applicable to post-retirement benefits as of January 1, 2004. I did not grant the Union's request and I established January 1, 2016 as the retroactivity date, the date from which eligibility for said 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 committed a jurisdictional error by setting the eligibility starting date at January 1, 2016. It bases its claim essentially on the recent Supreme Court decision in *Québec (Procureure générale) v*. *Alliance du personnel professionnel et technique de la santé et des services sociaux*[16]. Alternatively it alleges that the May 31, 2018 decision is not a final decision, since it was issued in the context of an ongoing process. As a result, the *functus officio* doctrine does not apply, and the tribunal can assent to its request to review the May 31 decision.

[57] For its part, the Employer opposed a review of the decision, stating that the *functus officio* and *res judicata* doctrinal principles support this stance. The issue raised in the recent Supreme Court decision[17] differs from what is in dispute in this case. There is a difference between a retroactivity date and an amnesty period. In this case, the tribunal is not establishing an amnesty period but instead is defining a date from which the eligibility period provided for in said plans must begin. Several Federal Court decisions establish a retroactivity date of one year preceding the filing of such a complaint. Furthermore, article 41(1)(e) of the *Canadian Human Rights Act*[18] allows the Commission to reject any complaint initiated more than one year prior to the filing.

[58] With respect, I share the Employer's claim.

Functus officio

[59] Firstly, the *functus officio* doctrine means "of no further official authority or legal effect"[19]. According to this principle, a decision-maker cannot rehear, re-examine or modify his or her decision[20]. There are exceptions to this principle, however. The Honourable Scott, in the *Chopra* decision[21], basing himself on the *Chandler* case[22], lists them:

> [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).

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[15] See paragraphs 823, 824 and 825 of the *Canada Post Corporation and Canadian Union of Postal Workers (collective grievance) award*, previously cited note 1.
[16] *Québec (Attorney General) v*. *Alliance du personnel professionnel et technique de la santé et des services sociaux,* 2018 SCC 17.
[17] *Ibid*.
[18] *Canadian Human Rights Act,* RSC (1985) ch H-6.
[19] Merriam-Webster Dictionary definition.
[20] *Trimble and Bearskin Lake First Nation, Re,* 2013 CarswellNat 316, para. 11.
[21] *Chopra v. Canada (Attorney General)*, 2013 FC 644.
[22] *Chandler* v. *Alberta Association of Architects*, [1989] 2 SCR 848.

> [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 the *Union des employees de production du Québec* case[24] defined jurisdictional error as acting beyond or refusing to exercise jurisdiction. Such an error is analyzed in light of the relevant legislative provisions conferring jurisdiction.[25]. In the present case, the tribunal decided in conformity with the powers conferred upon it by law.

[61] As was decided in the *Bossé v. Canada* case[26], a recent decision is not new evidence[27]. Thus, the arbitrator is not obligated to reconsider his or her decision as a result of the publication of a Supreme Court decision[28].

[62] Lastly, while this tribunal reserved jurisdiction for eventually deciding certain matters in dispute, the May 31, 2018 decision with regard to the retroactivity date is final. As Arbitrator Bergeron wrote in the *Société canadienne des postes c STTP* case[29] "the reasons underlying a decision go hand in hand with the determination of the issues".

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 the entirety of their arguments and debate them before the decision is rendered[31]. One party may not ask a decider to re-examine a matter already settled on grounds the party should have raised at an earlier, more appropriate time[32].

[64] In the case of *CUPE, Local 79* v. *the City of Toronto*[33] the Court specified that the *res judicata* doctrine applies in all circumstances, even when it involves a matter affecting the quasi-constitutional rights of an individual[34]. Just as for the *functus officio* doctrine, subsequent decisions do not allow re-examination of a decision[35]. Deciding this way would go against these principles as well as the stability of law.

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[23] *Chopra* v *Canada (Attorney General)*, previously cited 20, para. 64-65.
[24] *Union des employées de production du Québec* v *CLRB,* [1984] 2 SCR 412.
[25] *Ibid.,* p. 420-421. See also: *Jacobs Catalytic Ltd.* v. *International Brotherhood of Electrical Workers, Local 353*, 2009 ONCA 749, para. 62.
[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] *Société canadienne des postes c STTP,* 2009 CarswellNat 3464, para. 29 [NRF's unofficial translation; decision only available in French].
[30] Merriam-Webster Dictionary definition.
[31] *Infinity Rubber Technology Group* v. *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,* previously cited 30, para. 40. See also: *Canada Post Corporation* v. *Snook,* 2015 NLCA 49, para. 38*; Las Vegas Strip Ltd.* v. *City of Toronto,* [1996] OJ No 3210, para. 25.
[33] *CUPE, Local 79* v. *City of Toronto,* 2012 ONSC 1158.
[34] *Ibid.*, para. 51.
[35] *Metro-Can Construction Ltd.* v. *R,* 2001 FCA 227, para. 4.

[65] The Supreme Court decision invoked by the Union was rendered on May 10, 2018, three weeks before the May 31, 2018 decision. The Supreme Court upheld the lower courts' decisions and the Union could have raised the rulings of the lower courts. Lastly, as previously stated, I believe that the Supreme Court decision disposes of a different issue and is not relevant. We should keep in mind that the retroactivity date results from a consensual agreement between the parties.

[66] In this case, the chosen retroactivity date does not have the effect of granting the Employer an amnesty period. Instead, it eliminates pay discrimination with regard to women and establishes an equitable and realistic compensation process in accordance with the interests of both parties.

Conclusion of the tribunal

[67] For all these reasons, the Union's position is rejected and the reference date for the purpose of calculating eligibility for post-retirement benefits is upheld retroactively to January 1, 2016.

Annual leave

[68] The Union is asking for monetary compensation for the retroactive period and, for the future, the same access as the letter carriers enjoy. They claim that the approach recommended by the courts favours access to the benefit since access compensates for the loss in the same manner as lost opportunity[36].

[69] For its part, the Employer holds that monetary compensation is, depending on the case, a measure accepted by the courts[37] and, in this case, this avenue is a possibility given the high cost this measure represents.

[70] A careful reading of the jurisprudence shows that there are two jurisprudential currents. In the *Good Humor-Breyers, Simcoe* case[38] Arbitrator Kirkwood affirmed that the majority of arbitral decisions establish a form of presumption in favour of the in-kind method of compensation, subject to various exceptions, since this method compensates in the most fulsome way, 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]

[71] Arbitrator Kirkwood continues by listing the exceptions flowing from this presumption: (i) a deliberate breach (ii) persistent, (albeit good faith), mistakes (iii) the fashioning of an in-kind remedy is impracticable[40].

[72] In the *Lady Dunn General Hospital* case[41], the arbitrator assented to the Union's request and granted an increase in leave days. He found that the Employer

[36] See paragraph 96 of the Union's Proposal.
[37] See page 5 of the Employer's argument plan: *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.
[40] *Ibid*., para. 48. See also: *Lady Dunn General Hospital*, (1991), 2 P.E.R. 168, para. 32.

had not shown that the request would result in a burden too heavy to assume, or that the request was impracticable for the company.

[73] Arbitrator Graham, in the *Re Assiniboine Regional Health Authority* case[42], recalled that several decisions refer to a presumption established in favour of a contribution in-kind. However, he found that it was better to review each case individually. While there are several benefits associated with leave days[43], this method might not work in practice or might be ineffective in coming to a fair and reasonable solution[44]. Lastly, he affirmed that an arbitrator can also choose to combine both approaches if the combination is the most effective in addressing the losses and damages suffered[45].

[74] In this case, all RSMCs who have accumulated ten years of continuous employment are entitled to four weeks' annual leave per civil year with no reduction in their actual wages (article 15.01 b) of the Collective Agreement). The choice of leave period depends on the facility in which the RSMC works. If he or she works in a postal facility where there are no on-call or permanent relief employees already in place, the RSMC may take annual leave whenever he chooses but must notify the Corporation in advance (article 15.02 a)).

[75] As we have seen in the first award, RSMCs who work in a postal facility where there are no relief or on-call employees must ensure their replacement during their absence. Integral access in this case is 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) years of continuous employment.

[76] Apart from the high costs resulting from this request, in this case, taking all leave weeks at once could prove to be unrealistic or difficult to achieve for some RSMCs who must provide for their replacement themselves, especially beyond a certain threshold. A choice between monetary compensation or taking the leave represents a way of offsetting the replacement issues for these RSMCs.

[77] Given the presumption established in favour of a contribution in kind, the direct and indirect costs of the petition and the replacement issues some RSMCs could encounter, it is decided that the Employer pay all RSMCs financial compensation for the retroactive period from January 1, 2016 to December 31, 2018 at a time to be agreed upon between the parties.

[78] For the future, starting January 1, 2019, all RSMCs will be entitled to four (4) weeks per year of annual leave if they have seven (7) years of continuous employment; five (5) weeks per year of annual leave if they have fourteen (14) years of continuous employment; six (6) weeks per year of annual leave if they have twenty-one (21) years of continuous employment; and seven (7) weeks per year of annual leave if they have twenty-eight (28) years of continuous employment. However, in postal facilities where there are no on-call or permanent relief employees, RSMCs will have the choice of taking

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[41] *Lady Dunn General Hospital*, previously cited 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] *Ibid*., para. 44.

the sixth and seventh weeks of annual leave or claiming monetary compensation for said week(s).

Pre-retirement leave

[79] By virtue of article 19.12 of the Collective Agreement between the Corporation and the Canadian Union of Postal Workers[46] (hereinafter the "Urban Agreement"), in addition to the annual leave provided for in the Collective Agreement, all regular employees who reach fifty (50) years of age and have twenty (20) years of continuous employment, or who reach sixty (60) years of age and have five (5) years of continuous employment are entitled to one (1) week of paid pre-retirement leave in the annual leave year during which they become eligible for said leave, and in each subsequent annual leave year, up until their retirement date, but not exceeding a maximum of six (6) weeks of pre-retirement leave from the eligibility date until retirement.

[80] The Union asks that continuous employment years be counted in same manner as annual leave, and that access be granted for the future. For the past, the Union is claiming payment of compensatory indemnification.

[81] The Employer claims that the reference date for eligibility for post-retirement benefits should apply to this leave also and is proposing to compensate the RSMCs financially for the past and the future.

[82] In their January, 2018 report, Mercer evaluates 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 pre-retirement leave is thus $842,911."[47]

[83] In the May 31, 2018 award, the tribunal understood that the Employer asked to have the January 1, 2016 retroactivity date coincide with the reference date for calculating eligibility for the sole purpose of post-retirement benefits (medical, dental, etc.), for which the Corporation had to create reserves in its financial statements, since it is self-insured.[48] Thus, for the purpose of granting said benefits, the Corporation should enjoy a period of time equal to that of the letter carriers, during which it will create the required reserves.

[84] Such a financial measure is not required for bonuses credited to pre-retirement leave or annual leave. Said leave should therefore be allocated on the same basis as annual leave, since it could be considered annual leave as understood in article 19.00 of the Urban Collective Agreement, which covers annual leave.

[85] For all these reasons, for the retroactive period, the Employer shall pay the RSMCs concerned financial compensation at a date to be agreed upon between the parties and for the future, beginning January 1, 2019, the RSMCs who meet the criteria for access to the leave will be entitled to said leave. However, in postal facilities where there are no on-call or permanent relief employees, RSMCs will have the choice of taking said leave or claiming financial compensation.

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[46] The Urban Agreement that expires January 31, 2018.
[47] Page 5 of the report.
[48] See paragraphs 793 through 796 of the May 31, 2018 award.

Adjustment of PRE remuneration

[86] Appendix "F" of the Collective Agreement provides for the following terms and conditions with regard to PRE remuneration:

> "3 a) Permanent relief employees are remunerated in accordance with the activity values provided in Appendix "A" and variable allocation for the route covered by the replacement. Unless a Corporation vehicle is provided, the appropriate vehicle usage expenses shall apply.
>
> b) When a permanent relief employee is not assigned to a route and is not indemnified in conformance with paragraph 3a), he or she shall receive sixty dollars ($60) per day as compensation and is expected to perform the other tasks assigned by the Corporation during a maximum of three (3) hours per day.

[87] The Employer proposes raising the compensation from the $60 provided for in article 3 b) of Appendix "F" to $90 and maintaining article 3.a) of the same Appendix. Thus, PREs will be indemnified in the same manner as the RSMCs they replaced during the retroactive period. The same conditions would remain for the future.

[88] For its part, the Union is asking that the PRE remuneration be equal to that of the permanent relief employees covered by the Urban Agreement, which implies modifying PRE remuneration and working conditions (e.g., by imposing a minimum of eight (8) hours per day or by adding a premium). The Union is also asking that all hours be recognized for the purpose of the retirement plan.

[89] The Undersigned shares the Employer's contentions. In this case, the tribunal concluded that the PREs were covered by the present pay equity process to the extent that the wages of the latter should be adjusted in the same manner as those of the RSMCs[49].[49] Thus the wage adjustment for RSMCs does not include access to all the working conditions applicable to PREs and is covered by the Urban Agreement. And, furthermore, it does not include the bonuses that were excluded in the May 31, 2018 award. Pay equity does not mean "working condition parity".

[90] Therefore, taking into account the jurisdiction of this tribunal, PRE wage conditions and the disposition of the May 31, 2018 award, and the agreed-upon provisions listed in Appendix "A" of the present award, the Employer's proposal succeeds. It fits within the framework of the Collective Agreement and proves to be equitable with regard to the pay adjustments enjoyed by the RSMCs. The wage gap is proportional.

Pay equity maintenance

[91] The Corporation proposes maintaining pay equity as follows:

> "Canada Post is committed to maintaining pay equity once the potential wage gap is eliminated. A fair and equitable method of determining workload for RSMC employees is necessary. To that end, Canada Post is committing 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. As of today, our Route Management System alone, cannot fulfill this need with accuracy[50].

[49] See paragraph 471 of the May 31, 2018 arbitral award.
[50] Extract from Canada Post's Proposal, page 18.

[92] Canada Post then 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 that the parties should be able to develop and implement a new workload estimating system for RSMCs by 2022.

[94] For its part, in addition to the requests addressed in this award and that of May 31, 2018, the Union is asking, for the future, application of article 35.09 of the Urban Agreement (for the first time) and that all the activity values provided in Appendix "A" to the Collective Agreement be adjusted to achieve a derived pay rate equal to letter carriers' salaries, starting January 1, 2019. The Union is also asking that all time values be included in the Collective Agreement, and that the pay raises given to letter carriers (if applicable) for the period from January 31, 2018 to January 1, 2019, be given to the RSMCs as well.

[95] The Corporation contends that this tribunal does not have the jurisdiction to dispose of this matter, as it exceeds the mandate set forth in the pay equity memorandum of understanding signed on September 1, 2016.

[96] In the May 31, 2018 award, the Undersigned decided that the arbitration tribunal was not faced with a general discrimination complaint but, instead, a wage discrimination complaint. In determining the wage gap, the Undersigned ordered that the time values remain frozen (including those agreed upon in the course of the present process), at least during the retroactive period. This measure is in line with pay equity, since the Employer has asked to reduce said time values. It goes without saying that any intervention of a similar nature as of January 1, 2019 that effectively directly or indirectly prejudices the orders rendered in the May 31, 2018 award or this one, is not allowed.

[97] I hold that the Employer is committed to maintaining pay equity as defined in the context of the present process, and that it will respect its commitment. Lastly, I reiterate that any request requiring unilateral modification of the Collective Agreement, which is not indispensable for ensuring pay equity, appears to me to be contrary to the pre-established rules. I therefore reject the Union's petition.

[98] Finally, on May 31, 2018, I referred a number of matters to the parties and the parties resolved a number of items in dispute. The results of their discussions show that the procedure proved to be useful. The parties were able to clarify some demands, evaluate the consequences, adjust their positions and agree upon solutions that were better adapted than those presented in the hearings leading up to the first award.

[99] I wish both parties a good continuation.

FOR ALL THESE REASONS, THE TRIBUNAL:

GIVES EFFECT to the agreed-upon provisions described in articles 1 through 30 inclusively, and 34, of the English version of the unsigned memorandum of agreement attached hereto in Appendix “A”;

ORDERS the parties to comply with it;

ALLOWS the Union’s petition for a weighted average indemnification of $5.31 an hour as the direct wage gap;

ORDERS the parties accordingly to comply with the payment and implementation terms and conditions described in particular in paragraphs 51 through 54 of this award;

REJECTS the Union’s petition to reopen the May 31, 2018 decision and maintains the January 1, 2016 retroactivity date as the eligibility date for the purposes of post-retirement benefit plans;

ALLOWS in part the Union’s petition with regard to annual leave;

ORDERS the parties accordingly to comply with the indemnification and access terms and conditions listed in paragraphs 77 and 78 of this award;

ALLOWS in part the Union’s petition regarding pre-retirement leave;

ORDERS the parties accordingly to comply with the indemnification and access terms and conditions listed in paragraph 85 of this award;

REJECTS the Union`s petition with regard to the adjustment of PRE remuneration;

ADOPTS the Employer’s proposal and accordingly sets the compensation provided for in article 3 b) of Appendix “F” to the Collective Agreement at ninety dollars ($90) per hour for the retroactive period and the future;

REJECTS the Union’s requests regarding pay equity maintenance;

ORDERS the parties to modify the provisions of the Collective Agreement accordingly;

RESERVES competence for disposing of any and all issues in applying and implementing this award (including that of May 31, 2018), including any lateness.

Maureen Flynn, Arbitrator

Union solicitors:	Janet E. Borowy Paul Cavalluzzo
Employer solicitor:	Karen Jensen
Hearing date:	September 12, 2018
Deliberation date:	September 12, 2018.

Our file: MF-1702-31025-FP
Award No. 276-18

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 route- holders 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, route holders 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, route-holders 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 log sheet with a Personal Contact Item.

Life Insurance

19 Starting January 1, 2019, Life Insurance coverage will be provided to active route holders 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 documents will be satisfied within nine (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 gender-based 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 / Union des travailleurs et travailleuses des postes	Canada Post Corporation / Société canadienne des postes