

IN THE MATTER OF A DISPUTE
PURSUANT TO APPENDIX 20 – MEMORANDUM OF AGREEMENT
RE: DISPUTE RESOLUTION RELATING TO THE IMPLEMENTATION OF THE
SCHEDULED ON-CALL MODEL

BETWEEN:

PROVINCIAL HEALTH SERVICES AUTHORITY
(BC EMERGENCY HEALTH SERVICES)
Represented by Health Employers Association of BC

(the “Employer”)

AND:

AMBULANCE PARAMEDICS OF BC,
CUPE LOCAL 873

(the “Union”)

(8 Hours Clear)

ARBITRATORS

Vincent L. Ready and
Corinn Bell, Q.C.

COUNSEL:

Ryan Goldvine for
the Employer

Jason Jackson for
the Union

WRITTEN SUBMISSIONS:

December 4, 11, 14,
15 and 16, 2020

DECISION:

December 23, 2020

The parties agree that we have the jurisdiction, under Appendix 20 – Memorandum of Agreement, Re: Dispute Resolution (“SOC DRP”), to issue a binding decision resolving this dispute, related to the implementation of the Scheduled On-Call model (“SOC”). The SOC DRP process mandates that all decisions be rendered by the third party within fourteen (14) days of hearing the dispute.

This dispute concerns the appropriate application of the eight hours clear and rest period clauses specified in Appendix 18 – Memorandum of Understanding, Re: Introduction of Scheduled On-call (“SOC MOU”). Those clauses read as follows:

7. Where an employee receives a callout during their pager hours and consequently works more than sixteen (16) hours in a 24-hour period, that employee will receive a 24-hour rest period without loss of pay.
8. Where an Employee receives a callout during their pager hours that followed a period of regular hours, they must receive a minimum of eight (8) clear hours before the start of their next regular hours, without loss of pay, with an additional allowance for reasonable travel time. Such travel time shall not exceed one (1) hour each way...

The parties are aware of the other Collective Agreement/MOU provisions potentially relevant to this dispute. Accordingly, those provisions will not be reproduced here given the expeditious nature of these proceedings.

POSITION OF THE EMPLOYER

The Employer states that this dispute concerns “the application of necessary rest periods to employees working under the new SOC deployment”; more specifically, paragraph 8 of the SOC MOU, requiring eight clear hours before the start of a called-out employee’s next regular hours. The Employer

takes the position that the eight clear hours is triggered by a callout only during the pager hours that follow a period of regular hours within a single 24-hour SOC or CP-SOC shift. It is further argued that paragraph 8 of the SOC MOU must be considered in light of other provisions of the SOC MOU, including paragraphs 1, 4, 5, 7 and 9, in addition to other relevant provisions in the Collective Agreement.

The Employer maintains that it is within management rights to establish a 24-hour shift that begins with pager hours, followed by a period of regular working hours, and followed again by pager hours to the end of the 24-hour shift. The Employer further argues that the SOC MOU makes it clear that scheduling the regular and designated pager hours falls within the rights of management.

The Employer submits that the SOC schedule contemplates 24-hour shifts wherein pager hours abut regular hours, before and after the regular shift. The intent of the eight-hour clear provision was to address periods of rest to mitigate the risk of fatigue. In its written submission, the Employer writes:

Through extensive discussions between the parties it was established that a significant part of the rationale underlying the selection of stations where SOC/CP-SOC would be implemented, incorporating a 24-hour "shift" was the expectation that calls during pager hours would be minimal. This is based both on historical call volumes used to determine candidate stations, coupled with the commitment that SOC/CP-SOC units will not be assigned cross-coverage or non-emergency transfers during an employee's pager hours. With shifts including daytime working hours and evening and overnight pager hours, it was important to the parties to protect periods of rest to mitigate the risk of fatigue. It was agreed that even a single call during an employee's sleeping hours could create a risk of fatigue that would be built on by continuing into morning or daytime working hours the next day. It is the protection of these sleep hours that led to the parties'

agreement above, in the SOC MOU, wherein eight hours clear following one of these night calls, was agreed upon.

In considering the various scenarios which this provision could arise, the Employer argues that the eight-hour clear provision should be interpreted such that a callout occurring during the pager hours prior to the regular working hours (calculated within a specific 24-hour shift period) would not trigger the requirement for eight clear hours, if the callout does not follow a period of regular hours. The Employer provided examples where it says the Union's interpretation would lead to absurd results and would not address the issue of fatigue, which is at the heart of the eight-hour clear provision.

The Employer contends that it remains committed to the health and safety of paramedics and ensuring "necessary rest", but notes that: (i) employees have access to paragraph 7 of the SOC MOU (i.e., a 24-hour rest period without loss of pay if working more than 16 hours in a 24-hour period); (ii) employees can self-identify if they have fatigue concerns; and (iii) the Union can grieve an alleged unreasonable exercise of management rights in the Employer's creation of schedules.

In its two replies, the Employer delineates, "for clarification" its "existing practice with respect to when an employee is on a callout triggered while on pager hours and the callout hours or minimum paid hours overlap the employee's next regular working hours". The Employer notes that its existing practice is also how the Employer would intend to implement under the SOC.

The Employer asks that this Board confirm its interpretation of paragraph 8 of the SOC MOU.

POSITION OF THE UNION

It is the Union's position that where an employee receives a call-out during their pager hours that follows their regular hours, they must receive a minimum of eight clear hours before the start of their next regular hours, without loss of pay. The Union submits paragraph 8 of the SOC MOU reflects this bargain.

The Union argues the SOC MOU establishes a mandatory eight hours clear requirement before the start of a SOC employee's next regular scheduled hours. The Union submits that this was extensively discussed at the bargaining table to address the Union's concerns relating to fatigue and safety of paramedics. The Union disputes the Employer's interpretation of the language.

The Union argues that split shifts are not permissible, including split pager hours. The Union points to Article A. 1.01(g) of the Collective Agreement as well as the language in the SOC MOU paragraph 4. The Union submits that the Employer ought not to be permitted to manipulate the language that requires an analysis of the 24-hour "shift" start and split pager hours. The Union argues that was never discussed at the bargaining table. In its written submission the Union argues:

It would be an absurdity to suggest that, at the whim of the Employer, they can somehow impose a split in the pager hours and thereby declare a break in the consecutive nature of those hours by saying some of the pager hours precede the shift and others, to be determined by the employer, follow the shift.

The Union takes the position that the start time of the shift is irrelevant to the application of paragraph 8 of the SOC MOU. The Union submits that the plain reading of the language means that eight hours clear is required before

the start of an employee's next scheduled regular hours, not before the start of their next 24-hour shift as argued by the Employer. The Union asserts that absurdities could result in the scheduling and application of paragraph 8 of the SOC MOU if the Employer's interpretation was preferred.

The Union provided a sur-reply confirming its primary argument respecting the eight-hour clear rule and disputing the Employer's "overlapping hours" clarification.

The Union asks that this Board confirm its interpretation of paragraph 8 of the SOC MOU.

DECISION

Despite the multiple, complex submissions and replies from each of the parties, the issue at the core of this dispute – the appropriate application of paragraph 8 of the SOC MOU – is relatively straightforward. For ease of reference, that language reads:

Where an Employee receives a callout during their pager hours that followed a period of regular hours, they must receive a minimum of eight (8) clear hours before the start of their next regular hours, without loss of pay, with an additional allowance for reasonable travel time. Such travel time shall not exceed one (1) hour each way...

The essence of the Union's position is when an employee is called out during their pager hours following their regular hours, they receive eight hours clear before the start of their next period of regular hours, without loss of pay. The Employer asserts that the eight hours clear provision is triggered by a callout only during the pager hours that follow a period of regular hours within a single 24-hour shift.

The well-established rules of collective agreement interpretation are canvassed in the oft-cited decision of Arbitrator Bird in *Pacific Press v. Graphic Communications International Union, Local 25, supra*. Those principles are as follows:

The first major issue I address is one of interpretation. I reaffirm my adherence to the rules of interpretation which I set out in *White Spot, supra*. I summarize as follows:

1. The object of interpretation is to discover the mutual intention of the parties.
2. The primary resource for an interpretation is the collective agreement.
3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.
4. Extrinsic evidence may clarify but not contradict a collective agreement.
5. A very important promise is likely to be clearly and unequivocally expressed.
6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.
7. All clauses and words in a collective agreement should be given meaning, if possible.
8. Where an agreement uses different words one presumes that the parties intended different meanings.
9. Ordinarily words in a collective agreement should be given their plain meaning.
10. Parties are presumed to know about relevant jurisprudence.

The principles articulated in *Pacific Press, supra*, address the primary objective of an arbitrator in interpreting the collective agreement language, including the role of extrinsic evidence. Neither party can rely on past practice to clarify the meaning or scope of the SOC MOU for obvious reasons. Bargaining evidence was not tendered as evidence and is similarly of no assistance. As such, we are left to examine the specific language used to reflect the parties' agreement in the SOC MOU.

On a plain reading of the language, we first find that the parties contemplated that in this new scheduling model, the SOC pager hours must abut an employee's regular scheduled hours of work but can be scheduled either before or after the regular hours. For the reasons argued by the Employer with respect to the 24 hours shifts in the new SOC model, we find that pager hours scheduled before and after the regular hours is not prohibited. Further, we find that the characterization of the placement of pager hours in the Employer cited example (i.e., "05h00 to 08h00 – three pager hours; 08h00 to 16h00 – eight regular working hours; 16h00 to 05h00 – thirteen pager hours") as a split shift is something of a misnomer. The sixteen pager hours in this example are not "split", but are in fact consecutive hours in the 24-hour shift, and accordingly, do not run afoul of A1.01(g).

We recognize that both parties have identified certain examples that could lead to absurd results in terms of the rationale behind the scheduling of pager hours and the creation of the SOC system generally if the other parties' interpretation was accepted. We note that this is a matter that may require attention at the bargaining table in the future and encourage such future dialogue.

We find that the language of paragraph 8 of the SOC MOU does not provide for any exceptions to the "8 hours clear" provision. As such, we prefer the Union's interpretation of paragraph 8 as it reflects the plain and ordinary

words of the words chosen by the parties at the bargaining table. As noted by the Employer, the scheduling of shifts is in the hands of the Employer, which may mitigate some of the unanticipated impacts of the negotiated language.

An additional issue arose in the reply submissions in the SOC DRP regarding payment and/or scheduling adjustments utilized by the Employer under the current Collective Agreement in situations when the call out hours or minimum paid hours overlap the employee's next regular working hours. Based on our findings in this case, it is not necessary to make a determination on this issue.

We find in favour of the Union's position in respect of paragraph 8 in the SOC MOU. As such, an employee receiving a callout during their pager hours that follow a period of regular hours must receive a minimum of eight clear hours before the start of their next regular hours, without loss of pay, with an additional allowance for reasonable travel time (not to exceed one hour each way).

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 23rd day of December, 2020.



VINCENT L. READY



CORINN M. BELL, Q.C.