8-8-1969

Re United Automobile Workers, Local 195, and Bendix-Eclipse of Canada Ltd

Innis Christie

RE UNITED AUTOMOBILE WORKERS, LOCAL 195, AND BENDIX-ECLIPSE OF CANADA LTD.

I. Christie. *August 8, 1969.*

UNION GRIEVANCE alleging failure by the company to provide medical insurance coverage in accordance with collective agreement.

L. Sheffe and others for the union.
W. Hunt and *K. Nelligan* for the company.

AWARD

Union grievance, pursuant to the collective agreement between the parties dated August 7, 1968, alleging failure by the company to provide medical insurance coverage in accordance with art. 34:02 of the collective agreement.

The facts:

The grievance before me is as follows:

> "The Union charges the Company with the violation of our present agreement in the matter of not covering our employees who have returned to work after layoff immediately on all their Social Insurances."

The union complaint is that employees who return to work after a lay-off are not covered by certain of the insurance plans provided for in the collective agreement until after the next billing date established by the carrier company or organization. The union accepted the company's statement at the hearing that group life insurance coverage in accordance with art. 34:01(a), weekly sickness and accident insurance coverage in accordance with art. 34:01(b), and Green Shield Prescription Services Plan coverage in accordance with art. 34:03 are provided immediately upon an employee's return to work. Ontario Hospitals Service Plan, Blue Cross semi-private coverage and Windsor Medical Services Plan coverage are not provided by the company until the first billing date after an employee has returned from lay-off.

The relevant provisions of the collective agreement are the following:

> "34:01 The company agrees to arrange for and pay the present cost of the following items:
>
> "(a) For employees actively at work on or after December 1, 1968, Group Life Insurance shall be seven thousand dollars ($7,000.).
>
> "(b) For employees actively at work on or after December 1, 1968, Weekly Sickness and Accident Insurance....
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> "34:02 The Company agrees to pay any future increases in cost which may be assessed up to May 1, 1971, for the coverage currently provided under the following items:

"(a) Ontario Hospital Services Plan and Blue Cross semi-private coverage for the employee, his wife and his eligible children.

"(b) Windsor Medical Services Plan for the employee, his wife and his eligible children. These benefits shall not include a waiting period for obstetrical services. Probationary employees shall be covered under paragraph 34:02(a), (b) and 34:03 the next billing date following the completing of 30 days employment.

"(c) In the event of a layoff, strike, leave of absence, or any interruption of employment for reasons other than sickness and accident, all insurances shall be continued in force for one month following the last day of the month in which such interruption in employment occurs....

"34:03 The Company will provide Green Shield Prescription Services Plan for employees and their eligible dependants covered by this agreement."...

The issue:

The issue is whether the company is obliged under this collective agreement to provide immediate coverage under the Ontario Hospitals Service Plan, Blue Cross and the Windsor Medical Services Plan for employees returning from layoff. It must be determined whether the company's obligation to continue "coverage currently provided under the following items..." is an obligation to provide protection only as of the next billing date following an employee's return to work.

It is not relevant to the issue before me whether lay-off severs the employment relationship under this collective agreement. I am concerned with the rights of those who have returned to work and who are clearly employees. Further, Mr. Hunt for the company disclaimed any intention of arguing that such employees are probationary employees.

Decision:

In an arbitration between the parties held on October 18, 1966, Judge Harold Lang held, in relation to the company's obligation to provide Green Shield Prescription Services Plan under art. 34:03 of the collective agreement, that "an employee returning after an illness is an employee from the date of his return and the Company must cover him from the date of his return and *not on the first day of the following month*" [emphasis added]. Judge Lang was considering the case of an employee with a lengthy illness whose Green Shield entitlement had come

to an end by agreement between the union and company. "The first day of the following month" to which he referred was the next billing date, which, according to the carrier insurance company, was to be the date when Green Shield coverage commenced. A copy of Judge Lang's award, which is unreported, was introduced at the hearing.

In accordance with Judge Lang's direction the company now commences Green Shield coverage immediately upon an employee's return to work after lengthy illness or lay-off. Presumably because an employee returning from lay-off is also "an employee from the date of his return" the company commences Green Shield coverage immediately for him too. The company does the same for group life insurance and weekly sickness and accident insurance but, the company argues, that provision in art. 34:02 for Ontario Hospital Services Plan, Blue Cross and Windsor Medical Services Plan is materially different. Under that article, the company says, it is not obliged to provide coverage for "employees actively at work" or "for employees... covered by this agreement" but rather is obliged to grant "coverage currently provided". "Coverage currently provided", says the company, means that the company is entitled to continue the arrangement that it had with the carriers for Ontario Hospital Services, Blue Cross and Windsor Medical Services at the time the parties entered the current agreement. Part and parcel of that coverage, in the company's view, is the period of waiting until the next billing date for employees returning from lay-off.

The union argues that under art. 34:02 (a) and (b), as under the provisions for group life, weekly sickness and accident insurance and Green Shield, the company's obligation is to provide coverage for "the employee", which includes employees just returned from lay-off. "Coverage currently provided" says the union, refers to the level of benefits.

In my view the word "coverage" in this context means the protection afforded by the plans provided; the level of benefits, exceptions, obligations of the employee and the like. Whether the term also includes the waiting period before protection commences is most unclear. Merely by reading the first part of art. 34:02 I am unable to determine whether the parties intended that employee rights under Ontario Hospital Services Plan, Blue Cross and Windsor Medical Services Plan should be limited by whatever waiting period the carrier company happened to be insisting upon at the time the agreement was signed.

No evidence was introduced to establish a past practice between the union and the company of treating art. 34:02 as if it meant that a waiting period was to be imposed upon employees returning from lay-off. In most lay-offs the insurance coverages with which I am concerned now continue unbroken through the lay-off period, in accordance with the letter of understanding dated August 7, 1968, which is appended to the collective agreement. For whatever reason no evidence was introduced to establish the elements of past practice in the relevant sense. A useful statement of the kind of past practice that would have to be demonstrated appears in the report *Re Int'l Ass'n of Machinists, Local 1740, and John Bertram & Sons Co. Ltd.* (1967), 18 L.A.C. 362 (Weiler, chairman), at p. 367-8:

> "If a provision in an agreement, as applied to a labour relations problem is ambiguous in its requirements, the arbitrator may utilize the conduct of the parties as an aid to clarifying the ambiguity. The theory requires that there be conduct of either one of the parties, ... which explicitly involves the interpretation of the agreement according to one meaning, and that this conduct (and, inferentially, this interpretation) be acquiesced in by the other party. If these facts obtain, the arbitrator is justified in attributing this particular meaning to the ambiguous provision. ...
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> "... It would seem preferable to place strict limitations on the use of past practice in [this] sense of the term. I would suggest that there should be (1) no clear preponderence in favour of one meaning, stemming from the words and structure of the agreement as seen in their labour relations context; (2) conduct by one party which unambiguously is based on one meaning attributed to the relevant provision; (3) acquiescence in the conduct which is either quite clearly expressed or which can be inferred from the continuance of the practice for a long period without objection; (4) evidence that members of the union or management hierarchy who have some real responsibility for the meaning of the agreement have acquiesced in the practice."

In the absense of past practice I must return to the words of the agreement and attempt to give them a meaning consistent with the apparent purposes of the parties. Article 34:02(a) and (b) calls for coverage "for the employee", with no differentiation between the employee who has been back on the job for only a few days and any other employee. Nothing is said about waiting

until the next billing date. In contrast, in art. 34:02(b) coverage for *probationary* employees under art. 34:02(a) and (b) and 34:03 is expressly delayed not only until the completion of the probationary period but until the next billing date following the completion thereof. In the absence of any better indication of the intention of the parties I must conclude that had it been intended that employees returning from lay-off should await the next billing date the parties would have said so, as they did in the case of probationary employees. Further, to interpret art. 34:02(a) and (b) as not delaying coverage until the next billing date is to conclude that all insurance coverages commence immediately upon return, and there is no good reason to suppose that the parties would distinguish between them in this respect. Judge Lang indicates in the award referred to earlier that the Green Shield carrier was similarly anxious to delay coverage until the next billing date but the company could not do so. I have concluded that coverage under the Ontario Hospital Services Plan, Blue Cross and Windsor Medical Services Plan must recommence immediately when an employee returns to work after lay-off.

The collective agreement clearly contemplates an arrangement between the company and a carrier insurance company, in this case specified carriers. Thus it may be said that the Ontario Hospital Services Plan, normal Blue Cross arrangements and the Windsor Medical Services Plan in all their detail are incorporated by reference into the collective agreement. In my view, however, there is nothing in the rules of the three insurance plans referred to that prevents the company from fulfilling its obligation to provide coverage immediately upon an employee's return to work after lay-off.

As I suggested in my "Green Shield" award of July 23, 1967, between these same parties (18 L.A.C. 321 – headnote only), the collective agreement must be given a reasonable and practical interpretation, but I have no grounds upon which to say that it is impractical for the company to arrange immediate coverage for employees returning from lay-off. I cannot, of course, direct the carrier organizations to make any change in their apparently inflexible rules under which coverage commences only on fixed billing dates. On the other hand, there is no reason why the company cannot, at some extra cost, make provision for employees who foreseeably will be rehired before the next billing date. Where an employee on lay-off has, on his own, undertaken to pay the premiums so that he has the protection afforded by the plans in question there is no problem at all. The company

need only reimburse him a pro-rated part of his premium. As the agreement now stands, of course, the company cannot require an employee on lay-off to ease the company's burden by thus taking over his own insurance coverage.

In summary, art. 34:02(a) and (b) requires the company to provide coverage under the Ontario Hospital Services Plan, Blue Cross and Windsor Medical Services Plan immediately upon an employee's return from lay-off. The carrier's rule that coverage may commence only on the next billing date following the employee's return does not, on the wording of the article, appear to me to be part of the "coverage currently provided" to which the union has agreed; rather it is a rule relating to when the "coverage" commences. The company can, admittedly at some extra cost, arrange for immediate coverage for employees returning from lay-off even where the employees have not themselves kept up the payment of premiums.

The interpretation that I have made of the agreement disposes of the policy grievance before me. At the hearing Mr. Hunt, for the company, undertook to waive any time limits affecting the rights of individual employees in respect of these matters and to compensate any employees employed by the company at the time of the hearing who had been on lay-off and had suffered a financial detriment by the employer's interpretation of the agreement. What this means, apparently, is that the company will compensate on a pro-rated basis those employees who carried their own coverage from the date of their return to work after lay-off to the next billing date under the health insurance plans.