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### Re Stereotypers & Electrotypers Union Local 50 and The Ottawa Citizen

Innis Christie

*Dalhousie University Schulich School of Law*

S E. Dinsdale

Larry Sheffe

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#### Recommended Citation

*Re Stereotypers & Electrotypers Union Local 50 and The Ottawa Citizen* (1968), 1968 CarswellOnt 867 (Ont LA) (Arbitrators: Innis Christie, SE Dinsdale, Larry Sheffe).

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ARBITRATION

Between:

STEREOTYPERS & ELECTROTYPERS UNION, LOCAL NO. 50, I.S. & E.U.

PRINTING PRESSMEN'S UNION, LOCAL NO. 5, I.E.C. & A.U.

MAILERS' UNION, LOCAL NO. 60, I.M.U.

(The Union)

-and-

THE OTTAWA CITIZEN:

A DIVISION OF THE SOUTHAM CO. LTD.

(The Company)

Grievance filed on October 6, 1967

Hearing - January 31, 1968.

Before: Innis Christie, Chairman  
S.E. Dinsdale, Q.C., Company Nominee  
Larry Sheffe, Union Nominee

Appearances:

For the Union:

J.P. Nelligan	Counsel
G.P. Kritsch	Ottawa Stereotypers & Electrotypers Union, Local No. 50
J. Hodges	Ottawa Mailers' Union, Local No. 60
W. Burrows	Ottawa Printing Pressmen's and Assistance Union, Local No. 5

For the Company:

C.A. Morley	Counsel
S.G. Roberts	Production Manager, The Ottawa Citizen

This grievance, pursuant to the Collective Agreement between the parties effective July 1, 1966 to December 31, 1968, alleges that the Company has failed to pay the proper rate of overtime for certain work done on the night of June 26-27, 1967 and requests that the employees involved be compensated.

AWARD

The facts:

The facts are undisputed. On the night of June 26-27, 1967, the Ottawa Citizen acting in accordance with the Collective Agreement, requested a number of employees to work overtime to prepare a special Centennial edition. Considerable advance notice of this special work was given and everybody understood that there was some urgency involved as the special edition was to be distributed with the regular edition on June 27th. The Mail Room employees completed their day shift at 4:30 p.m. After the half hour break required by the Collective Agreement they resumed work and continued on the job until 4:00 a.m. the following morning, with appropriate breaks as provided by the Collective Agreement. The mail room employees involved were: H. Clapp, C. Weir, R. Poulin, B. Martin, J. Dodds, S. Taylor, T. Therien. D. Stevenson and W. LeBlanc, who had not worked the day shift, commenced at 5:00 p.m. and S. Robinson, who had not worked the day shift commenced at 7:00 p.m. All worked through until the job was completed.

L. Richard, G. Willis and W. Reid, stereotype department employees, worked the same schedule as the mail room employees except that L. Richard only worked until 8:00 p.m.

The same schedule was worked by the following press room employees: F. Reed, Harld Holmes, L. Taylor, J. Wolfe, G. Morton,

I. Montgomery, R. Chamberlain, B. Thurston, and W. Patterson,

There were three other press room employees, R. Villeneuve, A. Dinelle, and F. Fitzgerald who began work at 5:00 p.m.

although they were on holidays or at least not regularly working.

The Company had made a special arrangement with these three employees and they are not parties to this grievance. They were paid at the night rate for a normal shift and for the balance of their time at the night rate of overtime. All the other employees were paid at the day rate for overtime.

The issue:

The issue is whether the grievors, all of whom were regular day shift employees, are entitled to the night rate of overtime for work done during the night hours of June 26-27th.

The relevant provisions of the Collective Agreement appear in the appendices relating to each of the three trades involved.

The "Appendix of International Mailers Union Local No. 60" provides:

Section 2 - SCALE OF WAGES AND HOURS

Minimum rates for journeymen mailers shall be as follows:....

Effective May 1, 1967 to February 29, 1968

Day Rate: \$140.62 per week of 37 1/2 hours,

5 shifts of 7 1/2 hours

\$3.7499 per hour straight time,

\$5.6248 per hour overtime.

Night Rate: \$144.45 per week of 35 hours

5 shifts of 7 hours,

\$4.1271 per hour straight time,

\$6.1906 per hour overtime

....

Not more than 7 1/2 hours shall be a day's shift to be completed in 8 1/4 consecutive hours between the hours of 8:00 a.m. and 8:00 p.m. except for Saturdays when the day shift shall be between 6:30 a.m. and 5:30 p.m. Seven hours shall be a night's shift to be completed in 7 3/4 consecutive hours between 8:00 p.m. and 8:00 a.m.

The provisions appearing in the "Appendix of International Stereotypers & Electrotypers Union Local No. 50" are essentially the same with differences in the wage rates, and some differences in the definition of day and night shift hours, as follows:

Not more than seven and one half (7 1/2) hours shall be a day shift to be completed in (8) consecutive hours between the hours of (7) a.m. and (6) p.m. .... Seven (7) hours shall be a night shift to be completed in seven and one half (7 1/2) consecutive hours between the hours of six (6) p.m. and seven (7) a.m.

The "Appendix of International Printing Pressmen and Assistants Union Local No. 5" sets out the "scale of wages and hours, etc." in similar form and provides:

"Day shift shall be between 8:00 a.m. and 6:15 p.m. .... The night shift shall be between 10:00 p.m. and 7:00 a.m. Working hours on shifts to run consecutively.

There is an importance difference between this last provision relating to pressmen and the equivalent provisions in the appendices covering the mailers and the stereotypers and electrotypers. Under the provisions appearing in both of the latter appendices the whole 24 hour period of the day is covered either by night shift hours or day shift hours. In contrast, the pressmen's day shift runs from 8:00 a.m. to 6.15 p.m. and the night shift from 10:00 p.m. to 7:00 a.m., which means that on the face of the agreement the hours from 6:15 p.m. to 10:00 p.m. and from 7:00 a.m. to 8:00 a.m. are not assigned to either the day shift or the night shift. We have found the existence of this "no-man's time" in the pressroom to be of considerable relevance in deciding the issue before this Board.

There were other sections of the Collective Agreement which were referred to by Counsel and which may be marginally relevant,

but the issue would seem to turn on the sections of the Collective Agreement quoted above.

Decision:

The issue really comes to this: should the passages in the Collective Agreement setting out the "night rate" be read as establishing the straight time and overtime rates of pay for work done in hours in which the night shift is to be worked; or should the paragraphs setting out the minimum rates be read as if they provided for the "day [shift] rate" and the "night [shift] rate" so that a man is paid the day or night overtime rate depending on which is his "basic shift".

The Company, of course, contends for the second of the suggested interpretations and the Union for the former. The Union contention, as Mr. Nelligan put it, is that once the "magic hour" of 8:00 p.m. for the mailers, 6:00 p.m. for the stereotypers and electrotypers, and 6:15 p.m. for the pressmen is passed then the night rates come into effect. There is, of course, some difficulty in choosing between 6:15 and 10:00 p.m. in determining the "magic hour" for the pressmen. Mr. Morely, for the Company, contended that the grievors were day shift employees and therefore entitled to the day rate for overtime work no matter when overtime work was performed.

In the context in which they appear, the words "day rate" <sup>may quite possibly</sup> mean the rate paid to people on the day shift. The words "day rate" and "night rate" appear only in the tables of minimum rates (quoted above), where they are used in connection not only with the hourly rates set out, but also with the length of shifts; seven and one half hours for day shift, seven

hours for night shift. It is therefore quite arguable, for example, that the "night rate" of \$6.1906 per hour overtime is the rate to be paid to a mailer whose regular job involves five shifts a week of seven hours each. That is, \$6.1906 is the overtime rate for a mailer on night shift.

Because the Collective Agreement is ambiguous in this way we are faced with the task of assigning to it one or another of the meanings contended for. There is no past practice which is of any assistance. Mr. Neilligan mentioned that the fact that the three pressmen who had not worked the day shift were paid at night rates might be useful in this regard. But the arrangement between these three employees and the Company was at all times referred to as a special one under which employees not regularly working were brought in for this particular job, and therefore it casts no light on the meaning which the parties themselves attached to the ambiguous provisions.

In the absence of past practice the ambiguity must be resolved in favour of the interpretation which renders the Collective Agreement most consistent and equitable in its application. For two reasons it appears that the meaning contended for by the Company best achieves this result. In the first place, to accept the Union's argument that the night rate of overtime is payable within the hours set aside for night shift and the day rate of overtime is payable within the hours set aside for the day shift presents the Board with a real difficulty in the case of the pressmen. What is their proper overtime rate during that "no man's time" from 6:15 p.m. to 10:00 p.m. when the day shift hours have finished but the night shift hours have not yet commenced? This difficulty is avoided completely by accepting the Company's argument that

the applicable overtime rate at any time depends solely on whether the overtime worker is a day shift employee or a night shift employee. In the absence of practice to the contrary we must interpret the Collective Agreement in a way which avoids rather than creates such difficulties.

Secondly, under the Union's interpretation an employee who has worked a full night shift and then works overtime into the daytime hours receives a lesser overtime rate than does an employee who works a full day shift and then works on into the early evening. Clearly, the parties are free to agree that such is the case, but it appears to be somewhat inequitable and helps to persuade us that the Union's interpretation is not the correct one.

Mr. Nelligan argued that the premium for night work is intended to compensate employees for working at the time which is less socially desirable, whereas the overtime premium is "exhaustion" compensation. The grievors, he said, were clearly entitled to the overtime premium and, since they were working in "socially undesirable hours", they should get the night premium. It is, however, equally arguable that the night rate of overtime is provided under this Collective Agreement to doubly compensate the night shift employee who must work "socially undesirable hours" a regular basis.

There is little doubt in this case that the employees were working overtime beyond their basic day shift and cannot be said to have been working a "second shift". In the case of the mailers and the stereotypers and electrotypers there is no problem in this connection, but with regard to the pressmen there is, once again



a special provision. Section 2 of the "Appendix of International Printing Pressmen and Assistants Union Local No. 5" provides in part:

Due to the present shortage of printing pressmen, members shall not be limited to one shift in any one day. However, under this provision, members shall receive the overtime rate for the second shift, but in no case shall members receive more than a full day or nights pay for such relief work within the prescribed hours.

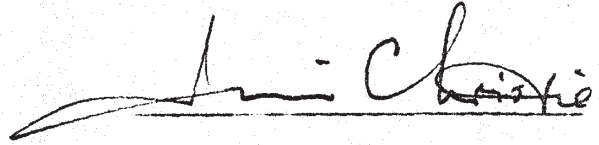
On the basis of this provision it could be argued that it is a hardship on the pressmen that they receive day rate overtime when they stayed on the job continuously, whereas had they broken off and come back after 10:00 they would have received night rate overtime. It is not really necessary to consider that question since this was clearly not work on a second shift. Moreover, in light of the limitation that the quoted provision places on the total amount of pay for such relief work the pressmen would be ill advised to place any real reliance on it.

Summary:-

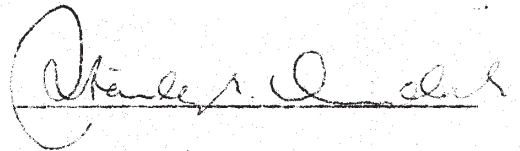
When the provisions for day and night rates of overtime are read in context an ambiguity becomes obvious. Does the Collective Agreement mean that the night rate of overtime is payable to an employee who works overtime during night shift hours or does it mean that the night rate of overtime is payable to an employee on the night shift who works overtime? In the absence of any evidence of past practice we have decided that the terms of the Collective Agreement, particularly the provisions relating to day and night shift hours for pressmen, are most satisfactorily and consistently explained by accepting the second of these two possible interpretations of the overtime rate provisions. This interpretation is also, in our opinion, the most equitable. The grievors were

all day shift workers and they were properly paid at the day rate for overtime for their work on June 26-27. The grievance is therefore denied.

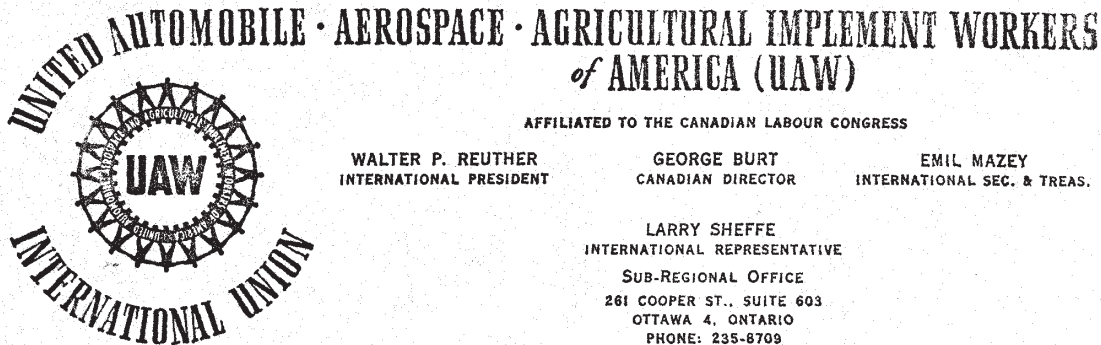
February 16, 1968.



Innis Christie,  
Chairman.



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AFFILIATED TO THE CANADIAN LABOUR CONGRESS

WALTER P. REUTHER  
INTERNATIONAL PRESIDENT

GEORGE BURT  
CANADIAN DIRECTOR

EMIL MAZEY  
INTERNATIONAL SEC. & TREAS.

LARRY SHEFFE  
INTERNATIONAL REPRESENTATIVE

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3rd April, 1968

Professor Innis Christie,  
Faculty of Law,  
Queens University,  
KINGSTON, Ontario.

Re: Stereotypers & Electrotypers Union,  
Local 50, I.S. & E.U. Printing Pressmen,  
Union Local 5, I.E.C. & H.U. Mailers,  
Union Local 60 I.M.W.U., and Ottawa  
Citizen

Dear Sir:

I am enclosing the copy of the award which was sent to me through you by Mr. Dinsdale in the above mentioned matter. I cannot sign this award and wish to register a dissent.

In doing so I refer you again to the L.A.C. which I sent to you on the 2nd of February with the underlined section which in my opinion lent a great deal of weight to the Union's position in the dispute. For some reason or other you did not see fit to even refer to the submission that you asked me to make along with that made by the Company nominee, even though that submission made a substantial point of dealing with a matter that had not been challenged by the Company counsel. As was pointed out by the Union this is not a question of a day shift or a night shift but of the way in which employees would be paid during their working hours. It was clearly stated that the only question of ambiguity, if there was any, dealt with a so-called 'gap' or 'no-man's-land' or 'magic hour'. These terms were not meant to be used in order to establish the difference between a day shift and a night shift as such. The case, in my opinion was clear and simple. The men in question regardless of their different starting times were concerned, worked through ~~the~~ continuously from their starting time in the morning until late into the next morning and once they had completed their regular hours of work for the starting day they should have then gone on to the applicable rates spelled out very clearly in the agreements as 'night rates' and not night shift rates. In this there can be no ambiguity.

It is my contention therefore that the grievance should have succeeded and been awarded in favour of the Union.

Yours truly,

*Larry Sheffe*  
Larry Sheffe, Union Nominee.

cc. J. Nelligan, G. Kritsch, file.