

Arbitration Award Summary
15-P—01837 – Article 17.01

Employer: Dominion Diamond Ekati Corporation

Arbitrator: Richard Coleman

Awarded: May 4, 2017

Case Outline:

This grievance falls under the BHP Billiton Collective Agreement expiring on August 31, 2014.

This grievance was filed as a result of the Employer violating Article 17.01 of the Collective Agreement. The Article states:

“Each department has its own system for allocation of overtime. Overtime work shall be distributed as equitably as possible amongst employees who normally perform the work. It is understood, that in most cases the incumbent in a position will be asked to work overtime first. The Employer agrees to discuss overtime allocations at least quarterly with Union representatives in each department.”

The Union alleged that the Employer had not set up systems of allocation overtime, overtime was not being distributed as equitably as possible amongst employees who normally perform the work, and has failed to schedule quarterly meetings with Union representatives in each department.

Union’s Argument:

Through disclosure prior to the hearing, the Union received a letter from the Employer which outlined the different overtime allocation systems in each department. The Union maintains that the systems fail to meet requirements in Article 17.01 as it includes “extraneous considerations such as seniority, attendance, and discipline and safety record” (pg. 5)

With respect to the quarterly meetings, it is the Union’s interpretation that it is the Employer’s responsibility to arrange quarterly meetings. As such, it is the Employer’s fault that no meetings have been held prior to the grievance.

In regards to the unequitable distribution of overtime, the Union’s Counsel relied on numbers presented by Ms. Thistle, the Director of Membership Services, that demonstrated “sufficiently large discrepancies as to reasonably demonstrate inequitable distribution” (pg. 6). He argued that 9 of 59 employees worked 43.2% of the available overtime in the Processing Department.

Further, the language in the article states that overtime will be distributed amongst employees who normally perform the work, which should be interpreted as bargaining unit employees and not non-bargaining unit or contractor employees.

Employer’s Argument:

The Employer argued that the Union has failed to prove that the Company has violated Article 17.01, and no direct reliable evidence has been provided to support their claims. The numeric evidence that was brought forward was not valuable as it did not demonstrate the reasoning that led to those employees being offered overtime, and if any offers were made and refused.

The Employer agrees that no quarterly meetings have occurred, but “maintain that their role is to “agree” to meet when asked to do so by a departmental Union representative, and there is no evidence that such a request has ever been refused” (pg. 6).

In respect to the allegation to assigning work to employees outside of the bargaining unit, the Employer argued that in the absence of a contracting out clause in the Collective Agreement it is management’s right to have discretion in offering work to bargaining or non-bargaining unit employees.

Arbitrator’s Decision:

The Arbitrator issued a partial award.

The Arbitrator found that Quarterly department meetings are mandatory, the Employer is required to provide overtime systems for each department, and the Employer must cease from using “criteria such as seniority, discipline, disciplinary record, safety record, employee’s attendance, in the allocation of overtime” (pg. 15).

The Arbitrator also found that the Employer is entitled to the use of contractor and non-bargaining unit employee for work and that the Union has failed to prove that the current overtime allocation is in violation of Article 17.01.

Notes

Unlike many of the Union of Northern Worker’s other bargaining units, DDEC’s system of allocation of overtime is different in each department.