QUEEN'S BENCH FOR SASKATCHEWAN

Date: **2016 10 17**
Docket: QBG 2091 of 2016
Judicial Centre: Regina

BETWEEN:

SUN COUNTRY REGIONAL HEALTH AUTHORITY
APPLICANT

- and -

THEODORE FRANCIS KOSKIE and THE HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN

RESPONDENTS

Counsel:

S. McLellan — for the applicant
G. Bainbridge — for the Health Sciences Association

FIAT — KEENE J.
OCTOBER 17, 2016

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[1] The applicant, Sun Country Regional Health Authority [SCHR] brings this application for a judicial review of the Arbitration Award of Mr. T. F. (Ted) Koskie. Mr. Koskie had been selected by the parties to resolve a grievance brought by Ms. Jodi Baht who is a member of the respondent, The Saskatchewan Health Services Association of Saskatchewan [HSAS]. Mr. Koskie provided his award on February 22, 2016. SCHR, being unhappy with the decision, brought this application requesting an order of *certiorari* quashing the award and an order for a re-hearing or re-consideration of the matter by Mr. Koskie.

[2] SCHR claims Mr. Koskie failed to interpret the Collective Bargaining Agreement [CBA] "in a manner within the range of reasonable outcomes" and exceeded his jurisdiction by adding to or amending the CBA.

BACKGROUND

[3] The parties appear to be in agreement regarding the factual background found by the arbitrator. Ms. Baht was employed by SCHR in October, 2014 as a casual Emergency Medical Technician [EMT]. EMT employees are considered part of Emergency Medical Services [EMS] under the CBA. EMS has to be staffed around the clock. This results in some casual EMT employees (such as Ms. Baht) being on call. Ms. Baht was scheduled to be on 24 hour call for October 3-7, 13-16, 22-16 and 31, 2014.

[4] Ms. Baht's 24 hour on-call period started at 6:00 p.m. on one day and ended at 6:00 a.m. the next day. SCHR paid her $5.00 for each hour of standby with a minimum of eight hours per day. If Ms. Baht was called in, SCHR paid her regular rate of $30.77 for a minimum of three hours and over-time after 12 hours.

[5] If released, she was to go back on standby. If called back in again within the 24 hour period, SCHR paid her a minimum of two hours and double-time for hours worked beyond three hours. Again, if released, she went back on standby.

[6] The parties seem to agree that this on-call resulted in restrictions on Ms. Baht's life while she was on standby during each 24 hour cycle.

[7] Mr. Koskie succinctly sets out the events that resulted in Ms. Baht's grievance as follows:

> [13] On October 3, 2014, Baht:
>
> a) commenced being on call at 6:00 a.m.;
>
> b) was called in at 12:30 p.m.;
>
> c) went back on call at 3:30 p.m.;
>
> d) was called in at 4:00 p.m.;
>
> e) went back on call at 6:15 p.m.; and
>
> f) reported ill with a migraine headache and asked to book off at 7:45 p.m. [footnote omitted]
>
> Baht remained ill for October 4 and 5, 2014, but went back on call on October 6, 2014 [footnote omitted]
>
> [14] Based on the records, [footnote omitted] Baht testified that, based on the records, she lost, due to her illness, on:
>
> a) October 3, 2014:
>
> i) a two (2) hour call-in that would have resulted in three (3) hours of pay at time and one-half (1½); and
>
> ii) the remainder of her standby amounting to eight and one-quarter (8¼) hours;
>
> b) October 4, 2014:
>
> i) a three (3) hour call-in that would have resulted in three (3) hours of pay at regular time; and
>
> ii) standby amounting to twenty-one (21) hours; and
>
> c) October 5, 2014:
>
> i) standby amounting to twenty-four (24) hours.
>
> [15] SCHR has not paid Baht for these lost hours. Baht had hours of sick leave banked and available that well

> exceeded same [footnote omitted]. She says these credits are something she earned and wants to access same for payment. She says access to same should be no different for casual, as opposed to full time, employees.

[8] The above para. 15 of the award is the crux of this matter. I note the arbitrator referred to some controversy as to whether or not sick leave had been paid to Ms. Baht on other occasions.

THE AWARD

[9] The arbitrator found in favour of Ms. Baht and wrote:

> [21] I find Baht entitled to sick leave for the standby shifts – On October 3, 4 and 5, 2014 – she was unavailable due to illness.
>
> [22] I find there is no basis upon which HSAS should be estopped from claiming access to same on behalf of Baht and other SCHR employees it represents.
>
> [23] I allow the Grievance and direct SCHR to pay Baht sick leave for her shifts on October 3 (partial), 4 and 5, 2014.

THE STANDARD OF REVIEW

[10] The parties agree that the standard of review here is reasonableness and not correctness. Our Supreme Court of Canada has provided three decisions that assist with the definition of this complex legal concept: reasonableness.

[11] In *Canada (Director of Investigation and Research, Competition Act) v Southam Inc.*, [1997] 1 SCR 748 [*Southam*], the court set out:

> 56 I conclude tbat the third standard should be whether the decision of the Tribunal is unreasonable. This test is to be distinguished from the most deferential standard of review, which requires courts to consider whether a tribunal's decision is patently unreasonable. An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a

> conclusion on the reasonableness standard must look to see whether any reasons support it. The defect, if there is one, could presumably be in the evidentiary foundation itself or in the logical process by which conclusions are sought to be drawn from it. An example of the former kind of defect would be an assumption that had no basis in the evidence, or that was contrary to the overwhelming weight of the evidence. An example of the latter kind of defect would be a contradiction in the premises or an invalid inference.

[12] The court went on to conclude this test is similar to the test employed by appellant courts reviewing findings of fact by the trial judge and described a "clearly wrong" standard as follows:

> 59 The standard of reasonableness simpliciter is also closely akin to the standard that this Court has said should be applied in reviewing findings of fact by trial judges. In *Stein v. "Kathy K" (The Ship)*, [1976] 2 S.C.R. 802, at p. 806, Ritchie J. described the standard in the following terms:
>
> > . . . the accepted approach of a court of appeal is to test the findings [of fact] made at trial on the basis of whether or not they were clearly wrong rather than whether they accorded with that court's view of the balance of probability.
>
> 60 Even as a matter of semantics, the closeness of the "clearly wrong" test to the standard of reasonableness simpliciter is obvious. It is true that many things are wrong that are not unreasonable; but when "clearly" is added to "wrong", the meaning is brought much nearer to that of "unreasonable". Consequently, the clearly wrong test represents a striking out from the correctness test in the direction of deference. But the clearly wrong test does not go so far as the standard of patent unreasonableness. For if many things are wrong that are not unreasonable, then many things are clearly wrong that are not patently unreasonable (on the assumption that "clearly" and "patently" are close synonyms). It follows, then, that the clearly wrong test, like the standard of reasonableness simpliciter, falls on the continuum between correctness and the standard of patent unreasonableness. Because the clearly wrong test is familiar to Canadian judges, it may serve as a guide to them in applying the standard of reasonableness simpliciter.

[13] This was followed by the Supreme Court of Canada decision in *Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 SCR 247 [*Ryan*] in which the court refined this concept and cautioned against a pull towards patent unreasonableness or correctness:

> 46 Judicial review of administrative action on a standard of reasonableness involves deferential self-discipline. A court will often be forced to accept that a decision is reasonable even if it is unlikely that the court would have reasoned or decided as the tribunal did (see *Southam, supra*, at paras. 78-80). If the standard of reasonableness could "float" this would remove the discipline involved in judicial review: courts could hold that decisions were unreasonable by adjusting the standard towards correctness instead of explaining why the decision was not supported by any reasons that can bear a somewhat probing examination.

[14] The court went on to outline the application of the reasonableness standard in some detail:

> 48 Where the pragmatic and functional approach leads to the conclusion that the appropriate standard is reasonableness simpliciter, a court must not interfere unless the party seeking review has positively shown that the decision was unreasonable (see *Southam, supra*, at para. 61). In *Southam*, at para. 56, the Court described the standard of reasonableness simpliciter:
>
> > An nnreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it. [Emphasis added.] [in original]
>
> 49 This signals that the reasonableness standard requires a reviewing court to stay close to the reasons given by the tribunal and "look to see" whether any of those reasons adequately support the decision. Curial deference involves respectful attention, though not submission, to those reasons (*Baker, supra*, at para. 65, per L'Heureux-Dubé J. citing D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M.

> Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286).
>
> 50 At the outset it is helpful to contrast judicial review according to the standard of reasonableness with the fundamentally different process of reviewing a decision for correctness. When undertaking a correctness review, the court may undertake its own reasoning process to arrive at the result it judges correct. In contrast, when deciding whether an administrative action was unreasonable, a court should not at any point ask itself what the correct decision would have been. Applying the standard of reasonableness gives effect to the legislative intention that a specialized body will have the primary responsibility of deciding the issue according to its own process and for its own reasons. The standard of reasonableness does not imply that a decision-maker is merely afforded a "margin of error" around what the court believes is the correct result.

[15] In a helpful manner, the Supreme Court of Canada went on in *Ryan* to tell us when a decision is unreasonable:

> 54 How will a reviewing court know whether a decision is reasonable given that it may not first inquire into its correctness? The answer is that a reviewing court must look to the reasons given by the tribunal.
>
> 55 A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79).
>
> 56 This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court

> should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[16] Finally, the Supreme Court of Canada, in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, described the concept of deference as it relates to the standard of reasonableness:

> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.
>
> 48 The move towards a single reasonableness standard does not pave the way for a more intrusive review by courts and does not represent a return to pre-*Southam* formalism. In this respect, the concept of deference, so central to judicial review in administrative law, has perhaps been insufficiently explored in the case law. What does deference mean in this context? Deference is both an attitude of the court and a requirement of the law of judicial review. It does not mean that courts are subservient to the determinations of decision makers, or that courts must show blind reverence to their interpretations, or that they may be content to pay lip service to the concept of reasonableness review while in fact imposing their own view. Rather, deference imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law. The notion of deference "is rooted in part in a respect for governmental decisions to create administrative bodies with delegated powers" (*Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554, at p. 596, per L'Heureux-Dubé J., dissenting). We agree with David Dyzenhaus where he states that the concept of "deference as respect" requires of the courts "not submission but a respectful attention to the reasons offered or which could be offered in support of a decision": "The Politics of Deference:

> Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286 (quoted with approval in Baker, at para. 65, per L'Heureux-Dubé J.; Ryan, at para. 49).

REVIEW OF THE ARBITRATOR'S AWARD

[17] Mr. Koskie set out the relevant provisions of the CBA. He then reviewed interpretation principles and considered the effect of the Supreme Court of Canada decision in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633 *vis-à-vis* the "leading case" in the labour arbitration world of *Communication, Energy And Paper Workers Union Of Canada, Local 77 v Imperial Oil Strathcona Refinery (Policy Grievance)* (2004) 130 LAC (4^{th}) 239.

[18] The arbitrator then went on to consider the case before him. He identified HSAS's argument in favour of the grievance as:

> [52] Counsel for HSAS went directly to Article 12.05(d) which reads:
>
> > Casual EMS Employees shall have access to accrued sick leave credits during the posted and confirmed period for shifts scheduled. In addition, a casual EMS Employee who remains unable to work due to illness shall have access to accrued sick leave credits based on the average number of paid hours in the fifty two (52) weeks preceding the illness, or since date of hire, whichever is less.
>
> He argues:
>
> a) the right to sick leave arises from a posted and confirmed period – something that is certain and not speculative;
>
> b) the Article uses the word "shall," which means you get sick leave if you meet the requirements – you are sick during the period and have credits; and
>
> c) this is the grammatical and ordinary meaning of the Article.

[19] Counsel for SCHR presented a far more complicated submission to the arbitrator. The arbitrator noted counsel "left no stone unturned". Counsel took the arbitrator through an elaborate argument in search of the real meaning of the word "work" under the CBA. This consisted of looking at "work vs. standby" (paras. 54-56 of the award), sick leave for full time employees vs. casual employees (paras. 57-61 of the award), the difference between shifts scheduled and standby (paras. 62-68 of the award), the workings of the pension plan (paras. 69-71 of the award) and the application of a previous arbitration award, *Prairie North Health Region v SUN*, 2004 CarswellSask 978.

[20] Having both points of view before him, the arbitrator then proceeded to make his decision. He concluded at para. 76 as follows:

> [76] In his argument, Counsel for SCHR has certainly left no stone unturned. Had I been dealing with a different employee classification, I must say I would have found his position to be compelling. However, I am here dealing with a Casual EMS Employee. According to the evidence before me, such employees are, unlike virtually all other employees within the bargaining unit, treated uniquely with specific provisions that apply only to them. My reading of these provisions brings about a result that is fatal to SCHR's position. I will elaborate.

[21] Mr. Koskie firstly referred to Article 12.01 of the CBA which states:

> **12.01 Definition Of Sick Leave**
>
> Sick leave means the period of time an Employee is absent from work because of disability due to illness or injury not covered by Workers' Compensation.

[22] The arbitrator recognized that Article 12.01 does not define work. Mr. Koskie wrote:

> [77] I start with Article 12.01. This is a provision of general application to all employees, including EMS. It speaks of "Sick

> Leave" being the period of time an employee is "absent from work." Since the CBA does not have a definition of "work," Counsel for SCHR refers me to Article 15 and its reference to *The Ambulance Act*. [footnote omitted] He argues section 37 excludes "on-call periods" from its definition of work. When coupled with Article 1.21 that defines "standby" as periods when employees are "not on regular duty," Counsel argues there is a clear distinction in the CBA between being on standby and being at work and, therefore, Baht was not calling to advise she would be absent from work due to illness, but rather that she would be absent from standby due to illness.

[23] The arbitrator then went on to consider s. 37 of *The Ambulance Act*, SS 1986, c A-18.1 but decided the definition of work in that *Act* did not have application. I note that during the judicial review hearing, counsel for SCHR stated Mr. Koskie either misinterpreted SCHR's argument regarding *The Ambulance Act* or placed too much importance on it. Indeed, counsel specifically abandoned any reliance on *The Ambulance Act* and referred to it as a "straw man". In any event, the arbitrator decided not to consider *The Ambulance Act* in aid of a definition for "work".

[24] The arbitrator then considered what he understood to be SCHR's argument regarding Article 1.21. This article states:

> 1.21 **"Standby" shall mean any period during which an Employee is not on regular duty, but must be available to respond without undue delay to a request to return to duty.**

[25] The arbitrator then went on to state in para. 78:

> [78] ... Furthermore, I do not see SCHR's position assisted by Article 1.21. It ignores Article 12.05(d) – a unique provision for Casual EMS Employees – that provides such employees "shall have access to accrued sick leave credits during the posted and confirmed period for shifts scheduled." My plain reading is that this provision is allowing sick leave for on-call time in addition to any lost work time. I might add that the second sentence of

> Article 12.05(d) speaks about a casual EMS employee "who remains unable to work due to illness." This does not bring the matter back to the language of Article 12.01. It simply creates a preamble for calculation of payment consistent for the unique casual EMS provision in Article 12.05(d).

[26] In paras. 79 – 81 of the award, the arbitrator considers an argument raised by SCHR regarding "costing" but concludes there is no basis in evidence to support these submissions. However, the arbitrator went on to relate evidence he found he did hear that ran contrary to the argument advanced by counsel (para. 81 of the award). Counsel remonstrates that such application of the evidence is unacceptable. I do not agree and find that the comments made by the arbitrator were appropriate.

[27] Next, Mr. Koskie tackles the SCHR argument regarding Article 12.05(a). This article states:

> **12.05 Deductions From Sick Leave Credits**
>
> (a) For full-time Employees, a deduction shall be made from accumulated sick leave credits for all normal working hours (exclusive of Public Holidays) absent for sick leave.

[28] In this regard, the arbitrator decided:

> [82] Counsel for SCHR next argues Article 12.05(a). I have already summarized the argument. Suffice it to say, he draws upon the Article to suggest Baht was not able to access accumulated sick leave under Article 12.05(d) becanse she was not absent from a scheduled shift. Again, I cannot accept this position. The CBA creates different approaches between FT and casual EMS employees. It is clear FT employees have regular or normal working hours. Other work via overtime and the like is neither regular, nor normal. It is reasonable that would be excluded from sick leave. It is different with casual EMS employees. All that is normal and predictable to them is what is posted and confirmed. The only reasonable interpretation is that is their scheduled shift.

[29] The arbitrator then considered a series of further arguments put forward by counsel (paras. 83-86 of the award) and provides his basis for disagreeing with SCHR.

[30] In the context of the arguments I received on this judicial review, I do not believe I have to consider arbitrator Koskie's decision under the heading of estoppel (see p. 32 of the award).

[31] The above is a brief outline of the arbitrator's findings, reasons and decisions.

POSITION OF SCHR ON THIS JUDICIAL REVIEW

[32] The applicant's position is summarized at p. 2 of counsel's brief:

> 5. The arbitrator ordered the employer "to pay [the employee] sick leave for her shifts on October 3 (partial), 4 and 5, 2014".
>
> 6. As will be demonstrated, in arriving at this decision, the arbitrator violated a fundamental interpretation principle, which is that the same words mean the same thing in the same context unless there is a clear indication that the words were intended to have different meaning. Further, the arbitrator relied exclusively on the factual matrix and, in so doing, he ignored the Supreme Court of Canada's admonition that the factual matrix should not be allowed to overwhelm the words of the text. Moreover, the arbitrator also ignored several other articles in the collective agreement that were clearly relevant to determining the overall issue.
>
> 7. Consequently, the arbitrator's decision is not one that falls within a range of possible, acceptable outcomes which are defensible in respect of tbe facts and law; and, therefore, the arbitrator's decision must be quashed.

[33] Additionally, counsel outlines a summary of SCHR's position at para. 126 of his brief which I will refer to below.

ARTICLE 12 – SICK LEAVE

[34] Counsel sees the wording of Article 12.05(d) as important and notes that Ms. Baht would have access to accrued sick leave "during the posted and confirmed period for shifts scheduled". Counsel then develops an argument that relates the definition of sick back to the wording of Article 12.01 and focuses on absence from work. He proposed the question: Is being absent from standby the same as being absent from work? Counsel concedes that the answer to this question is "at the heart of this grievance" (para. 23- SCHR's brief). Counsel continues and states:

> 24. So, when evaluating the arbitrator's decision, we must pay close attention to how he interprets Article 12.01 to determine whether or not his decision is one that falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[35] Counsel is critical of the arbitrator's approach in developing a meaning for the word "work" (para. 32 of SCHR brief) and argues that the arbitrator's reference to *The Ambulance Act* results in missing SCHR's main argument:

> 36. It is clear, based on these submissions, that *The Ambulance Act* was a small part of this overall argument. The employer's argument was that the *collective agreement* made a clear distinction between "work" and "standby" by referring to: Article[s] 15, Article 15.11(d), Article 15.15(b) and Article 1.21.

[36] Counsel then provides a detailed analysis of the interplay of various articles of the CBA and provides a conclusion that is not only critical of the arbitrator's reasoning but substitutes SCHR's answer to the question posed: Ms. Baht was not entitled to sick leave. At the conclusion of counsel's brief, he sets out three areas of concern:

126. The arbitrator's decision is not one that falls within a range of possible acceptable outcomes which are defensible in respect of the facts and the law for three main reasons:

> (1) The arbitrator fails to interpret Article 12.01 (i.e. absent from *work*) and, further, attempts to divorce Article 12.01 from Article 12.05, which is logically impossible because each is the other side of the same entitlement (i.e. access to sick leave credits must occur within the definition of sick leave);
>
> (2) The arbitrator ignores the employer's main argument regarding other articles in the collective agreement that make a distinction between *work* and *standby*;
>
> (3) The arbitrator provides a mere declaration (his "plain reading") of Article 12.05(d) and then relies entirely on the unique nature of casual EMS employees (i.e. the factual matrix) for his interpretation of Article 12.05(d) despite the fact that the applicable language of Article 12.05(d) is the same language that applies to 12.05(b) part-time employees and 12.05(c) other casual employees, thereby undermining any suggestion that the collective agreement is unique in its application to casual EMS employees.

WAS THE AWARD "UNREASONABLE"?

[37] Since the respondent supports the award, I will dwell on the applicant's position as set out under these headings.

(1) The arbitrator fails to interpret Article 12.01 (i.e. absent from work) and, further, attempts to divorce Article 12.01 from Article 12.05, which is logically impossible because each is the other side of the same entitlement (i.e. access to sick leave credits must occur within the definition of sick leave)

[38] Imbedded in this criticism is counsel's interpretation of the CBA and implicit is that it is only the applicant's interpretation that could be correct. Correctness is not the standard of review and a judicial review is not an appeal. However, assuming that this is more of a vigourous application of reasonableness, I will comment on the arbitrator's approach regarding the interpretation of the articles.

[39] It is apparent that the arbitrator did consider Article 12.01(see above quoted paras. 77 and 78 of the award). I cannot see how the arbitrator attempted to "divorce Article 12.01 from Article 12.05". It appears the arbitrator was looking to Article 12.05(d) as being helpful to define the word "work". It is clear SCHR disagrees with this, but nevertheless, the findings of the arbitrator are supported by reasons that stand up to a "somewhat probing examination" (*Southam*, para 56) and is not clearly wrong. I find that such a decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The reasoning passes the tests of justification, transparency and intelligibility.

[40] I appreciate that counsel strenuously argues that the arbitrator failed to provide the same definition of words in a consistent interpretation of the CBA. However, I do not see it in that fashion. The arbitrator adequately explained his methodology and clearly understood the arguments presented by the applicant. Therefore, I accept the arbitrator's approach under this heading as being reasonable as that term is defined by the authorities.

(2) The arbitrator ignores the employer's main argument regarding other articles in the collective agreement that make a distinction between work and standby;

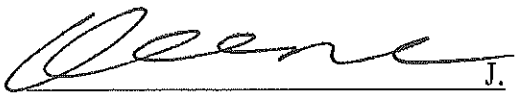
[41] There is, of course, a difference between ignoring an argument and not accepting an argument. Again, it is quite clear that the arguments were presented in detail by SCHR and the arbitrator considered them. As the arbitrator indicated, counsel for SCHR left no stone unturned. The arbitrator (as set out in the various quotations from the award) found that "work" (undefined in the CBA) and "standby" were similar enough to address the grievance in favour of Ms. Baht. Again, this fell within the range of possible, acceptable outcomes.

(3) The arbitrator provides a mere declaration (his "plain reading") of Article 12.05(d) and then relies entirely on the unique nature of casual EMS employees (i.e. the factual matrix) for his interpretation of Article 12.05(d) despite the fact that the applicable language of Article 12.05(d) is the same language that applies to 12.05(b) part-time employees and 12.05(c) other casual employees, thereby undermining any suggestion that the collective agreement is unique in its application to casual EMS employees.

[42] This is similar to the above arguments that the arbitrator failed to apply proper technique in interpreting the CBA. It appears facially that the CBA does highlight casual EMS employees. Nor do I see that the "factual matrix" approach overpowered the arbitrator's interpretation of the CBA. Again, the arbitrator's decision and process of reaching his decision passed the tests of justification, transparency and intelligibility and falls within a range of possible, acceptable outcomes. Accordingly, I can find no basis for judicial intervention.

CONCLUSION

[43] The authorities have been referred to. I am to provide considerable deference to the decision of the arbitrator. I am to consider whether the decision was transparent and understandable. In my view, it was. I am further to consider whether the decision was within the range of possible, acceptable outcomes. In my view, the arbitrator has carefully gone through the arguments presented by counsel for the applicant, but found in favour of Ms. Baht. I can see no basis for judicial interference in the arbitrator's award. Therefore, I dismiss the application with costs set at $1,200.00 payable by the applicant, SCHR.



J.

T. J. KEENE