

In the Matter of an Arbitration

Between

Nav Canada [employer]

And

Canadian Air Traffic Control Association/Unifor Local 5454 [CATCA or union]

And

In the Matter of Max Hours

Before: M. Brian Keller, arbitrator

Amanda Sarginson, for the employer

Louis Gottheil, for CATCA

Hearing by teleconference and written submissions

Award

On June 25, 2018, I issued an award dealing with the issue of Max hours. On page 13 of that award I wrote as follows:

“The parties have agreed that, notwithstanding any decision I make in this matter, the current practice will continue until at least the expiry of the collective agreement on March 31, 2019.”

As is the usual arbitral practice, I remain seized to deal with any issue arising from that award.

In a conference call on March 27, 2019, the parties indicated to me that they were unable to agree on when the past practice is to be discontinued. The union takes the position that the past practice should be discontinued effective April 1, 2019.

On the other hand, the employer takes the position that current practice should continue until the parties enter into a new collective agreement. It makes the argument that the phrase *“until at least”* can mean that the parties did not agree to a fixed date of March 31, 2019, on which to end the current practice.

An end to past practice through estoppel, where there is no agreement, or where the agreement is ambiguous, allows the arbitrator some discretion in determining when the past practice should end.

There are two predominant schools of thought. The first is that the past practice endures to the end of

the collective agreement, meaning the date on which it contractually expires. The second is that the past practice endures during the statutory freeze period and until the parties conclude a collective agreement or are in a position of strike or lockout.

The parties have informed me that they are in bargaining for the renewal of the collective agreement currently in effect. They have further informed me that the issue giving rise to my earlier award is the subject of bargaining between them. In my view, it makes labour relations sense that I exercise my discretion to adopt the second of the two schools referred to above in order to allow the parties the opportunity to resolve this matter during negotiations. Accordingly, the past practice shall remain in effect until such time as the statutory freeze expires or the parties enter into a new collective agreement. I believe it is agreed between the parties that if there is no change to the existing language, the current past practice will cease.

I remain seized as required.

Ottawa, this 30th day of March, 2019

A handwritten signature in black ink, appearing to read 'M. Keller', written in a cursive style.

M. Brian Keller, Arbitrator