IN THE MATTER OF AN ARBITRATION UNDER THE BRITISH COLUMBIA *LABOUR RELATIONS CODE*, R.S.B.C. 1996, C. 244

BETWEEN:

PACIFIC HONDA

(the “Employer” or the “Company”)

-AND-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 1857

(the “Union”)

Re: Nation Day for Truth and Reconciliation

APPEARANCES:	Danny Bernstein and Kate Jones, for the Employer
	Melissa VanderHouwen and Diana Sepulveda, for the Union
ARBITRATOR:	Ken Saunders
WRITTEN SUBMISSIONS:	March 28, 31, April 6, 7 and 8, 2022
DATE OF AWARD:	April 22, 2022

I. INTRODUCTION

1 The Union grieves that the Employer failed to add the National Day for Truth and Reconciliation ("NDTR") to the list of designated statutory holidays under Article 10.02 of the Collective Agreement.

2 Article 10.02 of the Collective Agreement designates 12 statutory holidays "and any other day proclaimed by the Provincial or Federal government when the Company is "forced by legislation to close down its operation." The dispute is whether the NDTR is caught by this closing proviso.

3 The Union seeks a declaration the Employer violated Article 10.02 by failing to recognize the NDTR as a designated statutory holiday, an order that it do so, and an order that employees be made whole for losses occasioned to date.

4 The Employer submits that the disputed proviso does not catch the NDTR because it is not a day the Company is "forced by legislation to close down its operation" as mutually intended by that provision.

5 The parties submitted this dispute for adjudication based on written submissions.

II. THE COLLECTIVE AGREEMENT

6 Article 10.02 reads in relevant part as follows:

> 10.02 Statutory Holidays
>
> All employees shall receive eleven (11) Statutory Holidays and one (1) "floater" day with pay at their regular straight-time rate. To qualify for the Floater Holiday, an employee must have been employed for six (6) consecutive months. The floater will be granted on a day or half (1/2) day(s) basis as mutually acceptable to the Company and the Employee. Ninety (90) days prior to December 31st of each year, the Employer may schedule any remaining Floaters that the employee has outstanding. The designated Statutory Holidays shall be:
>
> | | |
> |---|---|
> | New Year's Day | Labour Day |
> | Family Day | Thanksgiving Day |
> | Good Friday | Remembrance Day |

> Victoria Day Christmas Day
>
> Canada Day Boxing Day
>
> B.C. Day Floater Day
>
> *and any other day proclaimed by the Provincial or Federal Government when the Company is forced by legislation to close down its operation*
>
> […]
>
> c) *If the Company decides to open its business on a Statutory Holiday* employees to be retained to work will be requested to work on the following terms:
>
> First, on a voluntary basis;
>
> Second, by Seniority in the classification.
>
> The Company shall provide at least two (2) weeks prior notice of all mutually agreed days to observe Statutory Holidays falling on employee's regular days off.
>
> …
>
> [emphasis added]

7 Article 5.03 speaks to an overtime premium for work performed on a Statutory Holiday:

> **Overtime Payment**
>
> …
>
> Double time shall be paid on the seventh day for an eight (8) hour shift or the sixth (6) and seventh (7) day for a ten (10) hour shift and Statutory Holidays as agreed in 10.02.
>
> *(emphasis added)*

8 Article 8.02 of the Collective Agreement restates the presumptive confines of a collective agreement arbitrator's jurisdiction. It reads as follows:

> 8.02 An Arbitrator shall not have jurisdiction to add, to delete from, change or modify any of the provisions of this Agreement or make any decision inconsistent with the provisions of this Agreement. The arbitrator shall not have jurisdiction to award costs to either party and shall not have jurisdiction to award interest or any monetary award.

III. BACKGROUND

9 It is common ground that the Employer operates a provincially regulated business.

10 On June 3, 2021, Bill C-5, *An Act to amend the Bills of Exchange Act*, the *Interpretation Act* and the *Canada Labour Code* (National Day for Truth and Reconciliation) Statutes of Canada 2021, c.11 [Bill C5], received Royal Assent, which in turn added reference to the NDTR under the *Bills of Exchange Act*, RSC 1985, c. B-4 ("Bills of Exchange Act"), *Interpretation Act*, RSC, 1985, c. I-21 ("Federal Interpretation Act"); and the *Canada Labour Code*, RSC 1985, c L-2 (the "Canada Code").

11 The Province of British Columbia has not added the NDTR as a statutory holiday under the *Employment Standards Act*, R.S.B.C. 1996, c. 113 (the "ESA"). Instead, the Province designated the NDTR a day of commemoration.

IV. POSITIONS OF THE PARTIES

A. The Union's Position

12 The Union submits the parties intended the disputed proviso to add any new statutory holiday declared by the Provincial or Federal governments to the list of designated statutory holidays under Article 10.02. The Union argues the parties' mutual intention behind the words of this provision must be interpreted in context, as opposed to the strict confines of their grammatical and ordinary meaning. It invokes the presumption that the parties intended the disputed proviso to operate harmoniously within the scheme of the Collective Agreement. The Union also observes that the parties are presumed to know the law when negotiating their Collective Agreement. In this case, the *Provincial ESA* and the *Canada Code* have never required that the Employer close its operations on a statutory holiday. Nor does Parliament possess the jurisdiction to direct the closure of the Employer's provincially regulated business on a general holiday it designates under the *Canada Code*. Accordingly, the Union submits the parties could never have mutually intended to the disputed proviso to add newly proclaimed days only when legislation literally forces the Employer to close its operations.

13 The Union submits that each preceding consideration, combined with the words "and any other day," discloses a bargain to add all new general holidays proclaimed by the "Provincial or Federal Government" to the preceding list. Thus, the words signal

an intent to expand the preceding list of statutory holidays (some of which are not designated by the *ESA*), not to limit the addition of new holidays.

14 The Union further submits that confining the disputed proviso to when the Employer is literally forced by legislation to close its business would effectively render the operation of the disputed proviso meaningless, particularly for the addition of a federal general holiday. The Union says this is an absurd result. *See BC Public School Employers' Association and BCTF (Mountainside Secondary School)*, 139 CLAS 138. The Union invokes the rule that an interpretation available on the language that avoids absurd results prevails over one that does not.

15 The Union adds that it is essential to read the disputed proviso in the context of Article 10.02(c). Article 10.02(c) deals with staffing in circumstances where the Employer "decides to open its business on a Statutory Holiday." The Union says the parties' operating assumption behind that provision is that the Employer will generally close its operation on a Statutory Holiday. Only when it decides to remain open will premium wage rates apply. The Union submits in part:

> 67. The Union says that the most reasonable way to interpret the whole of the provision, including the word "Federal", is that "forced by legislation to close down its operation" is descriptive. It is a method of referring to a statutory holiday with employment and wage-related consequences.
>
> 68. This manner of referring to the statutory holiday distinguishes a holiday that has wage and employment related consequences, from holidays that are merely definitional. More specifically, a day "when the Company is forced by legislation to close down its operation" is a way of describing a legislative context under which businesses either close, or pay wages at a premium, as set out in the *ESA*, and the *[Canada] Code*. This is in contrast to a legislated statutory holiday that does not have employment wage-related consequences, such as those set out in the respective Canadian and provincial *Interpretation Act*, the *Holidays Act*, or the *Bills of Exchange Act.*

16 The Union relies on the oft-cited restatement of interpretive principles set out in *Pacific Press v Graphic Communications International Union, Local 25-C*, [1995] B.C.C.A.A.A. No. 637 ("*Pacific Press*"). It also relies the Supreme Court of Canada's direction in *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 to consider surrounding circumstances when ascertaining the parties' mutual intent behind contract language. It points to collective agreement arbitration awards endorsing a similar approach in *AUPE and Alberta Health Services,* [2017] A.G.A.A. No. 39 (Wallace) ("*AUPE*"), *West Fraser Mills Ltd. and USW, Local 1-425 (Bobtail Shift)*, [2016] B.C.W.L.D. 6306 (McPhillips) citing *C.E.P., Local 777 v. Imperial Oil Strathcona Refinery*, (2004), 130 L.A.C. (4th) 239, 78 C.L.A.S. 178 (Elliot). The

Union also cites *Olympic Motors (WC1) Corporation v International Association of Machinists and Aerospace Workers*, 2021 CanLII 122325 (Saunders) to support its contention that the parties' mutual intention should be interpreted consistent with the purpose of the disputed language.

B. The Employer's Position

17 The Employer says Article 10.02 Collective Agreement does not include the NDTR as a designated statutory holiday because it is not "forced by legislation to close down its operations" for that day.

18 The Employer points in support to a long line of arbitral authority for the proposition that an arbitrator's jurisdiction is confined to the interpretation and application of collective agreement language, not to alter, amend, subtract from or add to its terms: *Brinks Canada Ltd. v. Independent Canadian Transit Union, Loc. 1,* [1997] CLAD No. 806, at para. 44 (Kelleher), citing *Re Victoria Times Colonist and Victoria Newspaper Guild (1984),* 17 L.A.C. (3d) 284 (Hope); *Sobeys Capital Inc. v. United Food and Commercial Workers, Local 1518 (Five Pharmacies and Central Fill Grievance),* [2019] B.C.C.A.A.A. No. 44, at para. 7 (Brown). The Employer submits that the Union's interpretation seeks to add an entitlement that does not exist under the Collective Agreement.

19 The Employer further submits that it is essential to give the words of Article 10.02 their plain and ordinary meaning and that considerations regarding purpose, fairness, internal anomalies, cost or administrative feasibility are only decisive when the words of the Collective Agreement are ambiguous, thus forcing a choice between equally plausible interpretations: *Rio Tinto Alcan Inc. v. Unifor, Local No. 2301*, 2015 BCCAAA No. 80 (McConchie), at paragraph 70, citing *Canroof Corp. and TC, Local 230 (Group Grievance)*, (2013), 114 CLAS 288, 231 LAC (4th) 418 (Surdykowski) ("*Canroof*"). The Employer submits in part:

> "[A]nomalies" or "ill-considered results" are not sufficient to cause an arbitrator to alter the plain meaning of words. Similarly, if the interpretation of a collective agreement leads to hardship for one party, this is not enough to alter the clear meaning of a provision: Palmer & Snyder: Collective Agreement Arbitration in Canada (Bendel, et al.). 6th Ed. Part I, Ch 2, 2A(i) ("Palmer & Snyder"); *General Spring Products Ltd. v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1524 (Vacation Pay Grievance),* [1971] O.L.A.A. No. 2 ("*General Spring Products*").

20 The Employer draws upon the fifth canon of interpretation in *Pacific Press,* to argue that an important promise is likely to be expressed by unequivocal language. See

also *Wolverine Coal Partnership v. United Steelworkers, Local Union 1-424,* [2014] B.C.C.A.A.A. No. 100 (Nichols), para. 64; and *CUPE v. Toronto District School Board*, [2016] O.L.A.A. No. 448 (Howe), paras. 43-44. The Employer also cites the following authorities in support of its sur-reply (in response to the Union's contention in reply that there is no special onus to establish an interpretation conferring a monetary benefit): *Health Employers Assn. of British Columbia v. Health Sciences Assn. of British Columbia (Collective Agreement Grievance)*, [2019] B.C.C.A.A.A. No. 57 (Hall) at paras. 14 and 15 ("HEABC 1"); *Health Employers Assn. of British Columbia v. British Columbia Nurses' Union (Spencer Grievance),* [2022] B.C.C.A.A.A. No. 17 (Hall) ("HEABC 2").

21 The Employer argues that the result in *Olympic Motors* is distinguished by the fact that the operative language contained no limiting language such as that found in Article 10.02. It also relies on the reasoning in *Terrapure Environmental v. United Steelworkers, Local 2009* (National Day for Truth and Reconciliation Grievance), [2021] B.C.C.A.A.A. No. 202 (Sullivan) ("*Terrapure*"), where arbitrator Sullivan reasoned that because the list of designated statutory holidays at issue did not include a federal holiday (Easter Monday), the parties did not intend to recognize the addition of federal holidays by the language before him.

22 The Employer emphasizes that it was not forced by legislation to close its business on the NDTR. It submits the disputed proviso is correctly construed as a limitation on the Employer's obligation to recognize additional statutory holidays. The Employer contends that the language at issue is unambiguous. Accordingly, it is unnecessary to look past the plain meaning of the words to ascertain the parties' mutual intention. The Employer asserts there is no absurdity as asserted by the Union. In any event, the fact collective agreement language may create anomalies or ill-considered results does not justify a departure from the plain meaning of the language chosen. The Employer also argues there is no need to resort to extrinsic evidence or surrounding circumstances, given the clarity with which the parties expressed their intention: *AUPE*, at para 33. The Employer reiterates that it is necessary to give effect to the parties' mutual intention as reflected by the language of the Collective Agreement—specifically, the limitation that the Employer must be "forced by legislation" to close its operations.

C. The Union's Reply

23 The Union says that the Employer's interpretation fails to recognize the words "and any other day" and "federal" in the disputed proviso. Nor does the Employer deal with the fact that Article 10.02(c) speaks to its scheduling obligations if it "decides to open its business on a statutory holiday." Accordingly, it says the Employer's interpretation fails to give meaning to all words of the Collective Agreement and that the use of the word "forced by legislation" does not limit the addition of new statutory holidays to when the Employer is forced to close.

24 The Union submits that a contextual approach to collective agreement interpretation applies regardless of whether an ambiguity arises from the words when read in isolation. It says that the Union's interpretation does not require adding or subtracting words. Rather, it requires that the words chosen by the parties be interpreted in context. The Union emphasizes the statutory context and submits, in part, as follows:

> 15. The Employer says, at paragraph 55 of its Response, that "the only legislation that has the ability to force a BC provincial employer to recognize a statutory holiday is the ESA." This concession bolsters the Union's argument on this point: there is no legislation, provincial or federal, that forces or involuntarily compels businesses to close on a holiday.
>
> 16. For this reason, the Union says that "forced" cannot mean that it is involuntarily compelled by legislation to close; "forced" must mean something else. That is, "forced by legislation to close down its operation" is intended to describe circumstances when a business must choose between closing its operations, or paying its employees a premium rate, ie: a statutory holiday.

25 The Union invokes a well-established line of arbitral authority for the proposition that it does not bear a special onus to establish its interpretation: *BCPSEA v BCTF (Remedy for Semester 2),* [2018] B.C.C.A.A.A. No. 87 (Jackson), *citing Catalyst Paper v CEP, Local 1123*, [2012] B.C.C.A.A.A. No. 73 (Hall) ("*Catalyst*"). See also *Pope and Talbot and CEP, Local 1092*, [2006] B.C.C.A.A.A. No. 224 (Hope), at para. 92.

26 In response to the Employer's sur-reply, the Union does not dispute the canon of interpretation that a very important promise is likely to be clearly and unequivocally expressed. Its point is there is no special onus of proof regarding the interpretation of language conferring monetary benefits in contradistinction to non-monetary benefits: *HEABC 1*, at paras. 14 and 15; and *HEABC 2,* at paras. 14 and 15. The Union argues that its interpretation meets that standard as it follows as a matter of necessary implication from the disputed proviso.

27 The Union submits that the reasoning in *Terrapure* does not assist the Employer because that award was founded on a mistaken conclusion that Easter Monday is a federal statutory holiday when it is not.

V. ANALYSIS AND DECISION

28 The interpretive issue is what the parties mutually intended by the disputed proviso "…when the Company is forced by legislation to close down its operation." The Employer contends this phrase limits additions to the list of designated statutory holidays to only those days legislation literally forces it to close. The Union submits

the disputed proviso serves as a general shorthand description of the preceding list of designated statutory holidays, where the Employer must choose between closing its operations or paying a wage rate premium to employees scheduled to work that day.

29 This dispute lies to be decided by applying established canons of interpretation. In approaching this question, I have considered the oft-cited restatement of principles in *Pacific Press*.

30 My task is to ascertain the parties' mutual intention behind the words used to express their bargain.

31 The primary resource for interpretation lies in the language of the Collective Agreement. The direction under Article 8 of the Collective Agreement not to add or subtract words, dovetails with an arbitrator's overriding statutory mandate under Section 82(2) of the *Labour Relations Code,* R.S.B.C. c. 244. Section 82(2) directs arbitrators to: "…have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it *under the terms of the collective agreement*, and must apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute." (emphasis added)

32 Thus, an arbitrator's mandate must be discharged with careful regard for the language but always mindful it is the product of collective bargaining. The collective bargaining process often results in language that is imprecise, even clumsy, but just good enough to achieve a settlement to avoid or resolve a labour dispute. The tension between interpreting collective agreement language in its most literal sense and ascertaining the parties' mutual intent behind a disputed provision in this practical context, was aptly captured by the Labour Relations Board in *Simon Fraser University*, [1976] 2 Can. L.R.B.R. 54 ("SFU"), The following quotation is lengthy but deserves reproduction as it captures the central challenge posed by the present dispute:

> When the language of Section 92(3) [Now Section 82(2)] is examined closely, it is apparent that the Legislature envisaged a subtle task for the arbitrator, directing him at one and the same time to respond to the tug of apparently conflicting considerations. ***On the one hand, while the arbitrator must grapple with the merits of the grievance, it is clear that an arbitrator is not entitled to decide on the basis of his intuitive assessment of the equities of the individual case. Section 92(3) [now 82(2)] obliges the arbitrator to evaluate these merits by reference to "the terms of the collective agreement".*** The union and the employer negotiated that agreement. In turn, the arbitrator whom they select must respect the bargain these parties made. Otherwise, grievance arbitration would gradually be transformed into a disguised system of *ad hoc*,

interest-dispute arbitration. This obligation to the agreement was aptly expressed by Mr. Justice Douglas of the U.S. Supreme Court:

> "Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

But the major premise of Section 92(3) is legislative recognition of the special character of the interpretation of collective agreements. A ***seriously-contested dispute about the meaning of such an agreement can rarely be settled simply by the literal construction of the language on the face of the document. The practical features of collective bargaining produce a distinctive cast to collective agreements; in turn, this requires a complementary approach by the arbitrator to the task of interpretation.***

What are these special features? Collective agreements deal with the entire range of employment terms and working conditions often in large, diverse bargaining units. The agreement lays down standards which will govern that industrial establishment for lengthy periods -- one, two, even three years. The negotiators are often under heavy pressure to reach agreement at the eleventh hour to avoid a work stoppage, and their focus of attention is primarily on the economic content of the proposed settlement, not the precise contract language in which it will be expressed. Finally, the collective agreement, though the product of negotiations over many years, must remain a relatively concise and intelligible document to the members of the bargaining unit and the lower echelon of management whose actions are governed by it. (See Cox, "Reflections Upon Labour Arbitration" (1959) 72 Harvard Law Rev. 1482.)

What are the implications of these characteristic features of collective bargaining? ***The agreement which is the end-product of such a bargaining process must be approached by arbitrators with a very different set of mind than a judge construing a corporate indenture developed by batteries of lawyers for two large corporations. In particular, the arbitrator must recognize that while some provisions of the agreement provide objective, almost automatic criteria, many others are expressed in general, imprecise language allowing broad scope for judgment in their application***. (emphasis added)

33 The considerations set out by Chair Weiler in *SFU* are reflected in arbitrator McPhillips' summary of interpretive principles (in an award cited by the Employer)—*BC Hydro and Power Authority and IBEW, Local 258 (TNC Wage Adjustment)* 2018 B.C.C.A.A.A. No. 83:

> **60** In *UBC* and *CUPE, supra*, the B.C. Labour Relations Board stated that "it is important in industrial relations that the arbitrator decipher the actual intent of the parties lurking behind the language which they used**: *and not rely on the assumption that the parties intended the "natural" or "plain" meaning of their language considered from an external point of view."***
>
> **61** ***Another important consideration for an arbitration board is the context of the provisions in question, specifically, how they relate to other terms in the agreement or fit into the scheme of the contract:*** *Brown and Beatty, supra; Catalyst Paper (Elk Falls Mill)*, *[2012] B.C.C.A.A.A. No. 73* (Hall).
>
> …
>
> **63** Finally, the arbitral law is also clear that there is no particular onus placed on either party to establish that its interpretation is correct: *British Columbia Hydro & Power Authority*,[1987] B.C.C.A.A.A. No. 4 (Hope); *Peter Austin Manufacturing Co.*, *24 L.A.C. (2d) 289* (Dunn); *Catalyst Paper (Elk Falls Mill), supra; Louisiana -- Pacific Canada Ltd. (Golden)*, *[2013] B.C.C.A.A.A. No. 53* (Gordon). … (emphasis added)

34 I pause to address the parties' submissions regarding the question of whether the Union bears a special onus to establish entitlement to a monetary benefit. In my view, the cases cited in the excerpt above disclose an arbitral consensus that there is no such special onus, albeit arbitrators recognize that the more significant the promise, the more likely it will be recorded in correspondingly clear language. See also *HEABC 1*, at paras. 14 and 15; and *HEABC 2,* at paras. 14 and 15.

35 It also bears observation that the parties did not introduce extrinsic evidence regarding bargaining history or past practice to establish an ambiguity or to demonstrate a consensus resolving an ambiguity in the language. Accordingly, any question of ambiguity must be resolved on the wording of the Collective Agreement language itself, applying accepted canons of interpretation.

36 Finally, the Employer relies on an excerpt from Arbitrator Surdykowksi's award in *Canroof* to argue that factors such as purpose, fairness, internal anomalies, cost or

administrative feasibility only serve as aids to interpretation when the disputed words are found to be ambiguous and yield equally valid interpretations. I accept the thrust of the Employer's submission that parties must be held to the words of their bargain, regardless of whether one party struck an improvident deal. Nonetheless, in my view, the question of whether language is ambiguous and submits to two or more interpretations is appropriately made with holistic regard to the structure of that provision, its place in the scheme of the collective agreement, and whether a literal reading would result in an absurdity, is contrary to statute, or generates consequences contrary to its assigned purpose. I find this approach is consistent with the following framework of interpretive principles advanced by Arbitrator Surdykowki in *Canroof*:

> 4. The fundamental rule of collective agreement interpretation is that the words used must be given their plain and ordinary meaning ***unless it is clear from the structure of the provision read as a whole and in context that a different or special meaning is intended, or the plain and ordinary meaning result would be unlawful or absurd. All words must be given meaning***, different words are presumed to have different meanings, and specific provisions prevail over general provisions. The words that are there are obviously significant. But words that are not there may also be significant.
>
> 5 As a matter of general principle collective agreements must be interpreted in a manner which preserves the spirit and intent of the collective agreement. However, it is the words that the parties have agreed to use to express their intention which are of primary importance. The parties to a collective agreement are presumed to say what they mean and mean what they say. *Allegedly missing words or terms cannot be implied under the guise of interpretation unless it is absolutely essential to the apparent mutually intended operation of the collective agreement*, or to make the collective agreement consistent with legislation which the parties cannot contract out of (the Employment Standards Act, or the Human Rights Code, for example). Although much has been written about purpose, fairness, internal anomalies, cost or administrative feasibility, or what "should be", such considerations only come into play when the collective agreement language is truly ambiguous and the arbitrator must choose between equally plausible interpretations. The arbitrator's task is to determine what the collective agreement provides or requires, not what he or one of the parties thinks it should say, regardless of any professed unfairness of the effect on either party or the bargaining unit employees. The parties and employees are entitled to no more or less than what the collective agreement stipulates, and clear wording trumps all considerations other than legislation.

37 I now turn to consider the merits of the present dispute.

38 An isolated reading of the disputed proviso initially appears to limit its operation to circumstances where the Employer is literally “forced by legislation” to close its operations—or in other words, it does not have the option to open. Is this what the parties mutually intended by these words?

39 I note the purpose of the disputed proviso. Reading the whole of Article 10.02, I conclude the task of the proviso is to add statutory holidays proclaimed by the Provincial or Federal governments to the preceding list of “designated Statutory holidays.” This mutually intended purpose is evident from the words “and any other day” at the beginning of the sentence. I find the language extends the benefit of its operation in sufficiently clear language. I see no ambiguity in this specific regard. Therefore, the real substance of the issue in dispute is how to properly construe the words “forced by legislation to close its operation.”

40 The seventh canon listed in *Pacific Press* presumes the parties intend all the words of the collective agreement to convey meaning whenever possible. The tenth canon posits that the parties know the relevant jurisprudence—which in my view, includes the relevant statutory backdrop against which the parties negotiate and regulates the workplace.

41 These presumptions are underpinned by practical considerations in the labour relations context. Parties in collective bargaining are taken to mutually intend the provisions they negotiate “have work to do.” In this practical setting, an interpretation that renders a provision redundant is inherently absurd. Put differently; collective bargaining involves trade-offs representing exchanges of some value. Considered from an objective standpoint and in the absence of extrinsic evidence to the contrary, I find it inherently unlikely the parties settled upon language incapable of conveying value, tangible or otherwise.

42 In the present case, there is no dispute that the statutory setting in which the parties negotiated has never required the Employer to close its operations on a statutory holiday. There is no dispute that Parliament does not regulate this aspect of the Employer’s business. Hence, I find a literal reading of the words “forced by legislation to close down its operation” is undoubtedly confusing. A strict literal interpretation imposes a limitation that effectively means there will never be any addition to the list of designated statutory holidays. This interpretation holds that the parties sought to record an intention to add statutory holidays and to defeat that same intention in the very same sentence. In my view, that reading is notionally absurd in the collective bargaining context.

43 Thus, I am led to consider whether an alternative reading is reasonably available on the language—one that gives meaning to the disputed proviso in furtherance of its purpose and accords with other Collective Agreement provisions. I adopt the Union’s

submission regarding Article 10.02(c) in this last respect. That article deals with staffing in circumstances where the Employer "decides to open its business on a statutory holiday." I find that language discloses that the parties bargained with a mutually held operating assumption that the Employer will generally close its operation on a statutory holiday. Only when it decides to remain open will premium wage rates apply. With this consideration in mind, along with the interpretive factors noted above, I find it is reasonable to read the disputed proviso as a description of "a legislative context under which businesses either close, or pay wages at a premium, as set out in the ESA, and the Code" (as opposed to legislated statutory holidays that do not have employment or wage-related consequences)—as the Union submits. Accordingly, I find it reasonable to conclude the parties intended the disputed words "forced by legislation to close its operations" to serve as a loose descriptive reference to the nature of the designated statutory holidays listed immediately above, and not a strict limitation as the Employer contends.

44 I have considered arbitrator Sullivan's analysis in *Terrapure* in reaching this conclusion. Although Easter Monday appears under the definition of "holiday" under Section 35(1) of the *Federal Interpretation Act*, it is not a general holiday under the *Canada Code* or applicable regulations. Accordingly, Easter Monday does not carry employment or wage-related consequences (a day off with pay) under the *Canada Code* or in the same manner as designated Statutory Holidays listed under Article 10.02. For these reasons, I do not find that arbitrator Sullivan's analysis persuasively supports the Employer's interpretation in the present case.

VI. CONCLUSION

45 The grievance is allowed. I declare the Employer has violated Article 10.02 by failing to recognize the NDTR as a statutory holiday and order it to do so. I further order the Employer to make employees whole for losses occasioned to date. I retain jurisdiction to address the implementation of this award.

Ken Saunders, Arbitrator