

THE ESA'S MAXIMUM 13 HOUR WORK DAY CAP PREVENTS DOUBLE SHIFTS OF EIGHT HOURS EACH, EVEN IF EMPLOYEES (SUPPORTED BY THEIR UNION) WANT TO WORK THE HOURS BECAUSE OF THE PREMIUM PAY THEY STAND TO EARN

Norampac Inc., decision of Arbitrator MacDowell

The Company had a long-standing practice of scheduling “back to back” shifts (or “double shifts”) of eight hours each to meet the exigencies of its business. The Company ceased the practice in light of the new *ESA*'s 11 consecutive hours of rest requirement and the consequential maximum 13 hour cap that it placed on an employee's working day. The Union objected, arguing that employees should be able to continue to work back to back shifts (up to 16 hours in a day) because (a) an employee's decision to work those long hours was completely voluntary and (b) because the collective agreement's overtime pay provisions were far more generous than those contained in the *ESA*. As a result, the Union argued that the “back to back shift” scheme constituted a greater right or benefit for individual employees such that the *ESA* did not apply.

Arbitrator MacDowell disagreed with the Union, concluding:

A formula which permits 16 consecutive hours of work, without a break in between, or without having 11 hours off in a day is not a greater right or benefit, simply because the employee may choose to work those hours or may be well paid for it. To ask whether the package as a whole is better than the statutory ceiling from the employee's point of view is, in my view, to ask the wrong question. The subject matter of [the *ESA*'s hours of work provisions] is “time on and time off”; so from that perspective, a collective agreement provision required or permitting a double shift of 16 consecutive hours of work, is clearly not a better benefit than the 13 hour ceiling found in the *ESA*. [Emphasis added.]

Arbitrator MacDowell held that an employee's working day (*i.e.* the 24 hour period linked to an individual employee's work schedule) must be structured in a way that will guarantee him or her the stipulated 11 consecutive hours free from performing work as required by the *ESA*.