

**ARBITRATOR AGREES TO HEAR EXTRINSIC EVIDENCE TO DECIDE SAME MATTER OF INTERPRETATION THAT EARLIER ARBITRATOR HAD DECLINED TO DECIDE**

*Canada Bread Company, Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees (Teamsters) Local Union No.64*  
An Unreported Decision of Arbitrator Surdykowski dated March 30, 2000

**Facts**

The parties referred a grievance to arbitration before Arbitrator Surdykowski involving the application to new hires of the sick pay provision of the collective agreement in the context of a Letter of Understanding.

Arbitrator Craven had issued an earlier award (the "Craven Award") between the same parties in an individual grievance concerning the same matter. Both parties argued that the article was unambiguous and that recourse to extrinsic evidence was unnecessary. Ultimately, Arbitrator Craven granted the relief sought to the individual grievors but declined to precisely define the scope of entitlement for new hires. The company declined to follow the Craven Award in subsequent cases where new hires claimed entitlement to sick leave on the basis that it was clearly wrong. This dispute was ultimately referred to Arbitrator Surdykowski for resolution.

**Arbitrator's Award**

In a preliminary hearing before Arbitrator Surdykowski, the company argued that Arbitrator Craven determined the first grievance on a basis that neither party had argued, and that his decision was wrong. The company sought to call extrinsic evidence to establish the true meaning of the collective agreement and the Letter of Understanding. The company essentially argued that Arbitrator Surdykowski should address the exact same broad issue that had been before Arbitrator Craven, and in addressing that issue, Arbitrator Surdykowski should hear evidence that had not been put before Arbitrator Craven.

The union took the position that the only issue before Arbitrator Surdykowski was the narrow issue that Arbitrator Craven declined to deal with: the extent to which new hires are entitled to paid sick days under the collective agreement. The union argued that the broader interpretation of the applicability of the clause in question to "new hires" was determined by Arbitrator Craven and on the basis of *res judicata* could not be re-litigated before Arbitrator Surdykowski. The union argued that it was too late to call extrinsic evidence on the broader interpretation issue. The company successfully argued that the issue was not subject to estoppel, and that it should be permitted to call extrinsic evidence in support of the employer's position.

Arbitrator Surdykowski determined that *res judicata* did not apply because the prior grievance had been an individual grievance and the question before Arbitrator Surdykowski was a question of interpretation in the nature of a policy grievance.

Arbitrator Surdykowski noted that arbitrators seldom apply the doctrine of estoppel to issues of collective agreement interpretation. However, arbitrators generally refer to a prior decision on an interpretation issue unless they are satisfied that the prior decision is wrong.

In the circumstances before him, Arbitrator Surdykowski concluded that the Craven Award may well have been wrong on the interpretation issue. Furthermore, Arbitrator Surdykowski concluded that Arbitrator Craven had not fully determined the issue between the parties in the grievance before him.

Arbitrator Surdykowski allowed the employer to call extrinsic evidence on the basis that there was reason to think that Arbitrator Craven's decision was wrong on the interpretation issue for a number of reasons, and that the issue in question could not be determined without hearing the extrinsic evidence.