Court File No. CV-10-8533-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC., AND CANWEST (CANADA) INC.

APPLICANTS

ADJUDICATION OF THE RETIRED TYPOGRAPHERS' CLAIM

FACTUM OF THE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 145

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PART I - BACKGROUND

1. The Communications, Energy and Paperworkers Union of Canada, Local 145 (the "CEP") is the statutory bargaining agent for certain employees employed and formerly employed by *The Gazette*.

2. On January 8, 2010, the Applicants filed for, and were granted, CCAA protection (the "Initial Order").

3. On April 12, 2010 and May 17, 2010, the Court granted a Claims Procedure Order and an Amended Claims Procedure Order respectively. Amongst other things, the Orders called for claims and established the claims procedure for the identification and quantification of claims against the LP Entities.

4. On July 14, 2010, the CEP filed a proof of claim on behalf of nine of the LP Entities' Typographers. CEP claimed $500,000 in respect of each of the Typographers.

5. In December, 2010, the Typographers sought the Court's instructions and directions with respect to the proper characterization of the Typographers' claims. On January 5, 2011, the Court released Reasons for Decision on whether claims of Typographers who worked at The Gazette were excluded from the claims process in the *CCAA* proceedings. The Court determined that liabilities relating to active employees or transferred employees (the "Assumed Typographers") had been assumed by the Purchaser, Postmedia, and were excluded from the claims process and that liabilities relating to the five Typographers who were retired or who had resigned (the "Retired Typographers") were not. Those claims were encompassed by the claims procedure in the *CCAA* proceedings. This meant that the Assumed Typographers would continue with their proceedings in the Province of Quebec and that the CEP would pursue the Retired Typographers' proof of claim that was filed in July, 2010, in the CCAA proceedings.

6. In accordance with the Plan, the Monitor reserved 55,490 shares in the Disputed Claims Reserve for the claims of the Retired Typographers. This reflected the amount of the claims of $500,000 per Retired Typographer as submitted in the proof of claim of July, 2010.

7. In or around June 2011, Post Media brought a motion seeking, *inter alia*, an Order declaring that the Retired Typographers' claims were previously determined by an arbitration award of Arbitrator Sylvestre dated January 21, 2009 and that the Retired Typographers were bound by that award, subject to any setoff that may apply.

8. In its decision dated July 28, 2011, the Court held that, *inter alia*, Post Media's motion was premature as negotiations to resolve the disputed claim continued and the Monitor had yet to refer the Retired Typographers' claim to a Claims Officer for adjudication. Nevertheless, the Court provided some guidance to the parties in the event that negotiations proved unsuccessful and the Retired Typographers' claim was thereafter referred by the Monitor to a Claims Officer.

9. Subsequent to the release of the Court's July 28, 2011, the parties had some discussions in an attempt to resolve the disputed Retired Typographers' claim. However, a settlement was not reached and the Monitor thereafter referred the Typographers' Claim to a Claims Officer for adjudication.

PART II - ISSUES

10. The following issues arise in the adjudication of the Retired Typographers' claim:

(a) What is the test for determining whether the Motion for annulment is meritorious based on the evidence presented? and

(b) Is the Motion for annulment meritorious?

11. Once a determination is made as to whether or not the Retired Typographers' claim is meritorious, a second determination must be made depending on whether the claim is found to be meritorious or not. This factum focuses on the above two issues.

"Meritorious" – Scope of the Claims Adjudicators Jurisdiction

12. The jurisdiction of the Claims Officer with respect to the adjudication of the Retired Typographers' claim is set out in the Amended Claims Procedure Order and refined by the decision of Pepall J. dated July 28, 2011. In that decision, the Court provided guidance to the Claims Officer for the purposes of adjudicating the claims:

> In my view, the motion in annulment is in the nature of a review as contemplated by Arbour J. in *Toronto (City) v. CUPE, Local 79*. That said, this does not mean that the Retired typographers are at liberty to relitigate the entire proceedings. Rather, the Claims Officer should be limited by the determination of the nine month period of damages previously established by Arbitrator Sylvestre but subject to a consideration of whether the motion in annulment is meritorious based on the evidence presented. If it is meritorious, the Claims officer would be at liberty to authorize the retired the Retired Typographers to bring a motion before me seeking to lift the stay or to make any other order he felt was appropriate. If the motion in annulment is not meritorious, the Claims Officer would simply quantify the Retired Typographers' salary and benefits for the period between May, 1999 and January 21, 2000.
>
> **[emphasis added]**

13. The Court's guidance provided above raises an issue of interpretation. What is meant by the phrase – "a consideration of whether the Motion for annulment is *meritorious* based on the evidence presented?" What must be established to meet the threshold of *meritorious*, and to what extent must the Claims Officer delve into the merits of the Motion for annulment in order to make that determination?

14. In the CEP's submission, the issue of interpretation ought to be resolved having regard to the two-step adjudication process contemplated by Pepall J. in her decision of July 28, 2011. The first step requires the Claims Officer to make a preliminary determination as to the merit of the Typographers' Motion for annulment. If the Typographers' Motion for annulment is found to be meritorious, the second step permits the Claims Officer to, *inter alia*, authorize the Typographers' to bring a motion to lift the stay of proceedings and pursue the Motion for annulment before the Superior Court of Quebec.

15. Given the two-step adjudication process directed by Pepall J., the first step in the analysis must involve something less than a full and final inquiry into the merits of the Typographers' Motion for annulment. In the CEP's submission, the first step of the adjudication process requires the Claims Officer to determine, on a preliminary basis, whether the Motion for annulment presents a *prima facie* case for the relief sought. The Claims Officer ought to consider the evidence presented and determine whether the Motion for annulment presents at least sufficient merit that it would be contrary to the interests of justice for the Claim to be dismissed at the first step of adjudication.

16. If a Claims Officer were charged with conducting a full and final inquiry into the merits of the Motion for annulment at the first-step of the process, there would be no need to have a second step in the analysis (i.e., bring a motion to have the stay of proceedings lifted, etc.). Moreover, if a full and final inquiry was conducted at step-one of the adjudication process, the second-step, lifting the stay of proceedings, could potentially lead to conflicting outcomes. This cannot be what Pepall J. envisaged when she rendered her decision dated July 28, 2011.

17. Accordingly, the jurisdiction of the Claims Officer at the first-step is to determine whether the Motion for annulment is meritorious. That is, does the Typographers' Motion for annulment make out a *prima facie* case for the remedy sought based on the evidence presented. This approach at step-one serves to balance the interests of the Retired Typographers in having their Motion for annulment fully and finally determined and interests of the Applicants' and Post-Media in resolving the disputed claim and concluding the CCAA proceedings as expeditiously as possible. Moreover, this interpretation of "meritorious" is consistent with the way in which the authorities have considered the term in various contexts including, without limitation, in the context of Applications for Leave to Appeal decisions rendered under the CCAA.

***Edgewater Casino Inc. (Re)*, [2009] B.C.J. No. 174**
***Keewatin v. Ontario (Minister of Natural Resources)*, [2006] O.J. No. 3418**

<u>Is the Typographers' Claim Meritorious?</u>

The Applicable Standard of Review

The Court of Appeal, in its 1999 decision[1] opposing the same parties to the arbitration for which the award is contested by the *Motion for annulment in Superior Court (Montreal)* held that the

[1] *Communications, Energy and Paperworkers Union of Canada, local 145 v. Gazette (The), a division of Southam inc.*, December 15, 1999 (500-09-007384-985), p.19.

arbitration of which the arbitrator André Sylvestre was seized in 1996 was a consensual arbitration. The Court continued, holding that an arbitration of this kind was governed by the provisions of the Code of Civil Procedure and, particularly in relation to recourses for annulment, by article 946.4 C.C.P. The Court held that the standard of review for this kind of arbitration is similar to that applied in regular judicial review (art. 846, C.C.P.). The Court maintained the arbitral award with respect to the order made to the Gazette to participate in the process of exchanging the "final best offers" but annulled the order regarding payment of salaries as it was, in its opinion, an error subject to review (pages 29-30).

This question of the standard of review of a consensual arbitral award in Quebec was then the subject of a decision of the Supreme Court of Canada,[2] which defined the scope of the standard.

In this decision, the Supreme Court held that the standard depends in particular on the "mandate" of the arbitrator identified in the agreement of the parties. This decision was applied in 2003 by the Court of Appeal,[3] seized with a Motion for annulment of a second arbitral award by Arbitrator Sylvestre. The arbitrator had decided to limit the nature of the damages which could be claimed, meaning the salaries and benefits provided for in the collective agreement. This decision was upheld based on the fact that the arbitrator decided within the arbitration mandate, and the Court specified that the conclusions dealt with a question which was "at the very heart of the dispute between the parties" (par. 46).

Nevertheless, it is of note that in the *Desputeaux* decision, on the subject of the mandate, the Court referred to the judgment of the Superior Court which had authorized the arbitration when defining the mandate of the arbitrator:

> *23 First, however, we must note the importance of the judgment of the Superior Court rendered by Bisaillon J. As mentioned earlier, the parties' court battles had begun with the filing by Chouette of a Motion in declaratory judgment. Chouette wanted to have the agreements between it and Desputeaux and L'Heureux declared to be valid, and its exclusive distribution rights in Caillou confirmed. Relying on s. 37 of the Act respecting the professional status of artists, the respondent brought a declinatory exception seeking to have the dispute referred to an arbitrator. Bisaillon J. allowed the motion in part. He referred the case to arbitration, except the question of the actual existence of the contract, and the validity of that contract, which, in his opinion, fell within the jurisdiction of the Superior Court. That judgment, which has never been challenged, limits the arbitrator's competence by removing any consideration of the problems relating to the validity of the agreements from him. (…).*
>
> (Underlined by us)

The Supreme Court took into account the limit of the mandate given by the Superior Court. In the present case, the Court of Appeal, in its 2003 decision cited earlier, also mentions the limit of the mandate of the arbitrator at paragraph 51:

> *51 (…) I recall that the court seized of an application for annulment under art. 947 may not enquire into the merits of the dispute. Perhaps the question would appear*

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[2] *Desputeaux c. Éditions Chouette (1987) inc.,* [2003] 1 S.C.R. 178.
[3] *The Gazette v. Rita Blondin and A. Sylvestre and CEP, local 145,* August 6, 2003 (500-09-011439-015).

> *in a different light if the arbitrator had failed to comply with the order contained in Gazette No. 1, but nothing of the sort occurred here.*
>
> (Underlined by us) The reference to Gazette No. 1 refers to the Court of Appeal judgment of 1999.

Thus, in the present case, it is essential that the arbitrator strictly follow the mandate given by the Court of Appeal in its 1999 decision, page 32:

> *Therefore, I would ALLOW the appeal in part, ORDER the employer to submit to the process of exchanging best final offers within the 30 days following this decision, QUASH the two orders on payment and reimbursement of the salaries and benefits lost because of the lock-out and RETURN the file to the arbitrator, who will determine whether any damages should be awarded the 11 employees as a result of the employer's failure to respect article XI of the 1987 agreement.*
>
> (Underlined by us.)

A deviation from this mandate must result in the annulment of the arbitral award.

The Court of Appeal, once again seized of this matter on a Motion for annulment of a new arbitral award of Arbitrator Sylvestre, examines[4] the mandate of the arbitrator:

> [10] Thus, the arbitrator's original jurisdiction stemmed from the 1987 version of the tripartite agreement and from a notice of dispute sent to *The Gazette* by the union and the 11 typographers on June 4, 1996.
>
> [11] The scope and legal consequences of the documents in question were defined by our Court in 1999, hence it may generally be affirmed that the judgment rendered at that time circumscribed the arbitrator's jurisdiction, the jurisdiction under which the arbitrator granted the award of which the annulment is sought by the union and the typographers today.

In fact, in his award rendered in 2005, the arbitrator did not respect his mandate and decided that he could not award damages to the employees. The Court of Appeal annulled this award in its 2008 decision (par. 34) for the reason that the arbitrator did not respect the mandate which was given to him. The Court equates the failure to respect the mandate to an error mentioned in paragraph 4 of article 946.4 C.C.P. which provides:

> **946.4.** The court cannot refuse homologation except on proof that :
> **(...)**
> (4) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the agreement;(...).

It is now well established that the issue of the standard of review in the present case is strictly based on the respect by the arbitrator of the mandate given to him by the Court of Appeal.

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[4] *Local 145 of the Communications, Energy and Paperworkers (CEP) et als v. The Gazette and André Sylvestre*, March 17. 2008

In the following section we outline more precisely the scope of the mandate and the arbitrator's failure to respect this mandate in 2005, as analyzed by the Court of Appeal in its 2008 decision, in order to demonstrate that our Motion for annulment is "meritorious" within the meaning established in the first section of this factum.

The Motion for annulment is meritorious

Arbitrator Sylvestre rendered an arbitral award on March 18 2005 in which he decides not to award damages to the typographers. The union and the typographers presented a Motion for annulment of this award. This motion, having been denied by the Superior Court, was granted by the Court of Appeal of Quebec in 2008 (see note 4). The decision of the Court provides as follows:

> **[5] QUASHES** the Superior Court judgment; and, proceeding to render the judgment that should have been rendered:
>
> > **GRANTS** the petitioners' motion for annulment of arbitrator André Sylvestre's arbitration award of March 18th 2005 with costs against the impleaded party, The Gazette, a division of Southam Inc.;
> >
> > **ORDERS** that the case be remanded to arbitrator Sylvestre so that he may comply with the Court of Appeal judgments of December 15, 1999 and August 6, 2003. (Underlined by us)

The Court of Appeal specifies the scope of the mandate of the arbitrator in its 2008 judgment

Taking into account the position of the Court of Appeal in its 2003 decision (see note 3) that: *Perhaps the question would appear in a different light if the arbitrator had failed to comply with the order contained in Gazette No. 1*(…), and that this position is adopted again in the 2008 decision, the Court had to precisely define the mandate described in the 1999 decision in order to render judgment.

As discussed previously, the Court (par. 11) refers to the text of the 1999 order, which read:

> RETURN the file to the arbitrator, who will determine whether any damages should be awarded the 11 employees as a result of the employer's failure to respect article XI of the 1987 agreement. (Underlined by us)

Following this order, the Court decides on the fundamental question of the fault identified in the order:

> [24] That clarification having been made, it is important to recall that our Court's 1999 judgment very clearly identified the contractual fault committed by *The Gazette* in violation of the provisions of Article XI of the 1987 version of the tripartite agreement. Under a notice sent on April 30, 1996, the very date on which the collective agreement imposed by arbitrator Leboeuf in 1993 expired, *The Gazette* was required to exchange its last final best offers with the union no later than May 2, 1996. *The Gazette* did not do so and it is that fault that our Court pointed to as having possibly caused damage. That being so, what the arbitrator had to do was determine

> whether the contractual breach had had that effect in reality and, if so, determine the appropriate amount of compensation. (Underlined by us)

It is essential to note that the mandate of the arbitrator was restricted to the fault identified by the Court, meaning the fault committed by the employer. In his arbitral award, after admitting that he was *bewildered*, the arbitrator sought to find another fault not identified by the Court. Having failed to find it, he decided that the employer did not unduly prolong the lockout (see par. 25, 26 and 27, 2008 judgment).

The Court, in the face of this decision, and having noted that the arbitrator *lost the thread of the reasoning that, in December 1999, had led the Court to remand the case to him for a ruling on the matter*, decided that:

> [28] With respect, I believe that there was a misunderstanding and that the arbitrator's confusion led him to distort the dispute of which he was seized.

In order to ensure that the arbitrator would correctly accomplish his limited mandate, the Court identified it with greater precision:

> [30] It is important to remember that, at the time our Court rendered its judgment, in mid-December 1999, there were four main unknowns in the matter:
>
> (a) If the exchange of offers had taken place normally, after the sending of the April 30,1996 notice, when would the collective agreement have been finalized or, in other words, when would the lock-out have ended?
>
> (…)

The Court continues, declaring that *in deciding that The Gazette had done nothing to unduly prolong the lock-out, arbitrator Sylvestre ruled on something other than what had been intended in the judgment*.

Sub-paragraph (a) of paragraph 30 of the judgment is at the heart of the jurisdiction of the arbitrator; it is under this statement that the meritorious nature of our recourse should be examined.

The award of the arbitrator

The lockout imposed by the employer commenced at the beginning of the month of June 1996 and ended in June 2001. The claim of the typographers in the plan of arrangement covers the period from June 1996 to June 2001. A dispute in June 1996 was the subject of an arbitral award contested by the Motion for annulment, and the dispute of July 2000 has not yet been the subject of an arbitral award. Arbitrator Sylvestre is seized of the July 2000 dispute, and it is understood that this dispute will be decided after the litigation on the June 1996 matter receives a final award.

In the contested award, the arbitrator decides that damages must be paid to the employees but that these damages only cover the period beginning in May 1999 and ending in January 2000.

The reasons for annulment are explained in detail in the Motion for annulment. We refer the Claims Officer to the Motion. We are of the view that the arbitrator has once again decided on a dispute which was not submitted to him. As in the arbitral award annulled by the Court of Appeal, he sought out another fault. This time, he wished to attribute this fault to the union and to the typographers.

We believe that, as in the other award, the arbitrator *lost the thread of the reasoning that had led the Court to remand the case to him for a ruling on the matter.* The Court was clear; it must be decided whether the fault of the employer caused the damage. In effect, the arbitrator had to ask if the refusal to participate in an exchange of final offers resulted in a longer duration of the lockout. He did not have to ask whether the union or the typographers committed a fault. The fault to be analysed is that of the employer.

The arbitrator found another fault to reduce the duration of the damage

The analysis of the arbitrator of the duration of the compensation is found in paragraphs 52 to 56. However, the arbitrator first takes the time to discredit the union and its members, demonstrating a bias on his part which is invoked in order that the file might be withdrawn from him.

The only real analysis of the arbitrator regarding the period is found at paragraph 56:

> [56] In order to answer question (a), determining a date on which the collective agreement would have been finalized and the lock-out would have ended had the employer agreed to exchange final best offers, the arbitrator had to consider several different scenarios. The most logical stems from the claim by counsel for the employer that, on April 30, 1996, the union was not ready to exchange its final best offers. Indeed, in 2000 and 2008, the union offers could not be located and no reason for this was ever given by the union or the complainants. The arbitrator concludes from this that the latter preferred to opt for their disagreement to be heard by the grievance arbitrator to obtain adjudication of their rights. This first stage was eventually to be followed by a second, interest arbitration of final best offers. In these circumstances, the undersigned considers the scenario proposed by counsel for the employer to be the least flawed. Therefore, to answer the question, he has added the time he took to settle the disagreement, from June 1996 to February 1998, and the 15 months it took Me Leboeuf to render his award. Under this optimistic scenario, an arbitral award deciding the dispute would have been rendered in May 1999, followed a few days later by the signing of a renewed collective agreement and the end of the lock-out.

We refer to our Motion for annulment to demonstrate the fundamental error committed by the arbitrator on this question:

> 48. The plaintiffs submit here that once again here the arbitrator distorted the dispute he was seized of by trying via another way to find another fault, this time on the part of the Union and the employees, in order to avoid determining correctly the period of compensation;

49. Indeed, the Arbitrator criticizes the Union for not having been ready to exchange their best final offers;

50. However, this was neither the question nor the evidence filed in front of the arbitrator, evidence on the basis of which the Court of Appeal rendered its decisions;

51. In its decision dated December 15th 1999 **(P-2)**, the Court of Appeal, on page 30 states that:

> « In interpreting the texts submitted to him, the arbitrator was justified in concluding that the obligatory process for renewing the collective agreement provided for in article XI of the 1987 had not been terminated by arbitrator Leboeuf's award, and that the employer failed to meet its obligations when it did not respond to the union's request, on April 30, 1996, that it submit its best final offers. »;
>
> (Underlined by us)

52. The evidence is to the effect that the Union transmitted a notice on April 30th 1996 to the employer so that it proceeds to the exchange of the offers. However, the employer refused by a letter dated May 3rd 1996 by invoking that he did not have any obligation in this regard since the arbitration had become optional;

53. The question is not to know if the Union had or did not have a draft of final offers since the employer refused to proceed by advising the Union. Incidentally, we note paragraph 24 of the Court of Appeal decision **(P-4) :**

> « [24] That clarification having been made, it is important to recall that our Court's 1999 judgment very clearly identified the contractual fault committed by The Gazette in violation of the provisions of Article XI of the 1987 version of the tripartite agreement. Under a notice sent on April 30, 1996, the very date on which the collective agreement imposed by arbitrator Leboeuf in 1993 expired, The Gazette was required to exchange its last best final offers with the union no later than May 2, 1996'. The Gazette did not do so and it is that fault that our Court pointed to as having possibly caused the damage. That being so, what the arbitrator had to do was determine whether the contractual breach had had that effect in reality and, if so, determine the appropriate amount of compensation. »; (underlined by us)

54. The arbitrator opted for the employer's hypothesis by invoking that :

> « [56] (…)The arbitrator concludes from this that the latter preferred to opt for their disagreement to be heard by the grievance arbitrator to obtain adjudication of their rights. This first stage was eventually to be followed by a second, interest arbitration of final best offers. (…). » ;

55. There is a fundamental mistake on the part of the arbitrator concerning the notions that are at issue which were a part of his mandate. Indeed, considering the categorical refusal of the employer to participate in the process of arbitration, the only recourse the Union had was in accordance with the very text of the 1982 and 1987 agreements to proceed to the filing of the disagreements as though it was a grievance in order to obtain from the arbitrator an order for the employer to submit to the process of exchanging the best offers in accordance with the Agreements;

56. Incidentally, the Court of Appeal analyzed this question in order to conclude that the disagreement requesting an order to force the employer to submit to the process had been duly filed in accordance with the Agreements; the Court reminds the relevant texts on page 18 of its decision from December 15th 1999 :

> « 1) The grievance of June 4th 1996 provided that:
>
> The present grievance is filed in under the collective labour agreement and each of the tripartite agreements concluded on or about November 12, 1982 and March 5th, 1987.
>
> 2) The 1982 and 1987 tripartite agreements stipulated in the clause on grievance procedures that:
>
> In case of a disagreement over the interpretation, application and/or alleged violation of this agreement, the matter will be deemed a grievance and settled in the manner provided for in the grievance and arbitration procedures of the collective agreement. (emphasis added)

57. The grievance that had been allowed by the arbitrator in February 1998 and maintained for the process by the Court of Appeal included the demand that the

arbitrator issue an order for the employer to submit to the exchange process (see paragraphs 8 and 9 in **P-5**);

58. It is incidentally this demand that was reiterated by the Court of Appeal. The ruling from the Court only concerned the employer and not the Union:

> « order the employer to submit to the process of exchanging the best final offers within 30 days of the present decision ».

59. The exchange finally took place, after this ruling, on January 21st 2000;

60. Considering these events and the decisions of the Court of Appeal, the decision by the arbitrator to attribute to the Union the fault of, when faced with an interpretation of the Agreements, using the recourse provided by these Agreements in order to have them be respected, cannot be justified and is contrary to his mandate which is to make a determination within the context of the respect of the process and not its violation and the recourse that it led to;

In the scenario accepted by the arbitrator, he imposes, contrary to his mandate, the period during which the union and the employees had to resort to arbitration. This recourse to arbitration was rendered necessary by the refusal of the employer to meet the union and participate in the *final best offer exchange process*. This process provides that the employer and the union exchange their offers simultaneously. However, the employer refused to participate in a meeting which was to take place in the days following the notice given by the union.

In addition to attributing to the union a fault committed by the employer and identified by the Court, the arbitrator finds the duration to be 15 months which, he states, is the length of time which Arbitrator Leboeuf would have taken to impose a collective agreement during the lockout of 1993-94. However, the arbitral awards of Arbitrator Leboeuf, entered before Arbitrator Sylvestre, indicate that the examination of the content of the collective agreement, excluding objections on his jurisdiction, took 7 months (see par. 61 to 68, Motion for annulment).

There remains the question of the pension plan which the arbitrator refused to take into account. We refer the Claims Officer to paragraphs 71 to 80 of the Motion for annulment, which demonstrate that the arbitrator refused to apply his own earlier decision, upheld by the Court of Appeal in 2003, that the damages included the benefits contained in the collective agreement.

The reasons invoked in this Motion and explained in the present factum demonstrate in our view that this Motion is founded on the merits and that the arbitral award must be annulled and the file transferred to another arbitrator under the circumstances.

Part III – Conclusion

If we now apply the mandate given by the Court to the Claims Officer, there is no doubt that the Motion is meritorious. The Court gave the Claims Officer the mandate to examine the meritorious character of the Motion for annulment. As it is explained in Part I, this is a limited mandate which must be interpreted taking into account the directive of the Court in the event that the Motion is meritorious:

> [34] (…) If it is meritorious, the Claims Officer would be at liberty to authorize the Retired Typographers to bring a motion before me to lift the stay or to make any other order he felt was appropriate. (…)
>
> (Underlined by us)

We request that the Claims Officer declares that the Motion for annulment is meritorious and that he ask the parties to proceed to the second step of the adjudication process.

November 2, 2011

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