Prohibition against pyramiding does not apply where premiums serve different purposes

Date : December 9, 2015

Employers often provide shift premiums as additional compensation to employees that work weekends, evening or overnight shifts. For unionized workplaces, collective agreements will often prohibit the payment of two or more premiums for the same period of work pursuant to different articles of a collective agreement, provided that the compensation is for the same purpose (referred to as "pyramiding"). If a collective agreement is silent on the issue, there is a common law presumption against pyramiding resulting in only the greater of the two premiums being paid.

The recent decision of the Manitoba Court of Appeal in *Winnipeg Airports Authority Inc. v Public Service Alliance of Canada et. al.* (October, 2015) considered the right of employees to be paid both shift and weekend premiums for working evenings and/or nights on a weekend. The issue was raised notwithstanding that the collective agreement contained a clear prohibition against pyramiding. The relevant language of the collective agreement stated:

> Shift Premium
> 21.01 An employee working on shifts will receive a shift premium for all hours worked including overtime hours, between 4:00 p.m. and 8:00 a.m. provided the majority of the employee's regularly scheduled hours occur after 4:00 p.m. and before 8:00 a.m. The shift premium will not be paid for hours worked between 8:00 a.m. and 4:00 p.m. …
>
> Weekend Premium
> 21.03 Employees shall receive an additional premium of one dollar and fifty cents ($1.50) effective October 3, 2008 per hour for regularly scheduled straight time hours of work on a Saturday or a Sunday. …
>
> 22.13 It is understood by the parties that there shall be no pyramiding of premiums under this agreement.

At arbitration, the arbitrator held that the two premiums served different purposes and therefore employees were entitled to be paid both premiums when they worked an evening or night shift on a weekend. On judicial review, the arbitrator's decision was held to be unreasonable based upon the clear prohibition against pyramiding in the collective agreement.

The Court of Appeal of Manitoba however reinstated the arbitrator's award. The Court of Appeal noted that given the arbitrator found that the payment of the two premiums was for different purposes and the application judge found that conclusion was reasonable, that should have ended the application judge's analysis. However, the application judge erred when she went on to conclude the ultimate outcome of the arbitrator was unreasonable because it rendered the pyramiding provision meaningless. Although the collective agreement did in fact prohibit pyramiding, the Court of Appeal noted that pyramiding only occurs "where a payment compensates the employee more than once for the same purpose for the same period worked." The Court of Appeal also noted that there is a lack of consensus in the arbitral jurisprudence as to whether a shift premium and a weekend premium serve the same or a different purposes when considering the question of pyramiding. The Court of Appeal found that the arbitrator's overall conclusion that payment of the two premiums for the same hours would not run afoul of the prohibition of pyramiding clause of the collective agreement was found to be within the range of possible acceptable outcomes in fact and law and therefore was reasonable.

This case highlights the fact that a general prohibition against pyramiding in a collective agreement (and even the common law presumption against pyramiding) may not prevail where the purposes of the two premiums are nevertheless subject to interpretation. In order to ensure that only one premium is paid, clear drafting in the collective agreement is required.

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