IN THE MATTER OF AN ARBITRATION

BETWEEN:

SOCIETY STAFF UNION (the Union)

And

THE SOCIETY OF ENERGY PROFESSIONALS (the Employer)

RE: Grievance of Jim Bell (the grievor) dated April 25, 2014

Appearing for the Union:	Goergina Watts	-	Morrison Watts
Appearing for the Employer:	Thomas W. Agnew	-	Hicks Morley
Sole Arbitrator:	Norm Jesin		
Hearing held:	October 17, 2014		

File ID: 833686
File Folder: 10412-RR-14

Rel id 24316

AWARD:

The grievance in this case alleges that the grievor was denied a dental benefit contrary to the provisions of the collective agreement. Pursuant to article 27.2.1 of the collective agreement the Employer is required to pay the premium cost for certain insurance benefits including dental benefits. The carrier and insurance policy to be provided are referenced in the provision but the agreement does allow the Employer to change carriers subject to prior consultation with the Union and so long as equivalent benefit coverage is maintained.

The grievance arises as a result of a difference between the parties as to how to interpret the dental benefit provisions set out in article 27.2.3 of the collective agreement. That provision provides as follows:

> The Employer shall top up benefits received from the insurance carrier to provide 85% coverage for Major Dental subject to an employee's claim with supporting documents. The top-up portion applies whether or not the insurance carrier annual maximum has been reached or exceeded.

The parties agreed that the insurance plan provides a dental benefit of 80% to a maximum of $2,500.00. It is the Employer's contention that the top up provision requires it to pay an additional 5% of the claim regardless of whether the employee has received the maximum from the carrier. However, according to the Employer, even where the employee has received the maximum, the Employer's top up obligation is limited to 5%.

The Union contends that the provision requires the Employer to pay 5% until the employee has received the maximum amount from the carrier, and to pay 85% of any claim above and beyond that point.

During the hearing the parties agreed that as a result of certain facts which need not be detailed, the Employer was estopped from relying on its position, and it therefore agreed to pay the grievor's full claim above and beyond the insurance carrier's maximum payout. That estoppel will expire with the expiry of the present collective agreement. Therefore, the parties asked me to rule on which interpretation of the agreement is otherwise correct in order to assist them in their upcoming round of collective collective bargaining.

Although both parties provided me with a number of cases in support of various general principles, none of which were controversial, the cases provided were not directly on point. The real question in this case is did the Employer simply oblige itself in article 27.2.3 to pay 5% of the claim in addition to whatever the carrier paid, or did the Employer oblige itself to top up the benefit to ensure that the employee receives 85% of the claim, even where the carrier's maximum is exceeded. The Union's position is that on the clear language of the collective agreement, the Employer must top up the claim to 85%, regardless of the amount of the claim. The Employer relies on the second sentence of article 27.2.3 in support of its interpretation. The reference to "the top up portion" is a reference to the 5% difference between 80 and 85%, according to the Employer. Thus, when the provision says that the top portion applies whether the insurance carrier's maximum has been exceeded, that refers only to the Employer's 5% top up portion.

In my view the Union's interpretation is correct. Nowhere in the agreement is the term "top up portion" defined and/or limited to 5%. Rather, in my view, the term top up portion is meant to describe whatever portion the Employer must pay to bring the employee's total benefit up to 85%. Where the employee has not yet received the carrier's maximum, the Employer's portion will only be 5%, but when the maximum has been exceeded, the Employer's "top up portion" then increases to 85% of the amount claimed above the maximum paid by the carrier.

In reaching this conclusion I have noted the Employer's submission that there are other provisions requiring the Employer to top up other benefits but that the top ups in those provisions are expressly limited. Employer counsel submitted that on the Union's interpretation, the Dental benefit is the only benefit that is not limited. He asks me to conclude that the parties must have intended to limit the Dental benefit in accordance with the Union's interpretation. I note however that even on the Employer's interpretation, the Employer's obligation is not limited – it is simply less. There is no express limit contained in the dental benefit top up provision in article 27.2.3.

It is therefore my declaration that the Union's interpretation of the collective agreement is the correct one and that the Employer is required to top up the carrier's dental benefit to ensure that an employee receives a full 85% of his/her claim, regardless of whether the carrier's maximum has been reached or exceeded.

I remain seized to deal with any outstanding issues raised in this grievance.

Dated at Toronto this 12th day of November, 2014

NJ

Norm Jesin