IN THE MATTER OF AN ARBITRATION

BETWEEN:

OLG Slots at Woodbine Racetracks

and

PSAC Local 533

Before:	William Kaplan Sole Arbitrator
Appearances	
For OLG Slots:	Trevor Lawson McCarthy Tetrault Barristers & Solicitors
For PSAC:	James Craig Grievance Officer PSAC

The matters in dispute proceeded to a hearing in Toronto on May 10, 2016.

Introduction

On May 26, 2013, the parties entered into a Memorandum of Settlement renewing their collective agreement and making certain changes with respect to it. Among the changes was a new provision: Shift Giveaways, Article 17.15. On May 27th, the employer notified the union of a purported mistake in the signed off language of that new provision. The union disagreed and the employer eventually accepted the language as drafted. However, it immediately began to interpret the new provision in a certain way. The union raised an objection. The employer continued to interpret the provision in that way for many months before a grievance was eventually filed. The employer immediately objected to that grievance on the basis it was out of time.

At the hearing held on May 10, 2016, the union took the position that the employer knew about its objection. Moreover, there was evidence that the union had an internal practice of not filing grievances until the collective agreement was finalized. In these circumstances, the union argued, the grievance was timely. For its part, the employer observed that the time lines were mandatory, and that there was no question on the evidence that the union knew that management was interpreting and applying the provision in question in a specific manner yet no grievance was filed for many months. In these circumstances, the employer argued, the grievance must be dismissed.

Decision

Having carefully considered the evidence and arguments of the parties, I am of the view that the employer's preliminary objection must be upheld and the grievance, therefore, must be dismissed. In reaching this result, I am making no comments whatsoever on the merits of the position of either party.

The collective agreement makes it clear that the grievance time lines are mandatory and must be strictly complied with. In this case, the Memorandum of Settlement was signed on May 26, 2013. The next day, the employer advised the union of a purported mistake. The union did not share the view. The employer then notified the union of its intentions with respect to the interpretation of the new provision. Soon thereafter, it provided the union with a new form, the "Shift Drop Form." That form provided another expression of management's intentions with respect to the interpretation of the provision. The union again objected but no grievance was filed and the form continued to be used by employees for many months prior to the grievance eventually being filed in October 2013. When the grievance was filed, the employer immediately objected and maintained its objection at the hearing. In the meantime, the new provision had become effective the previous May as set out in the Memorandum of Settlement.

Given the above, the only conclusion that can be drawn is that the union knew within days of the Memorandum of Settlement being signed, and its coming into effect, that there was a dispute or difference between the parties. This was repeated on several other occasions thereafter. Simply put, the union knew that the employer was interpreting and applying the new provision completely contrary to what it believed the provision required. This conclusion is made manifest by both the documentary evidence and testimony in these proceedings. Whatever internal practices the union might have, they are not binding on management. The parties have agreed on strict time lines and this grievance was filed many months after they had passed. In these circumstances, the employer's preliminary objection must be upheld and the grievance dismissed.

DATED at Toronto this 11th day of May 2016.

"William Kaplan"

William Kaplan, Sole Arbitrator