

IN THE MATTER OF AN ARBITRATION

BETWEEN

CENTENNIAL CONCRETE (NIAGARA) INC.
("the Company" / "the Employer")

- AND -

TEAMSTERS LOCAL UNION NO. 879
("the Union")

CONCERNING A GROUP GRIEVANCE – No.19945

Christopher Albertyn - Sole Arbitrator

APPEARANCES

For the Union:

Joanne L. McMahon, McMahon Morrison Watts, Counsel

Ernie Bishop, Vice-President

Jim McNair, Steward

For the Company:

No appearance

Hearing held in THOROLD on June 21, 2016.

Award issued on June 21, 2016.

AWARD

1. This award concerns a group grievance filed on June 19, 2014.
2. The Union claims that the Company has violated Article 8.02 of the parties' collective agreement by not paying for lunch breaks that were worked.
3. Despite proper notice to the Employer on April 20, 2015, there was no appearance on behalf of the Employer at the appointed time and place of the arbitration. The matter was stood down for half an hour in case of a late arrival. There was still no appearance for the Employer.
4. The Union's Vice-President, Ernie Bishop, testified that he had spoken last week to Joe Candeloro, the Company's representative, about this hearing. Mr. Candeloro was reminded of the hearing. Also, a letter was sent to Mr. Candeloro by the Union arranging for the Union's steward, Jim McNair, to be booked off for the arbitration hearing.
5. Given the Employer's knowledge of the hearing and its failure to send a representative, the matter proceeded in the absence of the Employer.
6. Through the evidence of Mr. Bishop and Mr. McNair, the Union established the following facts.

7. The grievance originally affected five employees. However, one is no longer employed by the Company and one has passed away. That leaves three employees who still have a claim against the Company.

8. The relevant provision of Article 8.02 of the collective agreement is the following:

It is understood that employees may take one-half (1/2) hour for lunch without pay during the working period to start at a time designated by the dispatcher between the fourth and sixth hour worked. ..

9. For the relevant period covered by grievance, the dispatcher very seldom designated a time for a lunch break. Typically in the ready mix concrete industry, drivers are subject to the needs of the customers and the drivers may have to forego a lunch break if their services are needed by the customers.

10. If a driver is not able to take their unpaid lunch break, the Employer is liable to pay them for the half-hour worked.

11. The three individuals affected by the grievance are: Jim McNair, Jason Gillis and Mark McCallum ("the employees").

12. In about 2013 the Employer took a decision to no longer pay for the worked lunch breaks. This decision was maintained until December 2014. The employees kept a record of some of the days on which they were unable to take a lunch break during the period from 2013 and December 2014. Those records were presented in evidence.

13. Sometimes the individual employee would have moved into overtime as a consequence of the non-payment of the worked lunch break, but, in the calculation of damages, the regular rate of pay, not the overtime rate, has been used throughout. On this basis, the evidence establishes that the following hours of work and damages are due to the employees.

- a. Jim McNair: for various days between June 22, 2013 and December 5, 2014: $54.5 \text{ hours} \times \$22.00/\text{hour} = \$1,199.00$.
- b. Jason Gillis: for 27 incidents during the period May 5, 2014 to July 30, 2014: $13.5 \text{ hours} \times \$21.00/\text{hour} = \$283.50$.
- c. Mark McCallum: for 5 incidents during the period June 13 to 23, 2014: $2.5 \text{ hours} \times \$20/\text{hour} = \$50.00$.

14. I find that the Employer has breach the collective agreement by failing to pay the employees the amounts stipulated above.

15. The grievance is therefore upheld. I order the Employer forthwith to pay to the employees the following amounts, by separate cheques, subject to statutory deductions:

- a. To Jim McNair: \$1,199.00;
- b. To Jason Gillis: \$283.50;
- c. To Mark McCallum: \$50.00.

16. The Company is further ordered to advise Mr. Bishop of the Union, upon payment being made, as ordered, by providing him with a copy of the cheques

issued.

17. I remain seized of the implementation of this award.

DATED at THOROLD on June 21, 2016.

A handwritten signature in blue ink, appearing to read "C. Albertyn", with a horizontal line extending from the end of the signature.

Christopher J. Albertyn
Arbitrator