

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Jacobs Industrial Services Ltd.

-and-

**Labourers' International Union of North America
Local 506**

Grievance of Andrew Duckworth

Lorne Slotnick, Arbitrator

Representing the Company – Roy Fillion

Representing the Union – Michael Hancock

Hearing – Toronto, Ont., July 25, 2017

A W A R D

This award deals with issues that have arisen from the settlement of a grievance in June 2014.

Background

The company, Jacobs Industrial Services Inc., among its many other undertakings, performs maintenance work at petroleum refineries, including the Petro-Canada Products Ltd. refinery in Mississauga, owned by Suncor Energy Inc.

The maintenance work at Suncor's Mississauga refinery is performed pursuant to a collective agreement between Jacobs and 13 unions, including the union in this case, the Labourers International Union of North America. This agreement is one of numerous similar agreements across Canada known as General Presidents' Maintenance Agreements (GMPAs). The unions supply workers as needed in the various crafts through referrals from their hiring halls.

I was appointed in 2014 to hear the grievance of Andrew Duckworth, which claimed a violation of the collective agreement and the *Human Rights Code*. On the second hearing date, June 20, 2014, the parties reached a settlement, the relevant portions of which read as follows:

Whereas the Grievor suffers from a disability in the form of a degenerative disc disease that restricts his ability to perform certain work functions, including but not limited to heavy lifting, bending, twisting, climbing, pushing and/or pulling activities;

...

2. In the event of a complete or partial maintenance “shutdown” or “turnaround” within the meaning of section 1.200 of the GPMA at Suncor Energy Inc’s Mississauga Refinery (“the Suncor Facility”), the Company will request the Grievor by name to perform safety watch duties on any request for referral of additional workers during the period of the “shutdown” or “turnaround” and only for the period that the company requires additional workers and requires the performance of safety watch work for an entire shift.

3. During non-shutdown periods, if the Company requires one or more additional workers from the Union to perform safety watch duties at the Suncor Facility for a period of more than five consecutive days, the Company will request the Grievor by name on any request for a referral of workers by the Union, but only where the Company requires one or more additional workers to perform safety watch duties, and only for so long as the Company requires such additional workers for that purpose.

...

10. The parties agree that Lorne Slotnick will remain seized in the event of a dispute between the parties concerning the interpretation or implementation of the terms of the Minutes of Settlement.

Issues

Mr. Duckworth, despite his earlier disability, received medical clearance from his family physician on January 20, 2017, that he is fit to perform all the duties of a labourer at the Suncor facility without restrictions. Attached to the physician’s certificate was a physical demands description of the labourer position prepared by the company.

The company has accepted this change in his medical status. This raises the question of whether the minutes of settlement set out above are still operative.

The union and Mr. Duckworth have raised a second issue: whether Mr. Duckworth was given all the work he was entitled to in 2016 under the settlement. No claim is made for any work in 2014 or 2015.

Decision

Having heard the submissions of the parties, I make the following orders:

1. Given that the Minutes of Settlement signed on June 20, 2014, arose from the requirement to accommodate Mr. Duckworth's disability at the time, and given that Mr. Duckworth no longer has any restrictions preventing him from performing all the labourer duties at the Suncor facility, the Minutes of Settlement dated June 20, 2014 no longer have any force or effect. Mr. Duckworth will be treated as any other member of the union regarding dispatch to the Suncor facility.
2. Given that it appears that Mr. Duckworth may have lost some work that he should have been assigned in 2016, I order the company to pay Mr. Duckworth the equivalent of 240 hours' pay (package rate) less applicable deductions. The money is to be forwarded to union counsel within 30 days of this award. This resolves all claims under the Minutes of Settlement.



Lorne Slotnick, Arbitrator
July 27, 2017