

IN THE MATTER OF AN ARBITRATION

BETWEEN:

One Toronto Gaming dba. Casino Woodbine

-and-

**Public Service Alliance of Canada
Local 0533**

Policy Grievance 281-PSAC-2019 re Seniority

Lorne Slotnick, Arbitrator

Representing the Union – Sandra Gaballa

Representing the Employer – George Waggott

CONSENT AWARD

1. Pursuant to the collective agreement between the parties, I was appointed by consent as arbitrator to determine the above-noted policy grievance.
2. The grievance, which is dated April 27, 2019, is a union policy grievance relating to the seniority of certain slot attendants at the Casino Woodbine site in Toronto, Ontario.
3. All relevant employees are employed by the employer, One Toronto Gaming, doing business as Casino Woodbine, and represented by the union, the Public Service Alliance of Canada.
4. The exact wording of the grievance is as follows:

“I grieve management who violated article 21.04 [now Article 22.04] implemented order of seniority when a group of part-time slot attendants were promoted to full time status after the collective agreement was ratified in August 3 2017.”

5. The union says that certain employees who worked for the employer as slot attendants and who moved from part-time to full-time status had their seniority improperly determined in or about 2017.

6. The relevant provisions of the collective agreement provide as follows:

22.04 Where two (2) or more employees have the same service and seniority date, they shall be placed on the seniority list in an order determined by lottery. The lottery will be conducted by the Employer with a Union Representative present.

22.05 Where an employee moves from part-time to full-time status, or vice versa, he/she shall be placed at the bottom of the appropriate seniority list but shall retain accrued service attained at the date of the move.

7. The union says that the lottery process should only be used in cases where relevant employees have both the same service date and seniority date, and that this was not how seniority dates were determined in the past, including in 2017. The union therefore seeks a ruling and related remedies with respect to prior uses of the lottery system, and the approach to be followed going forward in future cases.

8. The employer says that, without regard to past use of the lottery system used to determine seniority, the grievance is untimely. The employer bases this position on applicable law, the general time limit for grievances set out in the collective agreement, and a specific time limit regarding seniority which is provided for in Article 22.03.

9. The employer's position is that the grievance must fail based on the express wording of Article 22.03 of the collective agreement, which provides as follows:

22.03 An employee attaining seniority shall have thirty (30) days from the posting of the first seniority list containing their name to advise the Employer, in writing, of any errors with respect to their seniority dates. Thereafter, the employee shall be deemed to have accepted the seniority dates posted.

10. The parties have had discussions about the grievance and related issues and have requested that I make the following orders, on consent:

(a) Based on the express wording of Article 22.03 of the collective agreement, I find that the grievance is untimely.

(b) With respect to future cases where seniority needs to be determined, the collective agreement prescribes the process which should be followed in certain limited

circumstances. I determine that Article 22.04 of the collective agreement mandates a limited use of the lottery system based on the terms outlined below.

(c) Article 22.04 of the collective agreement is to be implemented as follows:

(i) The employer must first attempt to order employees by seniority date, with “seniority date” for these purposes being the date that each relevant employee began employment within their classification. If there are no draws at this point, then the seniority list can be prepared based only on ranking resulting from this process; then

(ii) The employer must, only if draws remain after (i) above, further attempt to order employees by length of service with the employer and predecessors. If there are no draws at this point, then the seniority list can be prepared only based on the ranking result from the process followed to this point; and then

(iii) The employer must, only if there are draws remaining after both (i) and (ii) above have been completed, conduct a lottery with respect only to those relevant employees who have the same service and seniority date. A union representative will be in attendance.

(d) For greater certainty, this order does not have retroactive application to seniority determinations previously made and instead applies only to future determinations. Article 22.03 will continue to apply where an employee is challenging their seniority determination.

(e) The employer shall ensure that the individuals involved in decision-making regarding seniority lists shall be made aware of their obligations under this consent award.

11. It is so ordered.

12. The orders above end all matters in dispute arising from grievance 281-PSAC-2019.

A handwritten signature in black ink, appearing to read "Lorne Slotnick", is written over a horizontal line.

Lorne Slotnick, Arbitrator
November 20, 2020