BEFORE THE ARBITRATOR: Claude Martin, lawyer

BELL CANADA INC.

Represented by Me Maryse Tremblay

and

UNIFOR (AS SUCCESSOR TO THE UNION CANADA COMMUNICATIONS, ENERGY AND PAPERWORKERS CORPORATION)

Represented by Me Marjorie Langlois

Grievance: TEA-QN13-01 – Job Profile

Accreditation number: CIRB Order 10934-U

Auditions: November 28, 2022, May 18 and October 31, 2023

ARBITRAL AWARD

[1] To the opportunity for the negotiation surrounding the renewal of their agreement for the period from December 21, 2012 to November 30, 2016, The parties have agreed to substantially modify the salary scales Bell technicians. In particular, they have created new classes salaries for all temporary and permanent auxiliary employees who are members of the bargaining unit who would be employed by Bell on or after December 1, 2012. According to these new scales, these employees had to be grouped together in the jobs of *specialist technician*, *technician or generalist technician*[1]. Compensation for permanent employees who were already working for Bell before on December 1, on the other hand, was to be the subject of scales of salaries which covered fourteen named jobs[2]. Ok that the evidence has not formally demonstrated this, I take it as established that This structure already existed when the previous agreement expired.

[2] Due to a disagreement over the distribution of employees in the new scales, the Parties agreed to establish a joint committee, the *Advisory Committee on positions*, which was eventually expected to make recommendations on the job evaluation that Bell had conducted prior to undertaking the Negotiations. According to the memorandum that constituted it, the committee was to submit its recommendations no later than June 1, 2013. He was to based on the HayTM valuation method.

[3] The Committee began its work in April 2013, but it has never submitted its recommendations. Instead, Bell decided to discontinue its work at the May 2013. The Union challenged this decision using the grievance mentioned above and requested, as of July 2, 2013:

> That the Company comply with the Memorandum of Understanding in order to ensure that all the points of the said memorandum which have not been made shall be made in such a way as to that the "Postal Advisory Committee" be able to evaluate positions properly and make recommendations to the Company on the results of the financial year[3].

The relevant provisions of the collective agreement

[4] On reading the collective agreement, it is apparent that The parties agreed to two different wage plans in 2012, which they would were then resumed in the 2017-2020 collective agreement[4]. The first, which applied to all permanent employees who worked for Bell as at November 30, 2012, referred to "permanent employees covered by by the bargaining unit . . . on the Company's payroll in dated 30 November 2012' performing the tasks specific to fourteen posts different[5]. The second applied "to all temporary employees and permanent auxiliaries covered by the technician bargaining unit and auxiliary employees on the Company's payroll as of November 30, 2012 and all hired, rehired, reclassified employees permanent status or integrated into the bargaining unit on or after December 1, 2012."[6] Their

jobs were grouped into three job classes or categories summarily stated as follows:

> **Employment** **Scale**
>
> Technician – Specialist at
> Technician – Advanced B
> Technician – Generalist C

[5] The Memorandum of Understanding establishing the *Advisory Committee of the positions* on which the Union based its grievance is dated January 17 2013. The provisions of this agreement relevant to the resolution of the grievance appear to me to be the following:

> 1. The Parties agree to establish a positions composed of five (5) representatives of the Company and five (5) Union representatives (two (2) from Ontario, two (2) from Quebec and one (1) national representative).
>
> 2. The Committee's terms of reference will, using the evaluation methodology Hay™, to make recommendations to the Company on the results of the the Company's job evaluation exercise, if applicable.
>
> […]

> 4. The Committee should complete its work and submit its recommendations to the Company no later than June 1, 2013.
>
> […]
>
> 6. Notwithstanding the provisions of paragraphs 1 to 4, the results of the Company's job evaluation exercise will be in effect on December 1, 2012.

I would add that the *committee* also had to review job families in relation to the Memorandum of Understanding *Reshuffling of the but* the parties did not refer to this part of the mandate in the present case.

[[6] These provisions, in my view, are unambiguous. On the one hand, employees hired on or after December 1 2012 were to be divided into three jobs or job classes rather than fourteen. On the other hand, the parties have agreed to establish a *committee joint advisory committee* that was to make recommendations to Bell, on the evaluation of the positions that it had carried out *using the Hay*. The parties have also agreed to a for these recommendations to be forwarded to Bell. They were to be registered no later than June 1, 2013. Since the memorandum is dated January 17, 2013, the Advisory Committee had a little more than four months to relieve himself of his task.

Arguments of the parties

[7] Both parties agree that the obligation to which the committee was bound by an obligation of means[7]. The Therefore, the Committee was not required to make its recommendations to Bell since the debtor of an obligation of means must only take the necessary steps to achieve a result, without having the obligation to achieve that result[8].

- Unifor's argument

[8] The grievance, I recall, dates back to July 2013. The Communications, Energy and Paperworkers Union of Canada, now Unifor subsequently, was then seeking nothing more and nothing less than an ordinance requiring Bell to comply with the Memorandum of Agreement such that the *Committee Postal Advisory* Service may evaluate technician positions and make recommendations on Bell's previous assessment of the to propose the new classes of employment. The conclusions of the *Argument on the merits of the case*, however, are different. In addition a statement that I would confirm that Bell has not complied with the Unifor is seeking an order that the committee would be reconstituted and would benefit from a period of time to discharge itself from his task. Unifor is also implicitly asking that I determine the method of that the committee should adopt in order to do so, even if the brief did not require one except that the committee was to make recommendations to Bell in using the Hay job evaluation method. Unifor believes that the committee was to review all the technician jobs – about sixty, in fact – and that the agreement

required it. Mr. Langlois explains, in his brief that "in the end, what the union wants is a real consultation technicians, that the reality on the ground of the latter can really be heard and considered by the Employer". Unifor adds that it is convinced that the results of the Committee's exercise will be different from those of Bell's assessment of whether the true nature of the technicians' work is being taken into account. consideration.

[9] Unifor first points out that Bell unilaterally terminated the work of the committee.

[10] She then goes on to argue that the parties were both in the obligation to participate competently in the process described in the submission, diligence and good faith. The memorandum imposed an obligation on Bell to consultation. A real consultation process needed to take place within the and the parties had to be in good faith in the execution of this obligation. Bell, Unifor adds, had an obligation that is close to the duty to bargain in good faith. The parties were to discuss in a manner that would sincere and frank in the hope of achieving a result.

[11] Bell was required to provide the committee with the information necessary for its work so that he can carry it out. According to Unifor, Bell was slow to do so and no reasonable time was given to its representatives to take any knowledge and assimilate it. It did not provide the union with an explanation of the results to which it had arrived. She did not want to re-evaluate the work which she had done, despite the establishment of the committee. She refused to resume the evaluation process with the Union. She never had the intention to consult with the Committee or to come to joint recommendations with the its representatives. In addition, Unifor says that "people representing Bell participated in only two meetings of the committee. In short, Bell has refused to comply with the obligations it has imposed on it. was held because of the brief of January 17, 2013.

- *Bell's argument*

[[12] In presenting its arguments, Bell stated that recalled the content of Article 6 of the memorial. The results of the financial year job evaluation that it had carried out were to be in effect as of December 1, 2012, despite its first four paragraphs. At his the results of his assessment prevailed, regardless of what he had to say, was the result of the consultation prescribed by the agreement of January 17, 2013. It also submits that the dispute between the parties, at the time, was aimed at only seven positions. She also points out that the agreement did not require her to not an obligation. Rather, it imposed an obligation on a committee bipartisan.

[[13] The *Postal Advisory Committee*, Bell argues, had an obligation of means: that of consulting each other in order to present his Recommendations. However, he was not obliged to submit any. Bell could see that he would not succeed. Such a conclusion does not constitutes a breach of its obligations.

[[14] According to Bell, the evaluation of positions falls within its rights to the management[9]. Unifor, in this case, has not discharged the burden of demonstrating that it has had breached its obligations under the Memorandum of Agreement. If I came to the opposite conclusion, however, the only appropriate remedy that I could order would be a declaration to that effect. Unifor did not demonstrated that he had suffered prejudice as a result of Bell's decision to Terminate the activities of the committee. Reconstituting the committee would amend the collective agreement.

The rules applicable to the dispute

[[15] The solution to a grievance is always found in the agreement the result of negotiations between the parties. Its provisions are the right agreed upon by the parties or the rights which they have and the obligations they have agreed to assume[10]. In In the present case, the dispute is not based on the agreement, but rather on the in a brief that was not annexed to the 2012-2016 agreement. The parties, however, do not dispute my jurisdiction to dispose of the disagreement which opposes them.

[16] The parties agree, as noted above, that the committee had an obligation of means. By extension, I retain that the parties they themselves have entered into an obligation of this nature when they have agreed on the memorial. They were not forced to come to a result but they had to take steps to ensure that the Committee could to provide Bell with its recommendations on an evaluation exercise that it had undertaken to already carried out.

[[17] Both parties submit that the brief imposed a Duty to consult. According to Unifor, the purpose of the committee was Advisory. Bell had to be somewhat open to the consultation process[11]. Bell, for its part, argued that the bipartisan committee's obligation was joint in nature and Unifor cannot claim that Bell is solely responsible for the Committee's failure to submit recommendations[12].

[18] Consultation is the action of taking or giving an opinion on a subject, a question or a matter of any kind. Described differently, the Consultation is the advice or advice that a person seeks from another a person with specific expertise or qualifications[13]. She is based on the good faith of the person consulting and the expertise or knowledge of the person to whom it is addressed. It must be true and sincere. It cannot be said that there is a genuine consultation if a party, in Bell species, according to Unifor, seems to have already made its decision before sit at the discussion table with your counterpart[14]. The a *sine qua non* condition for a genuine consultation conducted in good faith by one party is its listening to the other party's point of view or, at the very least, at least, the possibility that it gives him to express it before taking his decision[15]. As a result, the conduct of the duty to consult will subject to scrutiny in the course of litigation involving it.

[[19] In my view, however, the parties are on the wrong track when they approach the dispute between them on the sole basis of a Duty to consult. The Memorandum does not impose an obligation on Bell to Unifor before starting new wage classes. She is not required to consult with the committee either. Rather, the parties have agreed to establish a committee with a mandate to submit recommendations on an "evaluation exercise" that Bell had already made performed. As Bell rightly points out, further, the parties have clearly stated that the results of its job evaluation exercise were in effect since December 1, 2012, when the Committee began its work.

[20] The obligation to establish the committee was joint and the Two parties were to be involved in the execution of its mandate. They were to adopt an attitude and behaviour that is likely to promote the development of recommendations that the committee was to submit to Bell by June 1, 2013. In my view, the parties did have a duty means, but they also had an obligation to collaborate or cooperation to be satisfied once the *Postal Advisory Committee* is set up in place. It is from this angle that I intend to approach the analysis of the evidence submitted by the parties.

[21] The duty to cooperate has not been the subject of several decisions in arbitration case law in labour law. It exists indisputably when the parties attempt to agree to an accommodation that will allow an employee with a disability to resume or continue their professional activities or work. However, I have not found any decisions by dealing with a disagreement of the nature of the one that I have to solve.

[[22] According to Baldwin,

> Cooperation requires behaviour that promotes the achievement of the common goals of the parties to the contract, while leaving room for the realization of personal goals of a party to the extent that this is not done at the to the detriment of the legitimate interests of the other. In certain circumstances, it obliges one party to assist the other, even if the former does not withdraw no immediate interest in his action. A party is also required to performs his service in a way that is really useful to the other[16].

[23] Although in a different context from the one I am concerned with, the Honourable Justice Rowe wrote in support of his dissent in *Churchill Falls (Labrador) Corp* v. *Hydro-Québec* that the obligation to imposes an obligation to do that requires the taking of measures to take into account the interests and reasonable expectations of the other party to a contract[17]. It implies a positive behavior of so that each party must take the initiative and do everything that is necessary to promote the performance or termination of the contract in the interest of both parties[18]. In my view, this duty applies parties in the present case, because they have agreed that the committee they set up should eventually make recommendations to Bell. It was impossible for them to do so if either party refused to cooperate in the fulfillment of the mandate of the committee.

[24] The obligation to cooperate, however, is similar to the duty to consult insofar as they both call on the same foundations. The parties must act in good faith in the pursuit of their common goals. The collaboration must be real, honest and sincere. Finally, collaboration is in the nature of an obligation of means. It does not require the parties to achieve the object of their cooperation. They may well work together in the hope of achieving a goal, without We might as well achieve it.

Analysis

- The negotiation of a New job classification

[25] The technicians were divided among several titles prior to the coming into force of the 2012-2016 collective agreement. The of them were employed in Class 1 occupations, which included apprentice technicians, various works managers, technicians of office technicians, cable repairers, business service technicians, or building equipment technicians. In accordance with the agreed provisions between the parties in January 2013, these employees were to be paid according to the wage rates appearing in a salary scale comprising eleven steps if they were employed by the company as of November 30 2012.

[[26] According to Mr. Alain Paradis, Bell could no longer hear Hire new technicians benefiting from these salary conditions. During negotiations for the renewal of the collective agreement, Bell

proposed to reduce the number of job classes. She presented enough a first proposal that divided the employees into four classes. The parties ultimately agreed that the employees hired at as of December 1, 2012 would now hold *technician jobs – specialists*, *technicians – advanced* and *technicians generalists* and that they would be subject to a salary plan different from that of employees who worked for Bell before December 1 2012.

[27] Bell had evaluated these jobs using its own before submitting proposals. The people to whom this task is carried out had been entrusted to the sixty or so job titles between the classes newly proposed. They had had several meetings with operations managers and 1and 2nd level managers prior to achieving this result, but they had not consulted with the representatives of the Syndicate or the technicians themselves. Exercise has easily required three months of almost full-time work according to Mrs. Lucie David[19]. The However, the Union disagreed with Bell's proposed allocation because it had been made after a consultation of directors only, which, according to Mr. René Jean[20], did not always know the work of the employees.

[28] Bell came back with a new proposal grouping technicians into three job classes, which are also included in the in the 2012-2016 collective agreement. At the conclusion of the negotiations, Bell was that the Union's disagreement was only about the classification of only seven jobs, according to Mr. Serge Thibault, who was at the time Labour Relations Assistant and member of the Management Bargaining Team. According to Mr. Thibault, the three new classes of use would allow Bell to pay employees hired on or after December 1 2012 according to the value of their jobs. In his testimony, Mr. Thibault explained that Bell does not create new jobs. She took over existing jobs, but remunerated them according to values that its job evaluation exercise attributed them to them. He added that this new job classification was to apply only to employees hired on or after December 1, 2012. Employees hired before that date would continue to be paid by grade and scales existing before 1 December, but their would be increased by annual salary increases agreed between the parties.

[[29] Although it accepted Bell's proposal, the Syndicate feared that employees doing the same work would be paid differently due to the reclassification of jobs into three classes Different. In addition, according to Mr. Douglass Dutton[21], Bell assigned very few employees the class of *technician – specialist*. The Union therefore proposed the establishment of a committee that would review the Evaluations. The evidence, however, is contradictory as to the assessments that The *committee* had to review. According to Mr. Dutton, the committee was instituted to review all evaluations. According to Mr. Thibault, by against, the parties had agreed that the committee would consider five to seven jobs for which there were discrepancies in their ranking.

- The Postal Advisory Committee

[(30) The Memorandum of Understanding establishing the *Advisory Committee of the positions* were the subject of a separate agreement from the collective agreement. The committee was made up of five representatives of the Union and four representatives of the of Bell. Mrs. Lucie David, one of the Bell representatives, was a Labour Relations Advisor at the job evaluation at the time. She had been certified by Hay since 2005 to conduct assessments of jobs using this method at the end of a five-day training. None union representatives had such recognition. Although the parties have expressly stipulated that it must submit its recommendations on June 1, 2013, at the latest, it has never done so and the members of the have never jointly reviewed divergent assessments.

[31] The evidence did not disclose the particular rules of or whether its members had agreed to such rules. I do not know, therefore, whether the parties had agreed, for example, to working arrangements, in addition to the fact that they would use the Hay, jobs that were to be the subject of its recommendations or the frequency of their meetings before undertaking their task. The testimony of Mr. René Jean suggests that its members did not entrust to one of them the responsibility of acting as secretary. There was therefore no a member responsible for recording the work done or completed and the difficulties with evaluations. The Human Resources Department de Bell, however, was to ensure the co-ordination of its work.

[32] The first meetings of the committee members have taken place February 27 and 28, 2013. Mrs. Lucie David, a Bell employee, then explained the HayTM method. She presented them with a *PowerPoint* explaining the procedure for evaluating posts using this method[22]. She has clarified that evaluators should consider the competencies required to perform the duties of the job to be evaluated, the interaction of the incumbent with the other employees, his creative initiative, the purpose of the job and the conditions under which it was exercised. They were to assign to each criteria for evaluating points according to specific evaluation scales. The sum of these points made it possible to classify the jobs according to the score granted to each of the posts. Members were then invited to Undertake an evaluation of a fictitious cashier position.

[[33] Mr. Thibault reconvened the members of the committee meetings on April 11 and 12, 2013, at 8:30 a.m., but the The day of the 11th was to be reserved solely for the representatives of the Syndicate[23]. The the day before this meeting, Mrs. David sent them an email to advise that it would be delayed and that it would not be able to join them before 9:45 a.m. Mr. Jean sent an email to the representatives of Bell Desjardins and Thibault inviting them to join those of the Syndicate at 9:30 a.m. Mr. Jean intended to take advantage of the 8:30 a.m. to 9:30 a.m. to propose to your colleagues to review "only the few profiles that after verification of our respective lists is problematic". According to him, there are had less than ten[24].

[34] The evidence did not disclose the outcome of the maintenance of the representatives of the Syndicate. However, they continued their evaluation exercise of the fictitious job of cashier and then started those of *the technician jobs – Repair installations*, *network conditioner, repair cables* and *central office technician*[25] exercised by Bell technicians, but in the absence of Mr. Thibault and Mr. Mr. Benoît. Ms. Déry and Ms. David had to make sure that they understood the Hay method and applied it correctly.

[35] In the end, Bell's management members never met joined by their union colleagues. The union members of the committee have completed their evaluations of the technician positions undertaken the day before. The results of their analysis were different from those that Bell had retained from his side. The differences in their results were large for two of the three jobs. Mr. Dutton and Mr. Paradis attributed these differences the lack of knowledge of jobs of the executives Bell had consulted to make his assessments, although Mr. Paradis acknowledged, while he was was cross-examined, that he did not have any statistics in his possession that would confirmed that the majority of these executives were not originally from bargaining unit.

[36] The Committee – at least its union representatives – was scheduled to continue its job evaluation exercise from May 10 to 12, 2013[26]. On the 7th May, Ms. David shared the results of the evaluations of three jobs conducted by union members. They were substantially different from those that Bell had retained on his side[27]. For In short, Ms. David was of the opinion that

the representatives of the Union overvalued the value of jobs, although it acknowledged that they had respected the Hay method. The dispute between Bell and the Union then arose crystallized. The Union wanted to evaluate all technician jobs to ensure that they had been properly assessed. Bell, for its part, took a fairly strong position and opposed it, according to Mr. Dutton.

- Conclusion of Committee Business

[37] The members of the committee did not see each other after the day of 12 May 2013. According to Ms. David, the parties had a different understanding of the Hay method and job evaluation. According to Mr. Thibault, it is seemed impossible for the committee to be able to make recommendations in the due in particular to the differences in the evaluations that union members and those of Bell. Bell has therefore decided to end its activities and not to extend the deadline for the committee to submit its recommendations[beyond June 1], 2013 without discussing them with the Syndicate.

- The conclusions to be drawn from the evidence

[38] The evidence leads me to conclude that the work of the committee were doomed to failure. Neither party has relieved of its obligation to collaborate as defined by Baudouin. The parties did not engage in conduct that promoted the achievement of goals while leaving room for the achievement of personal goals, a to the extent that it was not to the detriment of the interests of the legitimate on the other hand for several reasons.

[39] In my view, the parties did not reach an agreement on Departure on the subject of the dissertation. They vaguely defined the committee's mandate without first ascertaining the extent of the dispute between them. At 2012-2016 collective agreement negotiations, Bell was of the view that that the Union's disagreement related only to the classification of seven jobs only. The divergence that separated them was of the order of a few possibly a dozen, suggested Mr. Jean in his email of April 10, 2013. On the other hand, the Union insisted on revising the evaluations of all technician jobs in dispute because of a premise of which he has not demonstrated the merits. He assumed that executives or managers Bell had consulted in making its valuations were not aware of the the work of employees under their direction or supervision to assess them correctly.

[40] The evidence does not allow me to conclude, further, that the union members were familiar with the Hay method or had sufficient to apply it well. This was limited to a *PowerPoint* presentation and the evaluation of a fictitious task as a cashier.

[41] Bell did not intend to engage in a comprehensive review evaluations, especially since she felt that the groupings of jobs it had carried out were necessary for the realization of its objectives and that, in any event, the results of its evaluation exercise of positions were to be in effect as[of December 1], 2012 in reason for Article 6 of the memorial.

[42] Bell, on the other hand, quickly adopted a position inflexible. Due to discrepancies between its evaluations and those of the members of the committee at the end of their evaluation of only four jobs, It terminated the Committee's activities prematurely without discussing it with the union nor notify her of her intention and she objected to postponing the deadline stipulated in the memorandum. The evidence does not allow me to conclude that it sought an explanation for the discrepancies and sought to correct them. Bell has therefore the possibility of agreeing on the

necessary clarifications to be made to the mandate of the committee or to extend its particularly short term when It is taken into account that the members of the Committee have not had the opportunity to only twice, that the first meeting was devoted to a presentation of the Hay method and an evaluation exercise of a fictitious position, and that the second was only used to evaluate four jobs, in the absence of employer members.

[43] Finally, Bell did not meaningfully cooperate with the committee's work. Mr. Thibault and Mr. Benoît have participated in only one meeting of the committee, in the month of April. In addition, Bell has decided to abruptly terminate committee as soon as Ms. David informed Mr. Thibault of the the discrepancy that existed between the assessments made by the members and those that Bell had already made for three jobs only, without even trying to understand these discrepancies or to correct them.

[44] I would have come to the same conclusion if I had accepted the elements of the duty to consult to resolve the grievance, such as the parties invited me to do so. The *sine qua non* condition for a consultation conducted in good faith by a party is to hear the point of view of the other party or, at the very least, to give them the possibility of doing so before a decision is made. The proof, in does not allow me to conclude that the parties agreed with this condition. If Bell agreed to participate in the committee's activities, it would be reluctant to pursue them because of the discrepancy between the results of his evaluations and those carried out by its union members, without seeking to Understand the reasons for these discrepancies. If they wanted the committee to make recommendations, they wanted to make them at the end of the a review of the evaluation of all technician jobs because they had at most an impression – the basis for which Unifor has not demonstrated – directors or supervisors that Bell consulted when it had done their initial assessment work were not aware of the tasks that technicians under their supervision were performing or the conditions in the in which they carried out their work.

[[45] In its submission, Unifor invites me to reconstitute the committee advisory and again give the Commission a period of 135 days to conduct its work or, alternatively, twenty-two days, the equivalent of the period between May 10and June 1, 2013, to do so. In circumstances of this case, I am of the view that I cannot to grant the conclusions which the Syndicate seeks. On the one hand, the responsibility for the failure of the advisory committee seems to me to be shared. Other It seems to me to be inadvisable to order Bell to resume the work of the committee nearly eleven years after it had put an end to it, as Mr. Langlois had done suggests that I do so in his argument. Finally, the scheme created at The occasion of the 2012-2016 agreement has been taken up in the 2017-2020 agreement and there is nothing in the evidence to support me in concluding that the parties did not have the opportunity to address any challenges or barriers related to the implementation of the implementation of scales and classifications of employees hired asof December 1, 2012.

[46] The fact remains that the decision to terminate the work of the committee, not to discuss with the Syndicate avenues to smooth out, otherwise eliminate the difficulties or obstacles that members faced or to delaythe June 1 deadline is up to Bell alone. She was the one who abruptly ended her collaboration with the committee preventing it from carrying out its mandate. The evidence does not convince me that she did everything that was necessary to promote the execution of the dissertation in the interests of both parties. His behaviour is, in my opinion, akin to bad faith.

[47] This liability does not automatically result in harm and the need to repair it. Unifor, in this case, has not demonstrated the prejudice to the Union as a result of Bell's decision and, in any event, event, it did not originally require compensation for an infringement any. In these circumstances, therefore, a statement by which I confirm that Bell has breached its obligations seems to me to be sufficient.

FOR THESE REASONS, THE COURT

WELCOMES IN PART the grievance TEA-QN13-01 – Job Profile.

DECLARES that Bell has breached its obligations by abruptly terminating the work of the Advisory Committee established under the Memorandum of Understanding of January 17 2013.