

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BELL TECHNICAL SOLUTIONS INC.

(the “Employer”)

-AND-

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

(the “Union”)

**AND IN THE MATTER OF THE GRIEVANCE OF DAVE WILSON (#2012-43-010)
CONCERNING THE VEHICLE MATCHING PROCESS (OR “TUMS”, TRUCK
UTILIZATION MODULE)**

ARBITRATOR

ROBERT J. HERMAN

APPEARANCES

FOR THE EMPLOYER

**MIREILLE BERGERON
LAURA LEE HAMILTON
JENNIFER LOWTHIAN**

FOR THE UNION

**MICHEIL RUSSELL
MIKE LAMBERT
DAVE WILSON
SHAWN COWAN**

**HEARINGS IN THIS MATTER WERE HELD ON NOVEMBER 11 AND DECEMBER 4,
2013 IN ST. CATHARINES AND MAY 16 AND JUNE 20, 2014 IN BURLINGTON,
ONTARIO**

A W A R D

1. This is a policy grievance filed by the Acting President at the time of the Union Local, challenging a new program implemented by the Employer, Bell Technical Solutions Inc. (“BTS”), which requires designated garage dispatched technicians to pick up their truck for the day at the home of a home dispatched employee. The grievance asserts that BTS is seeking to compel and/or enter into improper agreements with both garage dispatched and home dispatched employees, contrary to the Collective Agreement and the *Canada Labour Code* (the “Code”). Further, the grievance maintains, BTS is refusing to provide work to employees who do not comply with its improper demands. The Employer responds that the grievance is untimely, and in any event, the new program is reasonable and does not breach either the Collective Agreement or the Code.

2. For the most part, the facts are not in dispute. BTS is a wholly owned subsidiary of Bell Canada (“Bell”) and performs installations and repairs for Bell customers. In order to do this, Bell advises BTS each day of the service calls scheduled for the following day. Most members of the bargaining unit are technicians who travel to customer residences or businesses to perform the installation or repairs. Prior to the implementation of the new program, generally speaking, technicians were either “home

dispatched” (“HD”) or “garage dispatched” (“GD”). An HD technician has the exclusive use of a company truck, which s/he uses when on shift and then drives home and parks at their house until on shift again. The truck cannot be used for personal purposes. An HD technician’s work assignments do not generally require the HD technician to attend at the Work Centre (or garage) out of which s/he works, and they generally only go to the Work Centre when required for meetings or to pick up material or equipment as needed. BTS does not require any technician to be home dispatched, and an HD technician can relinquish his company vehicle and become a GD technician if s/he prefers. HD technicians are mostly full-time employees and are generally more senior than GD technicians. An Award that issued on November 8, 2011 (the “HD Award”) addressed the company’s HD Policy.

3. Garage Dispatched technicians ordinarily attend each working shift at the garage or Work Centre where they are assigned a particular truck for the day, perform a safety check on their vehicle (referred to as a “circle check”), load their truck with their tools and equipment or material, and then attend at customer locations to perform their service calls. The GD technician typically returns to the Work Centre at the end of shift, and leaves the truck there before leaving work for the day.

4. In late 2010 and early 2011, BTS realized that on busy days when there were a large number of customer service calls, it didn’t have enough trucks available because so many of them were parked at HD technicians’ residences on their off days. It analyzed its workforce and truck fleet and concluded that it was not short technicians or trucks if

both were fully utilized, but too many of its trucks were sitting idle at HD technicians' residences on their off days when there were GD technicians who could work that day if there was a truck available for their use.

5. BTS considered various options for addressing this problem, including purchasing more trucks and rescinding home dispatch in areas where the deficit of available trucks was problematic, but ultimately decided on trying to make HD trucks available for GD technicians when HD technicians weren't using them. On July 7, 2011 it sent a communication to all Ontario technicians, Field Managers and Regional Managers, advising of the company's plan to implement a new initiative and describing in general terms the proposed "Vehicle Recovery Process" (referred to herein as "TUMS", short for "Truck Utilization Modules", the name often used by the parties during the hearing). HD technicians were advised that another technician might be coming to their homes on their day of rest to pick up their company truck. GD technicians were told that they could be travelling to another technician's house to pick up a truck for the day, that the vehicle would be close to their house or their Work Centre, and that the vehicle must be returned to the other technician's home at the end of their shift.

6. The Union raised a number of concerns about the proposed operation of the TUMS program at the July 2011 meeting of the labour/management Labour Relations Committee ("LRC"). The Union disputes that BTS made clear prior to a February 2012 LRC meeting that participation in TUMs would be mandatory for GD technicians,

but the company at least indicated at the July 2011 meeting that it was contemplating making participation mandatory for GD technicians. For HD technicians, BTS advised that they could return their trucks to the Work Centre or park their trucks at another convenient location when off shift if they didn't want to participate.

7. On a trial basis, beginning in November 2011 in the 905 West Region, the company introduced the TUMS program. In general terms, TUMS was utilized when there weren't enough vehicles at the Work Centre for all GD technicians scheduled to work on a given shift. When this happened, GD technicians who still needed a vehicle were "matched" to an HD technician who was not on shift that day and whose truck would therefore otherwise be parked and idle at his/her home. BTS notified both the GD and HD technicians that they had been matched for the upcoming shift, and the GD technician was then required to travel to the HD technician's residence for their shift to pick up and use their truck for the shift, returning it at the end of their shift. At this time, if not earlier, BTS made clear that participation in TUMS was mandatory for GD technicians who were matched for their shift, but that participation was voluntary for HD technicians in that HD technicians who didn't want to participate could return their truck to the Work Centre at the end of the last shift before they were off shift for the next day. Any HD technician who did so would then have to get back to the Work Centre to pick up their truck at the beginning of their following shift.

8. Once the pilot project began, technicians raised a number of concerns. They were concerned about, for example, liability issues if a GD technician was injured while

on the property of the HD technician, the problems that would arise if tools went missing or the trucks were damaged, the lack of available parking in some areas, the unsafe neighbourhoods where some HD technicians lived, the inconvenience of having to first drive somewhere else before going to the Work Centre, and so on. BTS made adjustments over time to address many of the concerns. Thus, if the matched GD technician could not find a suitable parking space near the HD technician's house, they were told to contact the Duty Manager and that the technician would be compensated for any additional working time or kilometers travelled because of the lack of parking, and that their shift would still start at their normal time despite any such parking problems. Over time, BTS also made exceptions in particular circumstances, such as not matching a GD and HD technician where there was a personal conflict between the two, or not requiring a particular GD technician to participate in TUMS because it would not be safe for him to drive the trucks used by HD technicians, or excluding an HD technician because there was no suitable parking near his house.

9. The parties continued to discuss the TUMS process at the LRC meeting on December 8, 2011. The Union still opposed TUMS, the company continued to maintain that it was mandatory for GD technicians, and it continued to make changes in how TUMS worked to make it more efficient and to respond to concerns expressed by the Union. At this meeting, the Union advised that a large number of HD technicians were being contacted up to several hours after their shifts had ended, in order to tell them that their vehicles would be picked up the next day by a GD technician. The Union

objected because the HD technicians were regularly being contacted about work even though they were off shift. In response, BTS confirmed that HD technicians were not expected to participate in the matching and pickup of their truck if not notified before the end of their shift the day before. Other problems were also corrected. Early in the trial, HD technicians had been required to personally hand over the keys to their truck to the GD technicians matched with them, but the company at this meeting advised that it was looking into the possibility of using “Keytainers” affixed to the trucks, so that HD technicians could leave their truck keys in the Keytainers on their off days and HD technicians and GD technicians would not have to interact at all when the truck was picked up or dropped off by the GD technician. The Union also raised concerns about GD technicians getting parking tickets because they had to leave their cars parked near the residence of the HD technician. The company responded that it would deal with “what if” issues as they arose. The details of how TUMS would work when fully operational across the system continued to be changed by BTS. The Union advised BTS at the meeting that it did not agree with the company’s right to introduce the TUMS program and it reserved its right to grieve.

10. BTS gradually expanded the TUMS trial to implement it in other locations as needed. By the LRC meeting on February 10, 2012, however, TUMS had still not been fully implemented and was still in trial mode. Shortly after this meeting, the Union issued a Report to its members that indicated that GD technicians should not be penalized by the new TUMS process, either by travelling farther than they normally

would or by having to work additional unpaid time. The Union advised technicians through this Report of its position that participation in TUMS should be voluntary, and that since the company could not ensure that GD technicians would not be disadvantaged by the new process, any member not properly compensated or not wishing to participate should consider filing a grievance.

11. BTS circulated an email on March 2, 2012 that updated all managers and technicians in Ontario about the TUMS program.

12. Sometime around the middle of March, 2012, the Union understood that a GD technician had been sent home for refusing to participate in TUMS as directed by the company. Although the Union asserts that the instant grievance was prompted by this action, the Union filed no grievance at the time.

13. However, approximately 38 individual grievances and a separate policy grievance over the TUMS process were filed by the end of March or by the first few days of April 2012. On April 9, 2012, the parties met to discuss those grievances. They met to discuss them again on May 31, 2012, which is when the Union filed the instant grievance, apparently presenting it directly at Step 2 of the grievance procedure, although the evidence is not entirely clear in this respect. Although the grievance on its face referred to March 15, 2012 as the date giving rise to the grievance, no issue with respect to timeliness was raised when the grievance was filed. Nor was any issue of timeliness raised by the company in its June 13, 2012 Step 2 response to the grievance or

in its September 7, 2012 Step 3 response. When asked in cross-examination why timeliness had not been raised earlier, the company Regional Manager responsible for responding to the Union's grievances testified that it was not raised as an objection to the grievance because there were already other grievances in the process on exactly the same issue.

14. The parties ultimately agreed to hold the other grievances in abeyance pending the resolution of the instant grievance. No timeliness objection was raised when this agreement was made.

15. On October 9, 2012, BTS issued "Guidelines on Vehicle Utilization and Home Dispatch" (the "Guidelines") to all Ontario technicians, Field Managers and Regional Managers. This was the first and only time the company advised all employees in detail of the operation of the TUMS program. The introductory paragraphs of the Guidelines communication stated that several notes had been issued before about Vehicle Utilization in the Home Dispatch environment but since employees had expressed concerns about the process or a lack of information about it, the company was issuing the communication to try to clarify the responsibilities of all employees involved. BTS indicated that the primary consideration was that GD technicians not be required to travel further than they would if picking up the vehicle at their Work Centre, and stated that on average, matched technicians travelled 65% fewer kilometres in their personal vehicles when picking up company trucks at the home of an HD technician. If in exceptional circumstances a technician travelled farther to the HD technician's home

than they would to the Work Centre, the technician would be compensated for extra mileage. If additional time was spent travelling, the additional time would be considered to be work time. If appropriate parking was not available within 500 metres of the HD technician's address, the GD technician was instructed to call their manager for assistance. A detailed list of responsibilities for HD and GD technicians was also set out in the Guidelines. GD technicians were advised that they were "not required to leave your house any earlier than you normally would in order to reach your assigned work centre for the start of your shift", and that they would not be asked to travel farther than they normally would to pick up a truck at the Work Centre. GD technicians were also told not to contact the HD technician whose vehicle they were picking up, and that once they picked up the truck, they were to proceed to the first job, or if necessary, to the Work Centre to pick up tools or material. The vehicle was to be returned to the home of the HD technician at the end of their shift. The Guidelines said that the GD technician was to "log in at the start of your shift".

16. The Guidelines also include a "Questions & Answers" section. The last question and answer read:

How many locations will I need to drive to before the start of my work day for vehicles that I can't use?

- If everyone cooperates with the process, you should only need to go to the one assigned location to obtain a vehicle for you to use for the day. In cases where something goes wrong, and you need to drive to an alternate location, you should advise your manager and submit the additional mileage required for your personal vehicle for compensation as permitted in the Company Expense Policy. Further, if you need to travel to an additional location, your

shift will start at its normal time regardless while you obtain the newly assigned vehicle. You should not be charging any additional time, nor losing any time related to this process.

17. Although the Guidelines state that GD technicians are not required to leave their homes earlier than is necessary to arrive at the Work Centre for the start of their shift, neither the Guidelines nor any other written statements issued by the Employer stipulate the time when a GD technician is expected to arrive at the residence of the matched HD technician. It is not therefore apparent from the Guidelines, or any other written material, whether GD technicians are permitted to arrive at the HD technician's house right at the start of their shift time or whether they are required to be at or near the Work Centre as of the start of their shift. The BTS Manager responsible for the overall implementation of TUMS testified that if the GD technician was a few minutes late to the Work Centre, because of the requirement to perform circle checks on the trucks or because of the time necessary to drive from the HD residence to the Work Centre, the GD technician would be paid from their shift start time. She also testified that GD technicians were not on payroll and paid until their shift start time. In the result, although the written description of TUMS does not address the time at which GD technicians are to arrive at the home of the HD technician, it appears that in practice GD technicians are expected to be at least close to the Work Centre by the start of their shift and are not paid until the start of their shift, regardless of what they are doing at the time, regardless of whether they have already picked up the HD technician's truck and are on route to the Work Centre or the first customer.

18. The timeliness objection was raised for the first time in early November 2013, approximately one week before the first day of hearing.

Submissions

19. With respect to the timeliness objection, the Union submits that at the December 8, 2011 LRC meeting it put the company on notice that it was objecting to the TUMS program and reserved its right to grieve, and that it was not until the February 2012 LRC meeting that BTS confirmed that TUMS would be mandatory for GD technicians. Once the program was actually rolled out and was no longer just a trial, the Union asserts, grievances were filed relatively quickly. It further submits that since other grievances over TUMS had already been filed, there is no prejudice in permitting the instant grievance to proceed. In the alternative, maintains the Union, the parties agreed to defer other grievances related to TUMS pending the resolution of the instant proceeding. The agreement to do so, and the failure to raise the timeliness objection earlier, amount to a waiver of any such objection. In the further alternative, the Union asserts that this is a continuing grievance and is not therefore untimely, and in the further alternative, asserts that I should exercise my discretion pursuant to Section 60 of the Code to extend the time limits for filing the grievance.

20. On the merits, the Union argues that requiring all GD technicians to participate in the TUMS program is in breach of the Collective Agreement. It submits that GD technicians have always started their work day at the Work Centre and they cannot be

forced to begin it elsewhere. Further, the Union submits, making individual arrangements with technicians that require them to pick up and drop off trucks at specific locations or be disciplined breaches Articles 1, 15, 16 and 17, and Appendix A of the Collective Agreement, as well as Sections 36 and 94 (1) (a) of the Code. In any event, it asserts, even if employee participation can be required, employees are entitled to be paid when they are working. In this respect, the Union asserts that the Employer is requiring technicians to act as unpaid couriers for the company, directing them to pick up keys from Keytainers attached to the trucks of the HD technicians, perform circle checks on the trucks, and then drive the company trucks to their Work Centres on their own time. The Union submits that GD technicians are working from when they pick up the truck keys, and the failure to pay them as of that time is in breach of the Collective Agreement. More specifically, it relies upon Article 16.01 (b) of the Collective Agreement, which stipulates that hours of work must be consecutive (except for Split-Shift, which is not in issue here). Since HD technicians are permitted to opt out of TUMS by returning their truck to the Work Centre when they will be on days of rest or not working, the Union does not assert a breach of the Collective Agreement or the Code on their behalf.

21. BTS submits that the grievance should be dismissed on the basis that it is untimely. It maintains that it made clear to the Union at least as of November 2011 that TUMS would be mandatory for GD technicians, yet no grievances were filed until the end of March 2012 and the instant grievance was not filed until May 31, 2012. The

Employer relies upon Article 13.02 of the Collective Agreement, which requires that a grievance be filed within 45 days from when an employee knew of or could reasonably have been expected to know of the event giving rise to the grievance. It maintains that the 45 days would have begun to run from sometime in November 2011. Even if the 45 days were to begin to run from the middle of February 2012, submits BTS, since the grievance was filed on May 31, 2012, it was still filed more than 45 days later. Articles 13.08 and 13.09 make clear, the Employer asserts, that an untimely grievance is deemed to have been abandoned unless the time limits have been extended in writing, and the parties here did not agree to extend the time limits. The Employer disputes that it ever waived the right to raise the timeliness objection, and asserts that one reason for the timeliness objection not being raised earlier was the confusion caused by the filing of so many grievances in March 2012. The Employer also argues that the grievance was inappropriately put forward directly to Step 2 in the grievance procedure, and therefore did not comply with the proper procedure.

22. As to the validity of the TUMS program, the Employer submits that it is a reasonable policy or program and is not in breach of any provision of the Collective Agreement or the Code, and is therefore permissible and ought to be upheld. It maintains that GD technicians have always spent the majority of their working day servicing customers at different locations, and they continue to do so if matched to an HD technician. The Collective Agreement contains no provision that stipulates where technicians are to begin their work shift or that restricts the Employer's ability to decide

whether a technician should first attend at the Work Centre or elsewhere. BTS notes that in paragraph 32, the HD Award states that “Although the time spent in logging in and out and performing circle checks is compensable work time, generally speaking, the time taken to drive to and from the first and last customer of the day or the Work Centre would not be”. The Employer maintains that this conclusion supports the TUMS program, since it is not required to pay technicians for their drive to and from work. Since employees are not asked to leave home earlier than they would otherwise have to in order to arrive at the Work Centre by shift start time, the Employer submits, they are not penalized or asked to work more than they otherwise would even though they are required to pick up a truck at an HD technician’s home on the way to their first customer or the Work Centre. BTS submits that picking up the truck keys from the Keytainer and performing a circle check are really pre-duty activities, much like the non-compensable time taken by an employee to put on a uniform they have to wear when working. Further, it submits, GD technicians are compensated from start of shift even if they do arrive at the Work Centre a few minutes after the shift start time, effectively compensating them for the few minutes necessary to perform a circle check before driving the truck. In the result, the grievance should be dismissed.

Decision

23. I turn first to the timeliness objection. TUMS was first rolled out on a trial basis in November 2011. The Employer made clear as of then that participation would be required by all GD technicians, and the Union objected as of then to the mandatory

nature of the program. TUMS continued for some time thereafter to be a program in transition and development through a continuing trial phase. As it gained experience from its pilot project, the Employer agreed to exclude from participation certain GD technicians, and it changed the operation of the program in certain respects, such as no longer requiring HD technicians to hand the keys to the GD technician and instead using Keytainers. At first, HD technicians were often contacted after expiry of their shifts to be advised that their truck would be picked up the next day, but the Employer later changed this procedure so that HD technicians would be advised after their shifts ended. As the trial continued, BTS established procedures for GD technicians to follow when parking near a particular HD technician's home proved to be problematic. These examples illustrate that the operational nature of the program continued to evolve after November 2011. Throughout this time, and until the company issued the Guidelines on October 9, 2012, the company did not publish or circulate a comprehensive written description of how the program was to work for HD and GD technicians. It was only when the detailed nature of the program was crystallized by the issuance of the Guidelines that the company finalized how the program would operate. To some extent, therefore, and to use the language of Article 13.02 of the Collective Agreement, it was only then that an employee "knew or could reasonably be expected to have known of the event giving rise to the grievance", for it was only then that the employees and the Union would have known how the company intended TUMS to fully work. In these circumstances, absent any communication from the company that comprehensively

described the critical aspects of TUMS, and in light of changes that continued to be made in the operative aspects of the program, it is not apparent that the Union or the grievor failed to file the instant grievance in a timely manner.

24. It is unnecessary to decide the timeliness issue on this basis, however, as in any event, the Employer waived its right to raise the timeliness objection through its agreement to hold other grievances in abeyance while the instant grievance proceeded. Had the company wished to raise a timeliness objection, it was incumbent upon it to have done so prior to or at the time of agreeing that the challenge to the TUMS program would be addressed through the arbitration of the instant grievance and that the other grievances would be deferred. No timeliness objection having been raised then, the Employer effectively waived its right to do so and cannot now raise it here.

25. In the further alternative, since the TUMS program continues in effect and continues to be applied to designated GD technicians, a technician could grieve about the TUMS program each time s/he is matched and is required to pick up a truck from the home of a HD technician, at least until the matters in issue were not otherwise resolved or arbitrated. The grievance is accordingly a continuing grievance that challenges actions of the company that are repeated each time a technician is required to participate in TUMS. As a continuing grievance, it is not untimely.

26. In the further alternative, I would exercise my authority under Section 60 of the Code to extend the time limits as necessary. The legitimacy of the TUMS program and

the ability of the Employer to unilaterally implement it remain matters of dispute between the parties. The Union made clear to the company during the trial period that it objected to the mandatory nature of TUMs and indicated it reserved the right to grieve. A number of grievances were filed within 45 days of the LRC meeting in February 2012 and, as noted, it was agreed to hold them in abeyance pending the resolution in this matter. In these circumstances, the Union had a reasonable explanation for its failure to file the instant grievance earlier than it did. As well, the fact that this grievance was only filed on May 31, 2012 creates no prejudice to the Employer with respect to consideration of the validity of the TUMS program. It was agreed that this grievance would be litigated and it is appropriate that the time limits be extended so that the parties' agreement in this respect is not frustrated.

27. Although the Employer also asserted that the grievance was improperly presented at Step 2, this assertion is not material to the timeliness objection and in any event, is no reason to dismiss the grievance, if only because the parties agreed to hear the instant matter while the other grievances remain in abeyance.

28. The timeliness objection is accordingly dismissed. The dismissal should not be taken as comment on any potential remedial issues, including whether any remedy otherwise appropriate should be limited because of the date when the grievance was filed.

29. Turning to the TUMS program itself, there is no dispute that BTS is entitled to

implement TUMS provided it is a reasonable program and is not inconsistent with any provision of the Collective Agreement or the Code.

30. The TUMS program is described in communications issued by the company on July 7, 2011, March 2, 2012 and October 9, 2012, although it was the October 9, 2012 Guidelines that described the operation of the program in any detail. TUMS is mandatory for GD technicians only, insofar as HD technicians can opt out of TUMS by bringing their trucks to their Work Centre at the end of their shifts prior to a day when they will not be working. If GD technicians are not matched for a given shift, they attend at their Work Centre as they normally would, where they pick up their assigned truck for the day and their tools, load the truck with equipment and material as needed, perform the circle check on the truck, and drive to their first customer. If matched through TUMS, the GD technician goes instead to the home of the matched HD technician for the shift in question. The GD technician is not required to leave his or her own residence any earlier than s/he would if going directly to the Work Centre. Once at the residence of the HD technician, the GD technician retrieves the key from the locked Keytainer fastened to the truck, opens the truck, performs a circle check, and then typically drives to the Work Centre to pick up tools and equipment and/or material, and from there to customer locations. Alternatively, the GD technician drives directly to the first customer. At the end of the day, the reverse applies, for the GD technician is to drop off anything that needs to be returned to the Work Centre, and then returns the truck to the home of the HD technician. Thus, if the GD technician arrives at the home

of the HD technician at the shift start time, and then picks up the keys, performs the circle check, and drives to the Work Centre, the GD technician would presumably be paid for the entire time from when s/he arrived at the HD technician's home. On the other hand, if the matched GD technician only arrives at the Work Centre by the start of shift, then the technician would be picking up the keys, performing the circle check and driving the company truck to the Work Centre all on his/her own time. As noted above, the Guidelines themselves are not clear on whether the company requires the matched GD technician to arrive at the Work Centre by the start of shift or within a few minutes thereof, nor are they clear about the time by which a GD technician must be at the HD technician's home or the Work Centre.

31. The Union argues that TUMS is improper because the company is inappropriately dealing with GD technicians on an individual basis when it tells them where to pick up a truck. BTS has not, however, engaged in bargaining or discussion with individual employees over their terms and conditions of employment, or over the terms of the TUMS program or implementation issues. It instituted a program of general application to GD technicians, and to HD technicians who agreed to participate, which requires employees when so directed to attend at the home of an HD technician rather than going directly to the Work Centre. The company did not circumvent the Union in discussions over TUMS, as it discussed the proposed program with the Union over several months at several LRC meetings. Whether a GD technician will be matched on a given day will depend on a host of factors, such as where the technician

lives, where the available truck is parked, the time it would take to get to the home of the HD technician, and so on. Just as the Employer can schedule employees to work specific shifts (provided it does so in a manner consistent with the Collective Agreement and the Code), it can determine which employees to match with HD trucks on a given shift on the basis of objective factors. There is no provision in the Collective Agreement or the Code that was breached by the manner in which the company proposed TUMS, discussed it with the Union, or implemented it.

32. Further, BTS did not act improperly when it considered exceptional circumstances on an individual basis that might justify exclusion from participation in TUMS or from some aspect of TUMS; indeed, the program would arguably be unreasonable had the company not considered and made exceptions as appropriate. If the TUMS program is otherwise reasonable and not improper for any reason, the fact that exemptions are considered or that only some GD technicians may be matched on a given day does not render the program unreasonable or in breach of the Collective Agreement or the Code. Just as an employer does not act improperly when it considers personal circumstances in deciding whether to grant an employee time off, BTS does not act improperly when it decides whether the personal circumstances of a GD technician justify exclusion from the program or modified participation.

33. The Union asserts that TUMS is unreasonable and in breach of the Collective Agreement and the Code because it is mandatory for GD technicians. However, neither the Collective Agreement nor the Code contains any provision that precludes the

introduction of such a program or precludes the Employer from requiring employees to participate in it. Nor do they contain any provision that indicates where employees are to begin or end their work shift. Provided the imposition of a new program, practice or policy does not breach the Collective Agreement or the Code, or any other applicable legislation, and provided the program as applied is not unreasonable, as part of its right to manage the workplace an employer is entitled to apply a new work practice and to require employees to follow that practice. The TUMS program was developed in response to legitimate business concerns, and there is no provision in the Collective Agreement or the Code that is breached by the requirement that GD technicians participate.

34. This leaves the question of whether the Employer acts unreasonably in requiring participation. If there were aspects of the application of TUMS that were unfair or unsafe for particular GD technicians or in particular circumstances, it might be considered unreasonable. For example, if there were no parking reasonably proximate to the home of the HD technician and the company docked the pay of the GD technician because s/he had to walk a long distance to get to the HD technician's home, the program would likely be considered to be unfair and unreasonable. Or if an area was unsafe for an employee or his/her car and the company nevertheless insisted on an employee parking his car in that area for the day, then the program might be unreasonable in its application. But there is no evidence of any such issues (beyond during the trial period) that the company has not adequately addressed. In these

circumstances, the mandatory nature of the program does not render it unreasonable.

35. In summary, BTS was entitled to require participation in TUMS by all GD technicians.

36. Although in the grievance the Union asserted that the company was refusing to provide work to employees who didn't comply with TUMS, it made no such assertion in final submissions, and in any event, the evidence did not establish any such circumstance.

37. The Union also asserts that TUMS is in breach of Articles 15, 16, 17 and Appendix A, insofar as GD technicians are required to perform work for which they are not compensated for as required by the Collective Agreement. In the HD Award, it stated:

32. **Although the time spent in logging in and out and performing circle checks is compensable work time, generally speaking, the time taken to drive to and from the first and last customer of the day or the Work Centre would not be. . . .** There are no provisions in the Collective Agreement that stipulate that travel time to and from work is compensable work time. Garage dispatched employees are not paid for this time. The fact that technicians are using company vehicles to drive to and from work each day does not convert what is generally considered to be a non-work function, driving to and from work, into "work" for which employees must be compensated. **Regular daily driving to and from work, in contrast to the actions of logging in or out and performing circle checks, is not customarily or presumptively considered to be "work".** Typically in other work settings, employees are not compensated for the time taken to get to and from work each day.

. . .

34. **If the company did in fact fail to compensate technicians for the time taken in the performance of the tasks of logging in and out and performing circle checks each day, it would be in breach of those provisions of the Collective Agreement that require employees to be paid for work performed and that stipulate rates of pay for such work; specifically, Articles 15, 16 and Appendix “A”.**

(emphasis added)

38. The Employer relies upon the first sentence of paragraph 32 in the HD Award as support for the proposition that requiring GD technicians to first travel to the home of an HD technician before going to the Work Centre, and to only log in at the regular shift start time, is not improper, inappropriate or unreasonable. It submits that since the technicians are not required to leave home earlier than they otherwise would, they are still getting paid for the same full shifts they would if they went directly to the Work Centre. The difficulty with this rationale, and with its application in the TUMS program, is that it ignores the nature of the activities required of the technician during this time at the direction of the Employer. BTS requires a GD technician to go to the home of an HD technician and pick up a company truck and drive it on company business, either to the Work Centre or the first customer. For all practical purposes, the GD technician is being told to start his/her work day at the home of the HD technician. If the technician's regular shift time has not yet begun, s/he will not be paid for doing any of these activities. S/he will not be paid for picking up the keys to the truck, for performing the circle check and for driving the truck to the Work Centre.

39. These are all components of the regular work day and regular work for a GD

technician. They are work activities and would be compensable time if performed at the Work Centre. There is no justification for treating them as non-compensable simply because they are performed at a location other than the Work Centre when they are performed at the Employer's direction and when non-compliance might result in discipline. In the HD Award it was concluded that "the time spent logging in and out and performing circle checks is compensable work time", even though the HD technician performed this work at their own residence. Just as such a requirement was a breach of the Collective Agreement and rendered the HD Policy then in place unreasonable, so too is it a breach of the Collective Agreement and an unreasonable program to fail to pay GD technicians for the time they are engaged in working. When GD technicians are required by the company to pick up a company truck at a specific location and then drive it to a specific other location, whether the Work Centre or the first customer, technicians are working and are entitled to be paid pursuant to the terms of the Collective Agreement.

40. The Employer argues that an employee is not working when they pick up the truck and drive it to the Work Centre or the first customer and that s/he is only engaged in pre-duty activities, since the technician does not have to leave home earlier than s/he otherwise would. It argues that what the employee is asked to do is not meaningfully different than the customary drive to and from work. But neither the drive to the Work Centre or first customer from the HD technician's house nor the drive to return the truck at the end of the shift can be considered to be the normal drive to or from work each day.

The normal drive, for which no compensation is required, is the drive to and from work each day, in this case from the GD technician's home to the home of the HD technician. Under TUMS, the matched GD technician is precluded by the company from driving straight to the Work Centre for the beginning of their shift or straight home at the end of the shift. They are required instead at the beginning of shift to go pick up a company truck, perform the circle check and bring the truck to the Work Centre or drive it to the first customer, and then return it to where they picked it up, before they can begin their trip home. Since they are required to do this by the Employer and since the activities engaged in upon arrival at the HD technician's home are normally work activities, the GD technician's work day begins when the truck keys are picked up at the HD technician's residence.

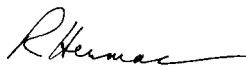
41. Whether the TUMS program is in breach of any provision of the Collective Agreement or is otherwise unreasonable depends on how it has been applied. The TUMS program does not on its face stipulate the time by which a GD technician must arrive at the home of the HD technician, so the policy as written appears to permit the GD technician to arrive at the home of the designated HD technician at or around the start time of the shift. If a GD technician arriving at the HD technician's home is paid from when they pick up the keys and the truck, there is nothing in the program that is in breach of the Collective Agreement or the Code and it would not be an unreasonable program, since GD technicians would then be compensated from when they began working. However, since it appears that the practice of the company has been to require

GD technicians to be at or near the Work Centre by start of shift and only log in then, it may be that the GD technicians were not paid for all their working activities. If applied in this fashion, the program would be unreasonable and in breach of the Collective Agreement, as it would be applied to require GD technicians to perform work without being paid for their work.

42. In the result, to the extent the TUMS program has been applied in a manner that requires a matched GD technician to pick up and drive company trucks without compensation from when the truck keys are retrieved, then the program both breaches the Collective Agreement and is unreasonable, and I so declare. Whether breaches of the Collective Agreement occurred in particular circumstances will depend on those particular circumstances.

43. This matter is remitted to the parties, and I remain seized for any matter arising from the grievance or this Award, including remedial issues.

Dated at Toronto, this 2nd day of December, 2014



Robert J. Herman - Arbitrator