



NATIONAL OFFICE MEMORANDUM

NO-03-2010

DATE	January 27, 2010	PRIORITY	4. For your information
TO	National Board of Directors and 2 nd Branch Contacts		
RE	Clarkson Decision (Day is a day when H'ing occurs)		

Sisters and Brothers,

As some of you may be aware, the CIU and CBSA have, in principle, agreed to enter into a Memorandum of Understanding regarding the Clarkson decision; this came subsequent to CIU being informed that the CBSA, in consultation with the Treasury Board, will not be pursuing their application for Judicial Review (will withdraw its appeal) of the Clarkson decision. That said, the CBSA is also taking the position that the new definition of a day found in the FB Collective Agreement applies to Designated Paid Holidays (DPH's). The CBSA thereby continues to insist that employees must make up the scheduled hours of work in excess of 7.5 hours when H'ed.

The CIU position is that the definition of a day resides in the *Leave* section of the Collective Agreement, and only serves to define *leave* which has nothing to do with DPH's. The language in the applicable Articles of the Collective Agreement that was in place at the time of the Clarkson grievance has not changed in any way, shape or form.

We cannot compel the CBSA to agree with our point of view; the only thing we can do in such circumstances is enter into a process that will expedite the grievance.

These are the main points that make up the MOU to which we agreed in principle on December 18, 2009:

- CBSA will withdraw its request for a judicial review of the Clarkson decision;
- CBSA will apply the Clarkson decision to the approximately 139 related grievances filed before March 14, 2005;
- The 139 grievors for these grievances will not receive an individual response; CIU will undertake to communicate the employer's decision accordingly and the CBSA will proceed to making the applicable pay adjustments to the 139 grievors;
- CIU will identify one (1) grievance from the approximate 317 grievance filed after March 14, 2005;
- That grievance will become the test case for the approximate 317 grievances and any such grievance subsequently filed;
- The balance of related grievances filed after March 14, 2005 will be placed in abeyance; CIU will inform the field that no additional grievances need to be filed in relation to this matter; should any nonetheless be filed these too will be considered in abeyance pending the outcome of the test grievance;



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- The test grievance will automatically be transmitted to the 4th level and will be allowed to proceed to adjudication if either party so chooses;
- The outcome of the test grievance will apply to the approximate 317 grievors and also to any CBSA employee who did not grieve after December 18, 2009 but who was affected in the same manner as the approximate 317 grievors.

Please inform the affected members accordingly; do not hesitate contacting us should you have any related questions, comments or concerns.

In solidarity,

Ron Moran
National President