

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Canadian Union of Public Employees, Local 815.1

(the “Union”)

-and-

EllisDon Facilities Services (OTMH) Inc.

(“EllisDon” or the “Employer”)

RE: Grievance No. 2024-0001 (Luis Soares)

BEFORE: Jesse Kugler (Chair), Michael Wright (Union Nominee), and Rob Little
(Employer Nominee)

APPEARING FOR THE UNION:

Ryan Newell – Counsel
Sophie Abatt - Counsel
Kevin Cook – First Vice-President, OCHU
Karrie Smith – President, Local 815
Danny Hawtin – Vice-President, Local 815
Luis Soares – Grievor

APPEARING FOR THE EMPLOYER:

Rebecca Liu – Counsel
Mohak Chauhan – Articling Student
Madeline Humstron
Erin Thorson
Dan Vukasid

Hearing conducted by videoconference on September 3, 2025. Final argument by written submissions received on September 30, October 29, and November 13, 2025. Executive Session held on November 18, 2025.

Introduction

1. The Employer is subcontracted at Oakville Trafalgar Memorial Hospital – Halton Healthcare (“Oakville Trafalgar”) to deliver maintenance services. The Grievor, Luis Soares, is employed by the Employer as an Electrician in accordance with the terms of the Collective Agreement between the Union and the Employer.

2. On January 2, 2024, the Grievor worked his regularly scheduled shift from 7 a.m. to 7 p.m. The Grievor’s next regularly scheduled shift was January 5, 2024. However, the Electrician scheduled to work on January 3, 2024 called in sick that morning, and the Employer contacted the Grievor and offered him that shift, which he accepted, working from 9:30 a.m. to 7 p.m. He received straight-time pay for those hours.

3. The Union filed a grievance dated January 9, 2024, alleging that the Employer breached Article 15.06 of the Collective Agreement by failing to pay the Grievor double time for the hours that he worked on January 3, 2024 (the “Grievance”). The Employer denied the Grievance, which was thereafter referred to this Board of Arbitration for determination.

4. Article 15.06 states:

15.06 – CALL-BACK

Where employees are called back to work after having completed a regular shift, and prior to the commencement of their next regular shift, they shall receive a minimum of four (4) hours of work or four (4) hours of pay at the rate of two (2) times their regular hourly earnings.

5. The Union takes the position that the Grievor was “called back to work” on January 3, 2024, within the meaning of Article 15.06. It submits that the Grievor completed his regular shift on January 2, 2024, and was “called back to work” on January 3, 2024, prior to his next regular shift on January 5, 2024. In the circumstances, it submits that the Grievor was entitled to be paid double time for the hours he worked on January 3, 2024.

6. The Employer denies that the Grievor was “called back to work” as contemplated by Article 15.06 of the Collective Agreement. The Employer submits that Article 15.06 applies in circumstances in which the Employer orders or compels an employee to return to work to address workplace “emergencies” and not, as here, when an employee voluntarily agrees to pick up an additional shift. This interpretation, the Employer submits, is supported by the past practice of the parties.

7. For the following reasons, a majority of the Board finds that the Grievor was “called back to work” on January 3, 2024.

Facts

8. The parties filed an Agreed Statement of Fact. In addition, the Employer called Dan Vukasinovic and the Union called Karrie Smith to give *viva voce* evidence in this proceeding. The relevant facts arising from the evidence is set out below.
9. The Employer is subcontracted to provide maintenance services at Oakville Trafalgar.
10. The Union and the Employer are parties to a Collective Agreement applicable to employees who work at Oakville Trafalgar in maintenance and the skilled trades.
11. The Grievor worked his scheduled shifts from 7 a.m. to 7 p.m. on January 1 and January 2, 2024. His next scheduled shift was January 5, 2024, from 7 a.m. to 7 p.m.
12. On January 3, 2024, the Grievor's co-worker was scheduled to work from 7 a.m. to 7 p.m. (the "January 3rd shift"). He called in sick.
13. At approximately 7 a.m. on January 3, 2024, the Employer offered the Grievor the January 3rd shift. The Grievor accepted the Employer's offer and worked from 9:30 a.m. to 7 p.m. He was paid straight time for the hours he worked on January 3, 2024.
14. The Grievor was paid 12.50 hours of overtime (1.5x) for the pay period from December 25, 2023 to January 7, 2024 for his shift on January 6, 2024, the last shift of the pay period.
15. The Employer did not force the Grievor to work the January 3rd shift. If the Grievor had not agreed to work the January 3rd shift, the Employer would have contracted it out because the only other person in the bargaining unit qualified to perform the work had called in sick.
16. The call-back language has been in the Collective Agreement between the Union and the Employer, and its predecessors, since at least 2009. In September of 2023, the parties agreed to increase the premium from time and one half (1.5x) to double (2x) time, effective June 13, 2023.
17. Mr. Vukasinovic testified that regular schedules are prepared by the Employer eight weeks in advance of their commencement and are posted in the workplace and shared with Union representatives. He stated that when absences arise because of illness or other issues the Employer "fills the position" by offering it to employees employed in the affected classification. Employees who are offered these shifts, he stated, are not required to accept them. According to Mr. Vukasinovic, these voluntary shifts are paid at straight time under the Collective Agreement.

18. Mr. Vukasinovic reviewed payroll records and identified the following employees as having worked additional or unscheduled shifts without being coded as having received call-back pay under Article 15.06 of the Collective Agreement:

- Mark Anthony Icaro: he worked an additional or unscheduled shift on May 13, 2022 and was not coded as having received call-back pay.
- Muhammad Tarique Iqbal: he worked an additional or unscheduled shift on May 8, 2021 and was not coded as having received call-back pay. Mr. Iqbal is, however, employed as a causal employee without regularly scheduled shifts.
- Morteza Younesi: he worked additional or unscheduled shifts on February 1, June 15-18, July 2-3 and 6-10, 2020, April 12, 2021 and was not coded as having received call-back pay.
- Leonardo Miguel Rocha: he worked additional or unscheduled shifts on January 27 and 29, and March 17, 2020, and was not coded as having received call-back pay.
- Dusan Curic: he worked an additional or unscheduled shift on April 23 and August 8-9, 2020, and was not coded as having received call-back pay.

19. Mr. Vukasinovic was unable to recall the circumstances in which these additional or unscheduled shifts arose, including what caused the Employer to offer them and when the Employer arranged with employees to pick them up.

20. Mr. Vukasinovic stated that the Union did not file a grievance claiming that call-back pay ought to have been paid in the circumstances above. He testified that to his knowledge the Union has never filed a grievance claiming that call-back pay is owed when an employee picks up an extra shift but acknowledged having no recollection preceding 2020. He agreed, however, that the paystubs issued by the Employer do not disclose whether an employee is paid a premium rate for work performed on a specific day of the week. He further agreed that an employee in the bargaining unit would only be able to ascertain whether they were paid a premium rate for work performed on a specific day by reviewing the Employer's payroll software.

21. When asked to describe the circumstances in which the Employer grants call-back pay under Article 15.06, Mr. Vukasinovic stated that call-back applies when an employee is "required" to attend work to address "emergency issues" engaging "specific trades and tasks." As an example, he described the call-back of an Electrician after having left work to de-energize a unit and complete lockout/tag out procedures. He acknowledged that he did not share his interpretation of

the call-back provision with the Union nor, to his knowledge, did any representative of the Employer do so.

22. In cross-examination, Mr. Vukasinovic acknowledged that the word “emergency” is not found in Article 15.06 of the Collective Agreement. He stated that when an employee declines the work in question the Employer retains a contractor to perform the work because a “shift can’t go unfilled” otherwise it would be unable to ensure that Trafalgar Oakville’s needs are met all times.

23. Ms. Smith, the Local Union President, confirmed that she receives a copy of the regular eight week posted schedule from the Employer. She further confirmed that she receives an email from the Employer every two weeks containing the schedule for the following two-week period. In addition, Ms. Smith confirmed that she is copied on emails sent by the Employer to employees employed as Building Operators when Building Operator shifts become available for various reasons and need to be filled. Ms. Smith testified that she receives no other communication from the Employer with respect to the filling of those vacant Building Operator shifts or with respect to the filling of shifts for any of the other classifications in the bargaining unit.

24. Ms. Smith testified that prior to this hearing she was not aware that the Employer interpreted Article 15.06 as applying only in circumstances of an “emergency.”

The Parties’ Positions

i. The Union’s Submissions

25. The Union submits that this is a simple case of collective agreement interpretation. It submits that Article 15.06, when viewed in its normal and ordinary sense, is clear and unambiguous. The Union submits that in the present circumstances, where no ambiguity exists, effect must be given to the words of the Collective Agreement.

26. According to the Union, the plain language of Article 15.06 stipulates three requirements for call-back pay. The employee must: (i) be called back to work; (ii) after having completed a regular shift; and (iii) prior to the commencement of their next regular shift. The Union submits that these requirements are satisfied in the case at hand. The Union submits that when the Employer contacted the Grievor at 7 a.m. on January 3, 2024, and offered him the opportunity to work the shift that day, the Grievor was “called back to work.” Further, the Union submits that the January 3, 2024 shift occurred between his last regular shift on January 2, 2024, and prior to the commencement of his next scheduled shift on January 5, 2024. As a result, the Union submits that the Grievor was entitled to double-time for the hours he worked on January 3, 2024, pursuant to Article 15.06 of the Collective Agreement.

27. Mr. Vukasinovic's claim that call-back pay under Article 15.06 only applies in cases of "emergencies" is, submits the Union, without merit. The Union notes that Mr. Vukasinovic acknowledged that the word "emergency" does not appear in the text of Article 15.06, and it submits that if the parties intended call-back pay to apply only in cases of "emergencies" they could have and would have expressly said so.

28. The purpose of call-back pay, submits the Union, is to compensate employees for intrusions on their private time between regularly scheduled shifts. Payment of call-back pay to the Grievor for work performed on January 3, 2024 is, submits the Union, consistent with that purpose. The Union referred to the following authorities in support of this argument: *Markham Stouffville Hospital v. C.U.P.E., Local 3651*, 2007 CanLII 52968, (ON LA) (Albertyn); *OPSEU v. Northeast Mental Health Centre*, 2004 OLA No. 673 (Whitaker); and *Re International Molders & Allied Workers Union, Local 49, and Webster Manufacturing (London) Ltd.*, 1971 CanLII 1902 (ON LA) (Weiler).

29. The Union submits that the Grievor was "called back to work" even if he had the right to decline the January 3, 2024 shift. The Union disputes that the Employer has the power to order an employee to work at all under the terms of the Collective Agreement. In any event, it submits that arbitrators have consistently rejected the argument that call-back pay and other premiums are only triggered when a return to work is mandatory or compelled by an employer. The Union submits that the Grievor's acceptance of the Employer's offer to return to work on January 3, 2024 is therefore not determinative of his entitlement to call-back pay under Article 15.06 of the Collective Agreement. The Union referred to the following authorities in support of this argument: *Labatt Breweries Ontario (London) and Brewery, General and Professional Workers' Union, Local #1*, 2006 CanLII 1319 (ON LA) (Shime); *Cambridge Memorial Hospital and ONA (Schmidt)*, Re, 2021 CarswellOnt 19704 (McNamee); *ONA v Kingston General Hospital*, 1995 CarswellOnt 1896 (Knopf); *North York General Hospital v Ontario Nurses' Association*, 2007 CarswellOnt 10213 (Goodfellow); and *North Bay Regional Health Centre v CUPE 139*, 2018 CanLII 39768 (Parmar).

30. The Union submits that the Employer's past practice evidence provides no assistance to the proper determination of this matter. Having inherited the Collective Agreement, including Article 15.06, from a predecessor employer, the Union submits that the Employer did not negotiate the language and that its practice cannot have any bearing on the parties' intentions at the time the language was bargained. In the alternative, the Union submits that the Employer has failed to discharge its onus of establishing that its past practice was uniform and consistently applied, and that it was known to the Union.

31. The Union requests that the Grievance be upheld. It seeks a Declaration that the Employer has violated Article 15.06 of the Collective Agreement and an Order that the Employer pay the outstanding premium for hours worked by the Grievor on January 3, 2024, in accordance with Article 15.06.

ii. The Employer's Response

32. The Employer agrees that at its core this case is a matter of collective agreement interpretation. It submits that the language of the Collective Agreement is to be given its plain and ordinary meaning but emphasizes that the words at issue must also be considered in their proper context. When two linguistically permissible interpretations present, the Employer submits that the interpretation that best fits with the purpose of the particular provision ought to be preferred.

33. The Employer submits that call-back pay is distinct from overtime pay. According to the Employer, employees may earn overtime by working longer than 8 or 12 hours in a given shift or by working additional shifts such that they work more than 75-hours in a two-week period. In the case of additional shifts, employees may choose whether they wish to work them. If an employee chooses to work an additional shift and, if in doing so, exceeds the overtime threshold, they are entitled to overtime at a rate of time-and-a-half.

34. In contrast, the Employer submits, call-back pay requires something more than simply offering employees the option to accept additional work after the regular schedule has been posted. According to the Employer, it is intended to provide compensation to employees for the inconvenience, disruption and expense of being required to come back to work. The Employer submits that call-back pay generally occurs when an unanticipated need arises at work, and the Employer must summon an employee back to work as soon as possible in response. The Employer submits that there is an underlying urgency and compulsion to the direction that an employee return to work and that the employee has "little to no choice in the matter". The Employer submits that unlike an additional shift with a scheduled start and end time, work performed on a call-back is to address an emergency requiring immediate attention of an unknown duration. The uncertainty of duration is precisely why, submits the Employer, the parties bargained a minimum 4-hour payment. In that sense, the Employer submits that a call-back is qualitatively different than picking up an additional regularly scheduled shift that becomes vacant due to illness or for other reasons as occurs routinely in a 24/7 hospital environment.

35. The Employer submits that the Union's interpretation – that call-back pay at double time applies any time an employee picks up a shift between two regularly scheduled shifts – belies the plain and ordinary meaning of the words "called back." If the parties had intended such a broad application, the Employer submits that they would have used other phrases such as "return to work" rather than "called back."

36. The Employer argues further that the Union's interpretation would produce two absurdities. First, it submits that the Union's interpretation would render bi-weekly overtime under Article 15.02 meaningless given the no pyramiding language in the Collective Agreement. If, as urged by the Union, every shift that an employee picks up between two regular shifts triggers call-back pay,

the Employer submits that none of those shifts would count towards the overtime threshold and the biweekly threshold would become meaningless. Second, the Employer argues that the Union's interpretation would absurdly result in the vast majority of shifts worked by part-time and casual employees attracting call-back pay. The Employer submits that the purpose of its part-time and casual workforce is to provide it with flexibility to back fill absences, sometimes on short notice. The Employer submits that the Union's interpretation of Article 15.06 would undermine that flexibility and foist significant costs on the Employer through an unduly broad application of the call-back provision.

37. The Employer submits that its past practice supports its interpretation. It submits that the language at issue has been in place since at least 2009, and that the Employer has consistently not paid call-back pay to employees that pick up additional shifts without grievance or complaint from the Union. The Employer asks that this past practice evidence, which it submits supports its interpretation, be used as an aid to the proper interpretation of the disputed language.

38. With respect to the authorities relied upon by the Union, the Employer submits that they involve different parties and engage different language under different collective agreements and are therefore distinguishable on that basis.

39. The Employer requests that the Grievance be dismissed.

40. The Employer referred to the following authorities: *Canada Forgoings Inc v CAW-Canada, Local 275* (1999), 84 LAC (4th) 309 (Levinson); *Casco Inc v UFCW, Local 175* (2012), 220 LAC (4th) 447 (Monteith); *Hotel-Dieu Grace Hospital and ONA* (2013), 237 LAC (4th) 309 (Snow); *Lantic Sugar Ltd v BCT, Local 443* (1995), 51 LAC (4th) 257 (Brown); *OPSEU and Ontario (Ministry of the Solicitor General) (Amendola)*, 2025 CarswellOnt 9211 (Sheehan); *OPSEU and Ontario (Ministry of Community Safety and Correctional Services)*(Jackson), 2017 CarswellOnt 20948 (Briggs); *Creston Moly Corp v Sattva Capital Corp*, 2014 SCC 53; *Sault Ste. Marie (City) v ATU, Local 1767*, 2014 CarswellOnt 17774 (Hayes); and *Board of Commissioners of Policy for the City of Owen Sound and Owen Sound Police Association* (1984), 14 LAC (3d) 46 (M. Picher).

iii. *The Union's Reply Submissions*

41. The Union submits that the Employer has failed to establish that Article 15.06 applies only to cases of emergencies. It emphasizes that the parties used the term "emergency" elsewhere in the Collective Agreement (i.e., Article 11.01, 12.01, 12.10) and submits that had the parties intended to limit the application of Article 15.06 to an "emergency" they would have done so using that term expressly. The Union relies upon the decision in *Cambridge Memorial, supra*, in which it submits that Arbitrator McNamee rejected the argument that a call-in can only occur in the context of an emergency. The Union submits that none of the cases cited by the Employer support the

conclusion that Article 15.06 is only payable when an employee is asked to perform work in response to an “emergency.”

42. The Union submits that the Employer’s argument that Article 15.06 only applies where an employee is compelled to return to work is not evident nor suggested in the language of Article 15.06. Instead, it submits that the term “called back” means that an employee receives a “call” requesting that they come “back” to work in between regularly scheduled shifts. The Union submits that had the parties intended to apply Article 15.06 only when “ordered on penalty of discipline,” they would have used the word “ordered” or something to that effect rather than “called back to work.” The Union submits that the cases relied upon by the Employer for this proposition in fact support the opposite conclusion. The only circumstance in which the Employer may “compel” an employee to perform unscheduled work, submits the Union, is when they are scheduled to be on standby and “available for duty” under Article 15.07.

43. The Union submits that its interpretation of Article 15.06 would not result in casual employees earning call-back pay for every shift they pick up because one must be regularly scheduled to receive call-back pay. As casual employees do not have regularly scheduled shifts, they cannot satisfy that requirement. And while part-time and full-time employees are regularly scheduled, the Union submits that their right to receive call-back pay is not absurd simply because it results in increased costs for an employer.

44. The Union denies that its interpretation of Article 15.06 would render the overtime provisions of the Collective Agreement meaningless. It states that bi-weekly overtime would still have application, at the very least, to casuals, who would generally not be entitled to call-back pay. It further submits that bi-weekly overtime would also apply to overtime shifts that are pre-scheduled or pre-arranged.

45. Finally, the Union reiterates that the Employer’s evidence of past practice is of little assistance in this matter. The language in dispute, it submits, is not ambiguous and, in any event, the Employer’s past practice evidence does not address the intentions of the central parties who bargained the language. The evidence adduced, the Union submits, does not establish any discernable practice nor has the Employer established that the Union had knowledge of it or otherwise acquiesced to it.

46. The Union referred to the following authorities in reply: *West Grey Police Services Board v. West Grey Police Association*, 2011 CanLII 11609; *York University v Canadian Union of Public Employees Local 3903*, 2024 CanLII 105209; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53; *Dumbrell v. The Regional Group of Companies Inc.*, 2007 ONCA 59; *Neegan Development Corporation Ltd. v International Union of Operating Engineers, Local Union No. 955*, 2020 CanLII 6437; *Shaw Cablesystems v. IBEW Local 213*, 2019 CanLII 99544; *Catholic District School Board of Eastern Ontario v. Ontario English Catholic Teachers Association*, 2015

CanLII 23819; *Centennial College and OPSEU Local 558*, 2003 CarswellOnt 3025; *Collingwood General & Marine Hospital v. Ontario Nurses' Association*, 2012 CarswellOnt 2805; and *Petro Canada Lubricants Inc. v Unifor Local 593*, 2019 CanLII 69953.

Discussion

47. The issue determined by this Award is whether the Grievor was “called back to work” on January 3, 2024 in accordance with Article 15.06 of the Collective Agreement.

48. The Union submits that the Grievor was “called back to work” between regularly scheduled shifts on January 3, 2024. The Employer denies that the Grievor was “called back to work” within the meaning of Article 15.06, asserting that the call-back provision applies to emergency or urgent circumstances in which the Employer compels or requires an employee to return to work and not, as the Union suggests here, where an employee voluntarily agrees to pick up an additional shift.

49. This case turns on the proper interpretation of Article 15.06 of the Collective Agreement. To resolve this dispute, it is necessary to interpret the relevant Collective Agreement language in accordance with the well-established principles of collective agreement interpretation. The object of collective agreement interpretation is to ascertain the intention of the parties with reference to the language used to express their bargain. The words of a collective agreement must be given their plain and ordinary meaning unless the collective agreement provision, considered in its proper context and within the collective agreement as a whole, suggests that a different meaning was intended. All words must be given meaning and different words are presumed to have different meanings. The surrounding circumstances that were known or ought to have been known to both parties at the time the Collective Agreement was concluded can provide relevant context as an aid to interpretation but cannot “overrule” the clear meaning of the words chosen by the parties.

50. Article 15.06 states:

Where employees are called back to work after having completed a regular shift, and prior to the commencement of their next regular shift, they shall receive a minimum of four (4) hours of work or four (4) hours pay at the rate of double time their regular hourly earnings.

51. There are three requirements under Article 15.06. An employee must: (i) be called back to work; (ii) after having completed a regular shift; and (iii) prior to the commencement of their next regular shift. There is no dispute that the January 3, 2024 shift occurred after the Grievor completed his regular shift on January 2, 2024 and prior to the commencement of his next regular shift on January 5, 2024. The parties disagree, however, as to whether the Grievor was “called back to work” on January 3, 2024, within the meaning of Article 15.06.

52. This Award may be the first to determine whether an employee is “called back to work” under Article 15.06 of the Collective Agreement when an employee, after completing a regular shift, receives and accepts an offer to work an unscheduled shift that occurs prior to the commencement of their next regular shift. Article 15.06 is centrally bargained between the Participating Hospitals and the Ontario Council of Hospital Unions. It is found in hospital collective agreements across the Province of Ontario which govern the terms and conditions of employment of tens of thousands of hospital employees. It has been in place since at least 2009. It has surely been administered routinely under CUPE hospital collective agreements since inception. Yet, this case was advanced in respect of a bargaining unit consisting of a small number of maintenance and trades employees employed by a subcontractor to a hospital. No evidence was led to explain the historical application of Article 15.06 by the hospitals across the province that are charged with its administration (save for the limited evidence of past practice led by EllisDon in this proceeding, which we address below). No bargaining or contextual evidence was led to address Article 15.06’s intended purpose and scope. No evidence was led to explain the financial and operational implications that would result from the respective interpretations advanced by the parties. And no evidence was led to establish that the parties intended the phrase “called back to work” to bear a special or specific meaning.

A Textual Approach Supports Entitlement

53. The phrase “called back to work” under Article 15.06 is not defined in the Collective Agreement. It must therefore be interpreted having regard to its plain and ordinary meaning. The plain and ordinary meaning of “called back to work” is self-evident: an employee must be “called” by the Employer to come “back to work.” The language neither suggests nor implies anything else. The Grievor met those requirements in the case at hand. On January 3, 2024, his co-worker called in sick for his 7 a.m. to 7 p.m. shift. To address its unanticipated staffing shortage, the Employer contacted the Grievor and offered him the January 3, 2024 shift. The Grievor accepted the Employer’s offer and worked from 9:30 a.m. to 7 p.m. that day. In the circumstances, the Grievor was “called” to come “back to work.”

A Purposive Approach Supports Entitlement

54. A purposive interpretation leads to the same conclusion. The purpose of call-back pay is to compensate employees for the inconvenience and disruption caused when they are called back to work between their regularly scheduled shifts. In *Northeast Mental Health Centre, supra*, Arbitrator Whitaker concluded that call-back pay “should be understood as compensation for the disruption to one’s own time and nothing else.” A similar conclusion was reached in *Webster Manufacturing, supra*, where a Board of Arbitration Chaired by Arbitrator Weiler concluded that call-back pay was designed to recognize the “significant disruption and expense for an employee” in the circumstances.

55. The facts of this case engage the purpose of call-back pay. An employee called in sick for the January 3, 2024 shift. The Employer needed to fill the vacated shift. It contacted the Grievor who was not scheduled to be working that day and asked whether he would cover the January 3, 2024 shift. He agreed, and in doing so, his personal time away from work between regularly scheduled shifts was disrupted. The purpose of the call-back pay provision - to compensate employees for the inconvenience and disruption associated with returning to work between regularly schedule shifts - is engaged in the case at hand and supports the conclusion that the Grievor is entitled to call-back pay.

No requirement or Compulsion

56. The Employer argues that an employee must be “required” or “compelled” to return to work to receive call-back pay under Article 15.06. It submits that the Grievor voluntarily agreed to work the January 3, 2024 shift and is therefore not entitled to call-back pay. There is nothing, however, in the language of Article 15.06 that suggests or implies that compulsion is a pre-condition to entitlement. To repeat, the language says one must be “called back to work.” It does not say one must be “compelled” or even “required” to return to work. The word “required” is, in fact, used repeatedly by the parties throughout the Collective Agreement, including with respect to other Articles governing premium pay (15.03 – Overtime Premium and No Pyramiding; 15.04 – Time Off in Lieu of Overtime; 15.07 – Standby; and 15.11 – Orientation). In the case of standby pay under Article 15.07, for example, the parties specifically limited its application to circumstances in which “an employee...is required to remain available for duty” (emphasis added). Had the parties’ intended to limit call-back pay to circumstances where an employee is “required” or “compelled” to return to work, they would have expressly said so.

57. The arbitral jurisprudence does not treat compulsion as a pre-condition to entitlement. For example, in *Labatt Breweries, supra*, Arbitrator Shime rejected the argument that compulsion was a precondition to being “called back to work,” holding that since the “Company required the work to be done and the Company initiated the request,” the “voluntary nature of the work [did] not derogate from the notion that [it] was a call back.”

58. Similarly, in *Cambridge Memorial, supra*, Arbitrator McNamee concluded that an employee was “called in” and entitled to call-in pay under ONA’s collective agreement despite having voluntarily accepted the employer’s request to return to work. The call-back language in that case applied when “a full-time or regular part-time nurse has completed her or his regularly scheduled tour and left the hospital and is called in to work outside his or her regularly scheduled working hours.” In reaching his conclusion, Arbitrator McNamee, citing an award of Arbitrator Aggarwal’s in *Sault Ste. Marie Hospital*, found that the Grievor’s decision to accept the employer’s offer of an additional shift was not properly characterized as an act of volunteerism. Arbitrator McNamee noted that the Teplitsky consent award of 1983 expressly recognized circumstances in which an employee may accept an additional shift upon an employer’s request - rather than order

- and still be entitled to call-in pay. He further cited with approval the Award in *Re the Ottawa Hospital*, which held: “The question of whether the nurse voluntarily accepts a hospital-initiated change is not relevant to whether a premium is payable: if the hospital initiates the change to meet its own staffing needs, and the change otherwise qualifies the shift for a premium, it is payable even if the employee has voluntarily agreed to work the shift.”

59. In *Kingston General Hospital, supra*, Arbitrator Knopf considered whether a nurse who had been regularly scheduled to work on alternate weekends was entitled to a consecutive weekend premium when she agreed to work on the intervening weekend. The language at issue in that case provided that “if a nurse is *required* to work on a third or subsequent consecutive weekend, she shall receive a premium payment...except where...such nurse requested weekend work.” Arbitrator Knopf interpreted the work “required” to mean when the “work is required to be done” and “when [an employee’s] services are required.” She further found that once an employee accepts a shift, they are “required to work.” In view of these findings, Arbitrator Knopf upheld the grievance, concluding that an employee’s acceptance of a shift that resulted in her working three or more consecutive weekends did not disentitle her to the consecutive weekend premium.

60. Similar results were reached in *North York General, supra*, and *North Bay Regional Health Centre, supra*, where Arbitrators Goodfellow and Parmar reviewed the arbitral authorities and upheld the grievances, finding that an employee’s agreement to pick up a shift did not mean that she was not “required to work.”

61. The Employer argues that cases addressing entitlement to consecutive weekend premiums have “no application to the present case.” While we acknowledge that we are not addressing consecutive weekend premiums in this case, those authorities do establish that arbitrators have rejected the argument that compulsion to work is a precondition to receipt of consecutive weekend premiums, even when the language under those collective agreements expressly made entitlement conditional upon being “*required* to work.” Here, as noted, the word “required” or “compelled” is not used; instead, one need only be “called back to work.” If compulsion is not viewed as a condition to entitlement in the context of a provision that “requires” an employee to work, it seems even less likely to be a condition under a provision that merely contemplates being “called back to work.”

62. The authorities relied on by the Employer do not alter the analysis. The Employer points to *Lantic Sugar, supra*, as an example of an arbitrator finding that a call-back provision is not voluntary. However, on close examination, the issue raised by that grievance was whether the employer was entitled to order an employee to return to work. It does not address the issue squarely raised in this case – namely, whether an employee who accepts an offer to pick up an additional shift has been “called back to work.” Similarly, in *Amendola, supra*, Arbitrator Sheehan denied entitlement to call-back pay because the work in question had been pre-planned rather than arising after having left the workplace in accordance with the provision at issue. That is, the call backs at

issue occurred prior to the conclusion of the employee's last regularly scheduled shift. In *Jackson, supra*, Arbitrator Briggs denied a grievance claiming call back pay because the grievor had given the employer advanced notice of his availability to work overtime for the shifts in question in accordance with a negotiated overtime protocol between the parties. The result was driven by the advanced arrangements made by the grievor to work overtime under the negotiated protocol and not by the alleged "mandatory nature of call back."

No Requirement of Emergency or Urgency

63. The Employer also argues that call-back pay is only triggered in the context of emergencies. It submits that the work performed by the Grievor on January 3, 2024, was not an emergency and that he is therefore not entitled to call-back pay. Again, however, there is nothing in the language of Article 15.06 that suggests or implies that call-back pay is triggered only in the case of emergencies (however that may be defined). Had the parties intended for Article 15.06 to apply only in emergencies, they would have used that term expressly as they have elsewhere in the Collective Agreement (e.g., Articles 11.01, 12.01, 12.10). While the employer may resort to the call-back provision to respond to emergencies that arise in the workplace from time-to-time, the language bargained by the parties does not limit its application to those circumstances.

64. In *Cambridge Memorial, supra*, Arbitrator McNamee rejected the argument that call-in premium is only payable in the case of an emergency, stating:

48. I further do not agree with the employer that a call in under Article 14.06 can occur only in the context of an emergency or other objectively urgent situation. It is the employer's choice as to whether or not to fill a vacant shift or tour (although that choice may often be driven by the circumstances), but if it chooses to do so, it cannot later say that its decision was unnecessary, and that its infringement upon an employee's free time was not required...

65. While the Employer relies on *Casco Inc., supra*, that case addresses an employer's right to schedule mandatory overtime. In any event, the arbitrator in that case described call-back premium as "a type of overtime that arises because the employer required employees to perform *unexpected* or emergency work" (emphasis added). The work performed by the Grievor on January 3, 2024, clearly constituted a form of "unexpected work."

66. Even assuming that some level of emergency/urgency is a condition to entitlement under Article 15.06 of the Collective Agreement, we are satisfied that the Employer treated the circumstances as sufficiently urgent to trigger entitlement. The Employer contacted the Grievor, without notice, first thing in the morning on his day off to ask whether he would pick up a shift that had become vacant due to an unexpected employee illness. The matter was serious enough that the Employer was prepared to retain a third-party subcontractor to fill the void if the Grievor did not agree to pick up the shift. By any objective measure, the conduct of the Employer reflects a degree of urgency in its approach to filling the January 3, 2024 shift.

Absurdities Not Made Out

67. The Employer argues that the Union's interpretation would produce two absurdities.

68. First, it argues that biweekly overtime would be rendered meaningless on the Union's interpretation. The Employer submits that if every shift picked up by an employee between two regular shifts constitutes call-back pay, none of those hours would count towards biweekly overtime because Article 15.03 prevents overtime from being duplicated or pyramided. This, the Employer submits, would render biweekly overtime meaningless. However, this argument fails to recognize that casual employees are not entitled to call-back pay because they are not regularly scheduled. It further fails to recognize that additional shifts that are pre-scheduled or pre-arranged with an employee before the completion of their last regularly scheduled shift would not attract call-back pay and therefore still be counted towards biweekly overtime entitlement.

69. Second, the Employer argues that under the Union's interpretation the vast majority of shifts worked by part-time and casual employees would attract call-back pay. This, the Employer asserts, is absurd. However, as noted, casual employees are not entitled to call-back pay. And, with respect to part-time employees, call-back pay is not triggered if the additional shift is pre-arranged or scheduled prior to the completion of an employee's last regularly scheduled shift. Further, while it is at least arguable that cost consequences could have some bearing on the intention of the contracting parties, there is no evidence related to the cost consequences that would result from the Union's interpretation. In the absence of such evidence, it is not possible to conclude that the Union's interpretation is absurd because of its financial implications. We note, parenthetically, that we were not directed to any language in the Collective Agreement that constrains management's discretion to determine whether to offer additional shifts or with respect to the selection of employees to fill those shifts.

Past Practice Not Determinative

70. The Employer's evidence establishes that several employees picked up additional shifts after the posted schedule was complete. It further establishes that those employees were not coded as having received a call-back in the Employer's payroll software. However, the evidence does not establish the circumstances in which those additional shifts were picked up. Critically, the evidence does not disclose whether the employees were called back to work "after having completed a regular shift" and "prior to the commencement of their next regular shift." In the absence of such evidence, it is not possible to determine whether, as the Employer submits, the past practice of the parties is inconsistent with the Union's interpretation. In addition, there were other problems with the evidence, including the fact that at least some of the employees were employed on a casual basis and were thus not entitled to call-back pay. Most importantly, however, the evidence failed to establish that the Union knew or ought to have known of the Employer's

treatment of those additional shifts. In the absence of evidence that the Union knew about and acquiesced in the alleged practice, there is no basis to find that the alleged practice reflects the parties' mutual understanding about how the call-back provision is supposed to operate.

71. Accordingly, the evidence of past practice does not aid the proper interpretation of Article 15.06 of the Collective Agreement.

Disposition

72. For the reasons stated, based on the case as presented, a majority of the Board finds that the Grievor was "called back to work" on January 3, 2024, in accordance with Article 15.06 of the Collective Agreement.

73. The Grievance is therefore allowed to that extent.

74. The parties' submissions focused on the issue of whether the Grievor was "called back to work" under Article 15.06. The parties did not make fulsome submissions on the issue of remedy. Accordingly, we remit that issue to the parties and remain seized in the event they are unable to resolve the matter directly.

Dated at Toronto this 17th day of April, 2026.



Jesse Kugler – Chair

“I Concur”

Michael Wright – Union Nominee

“I Dissent”

Rob Little – Employer Nominee