

PART I: INTRODUCTION

This arbitration is between the Amalgamated Transit Union, Local 508 and the Halifax Regional Municipality. It arises from a reorganization of the Access-A-Bus (AAB) Division of Halifax Transit that involved the creation of a new classification of unionized AAB employees, “Trip Reservationists”, and the transfer of some union work to non-unionized “Dispatch Supervisors”. It is the Union’s claim that the Employer improperly transferred some of the Dispatcher’s work to Dispatch Supervisors contrary to Article 6.01(a) of the Collective Agreement.

The Employer argues they were permitted to carry out the reorganization under the “Management Rights” clause found at Article 3 of the Collective Agreement, as they were acting in good faith with a *bona fide* or legitimate business purpose for the reorganization.

As will be detailed below, I find merit in the Union’s claim. Some but not all work transferred to non-bargaining unit employees was transferred contrary to Article 6.01(a) of the Collective Agreement.

PART II: BACKGROUND

1. Preliminary Matters

The relevant Collective Agreement (“the Agreement”) was effective September 1, 2011 to August 31, 2016.

I was appointed as sole arbitrator in this matter on July 22, 2015.

The Employer raised an objection claiming that this grievance had been settled between the parties, and therefore I had no jurisdiction to hear this grievance. I heard evidence relating to the jurisdictional matter on January 26 and 27, 2016 and published my preliminary award on February 29, 2016. I found the grievance in this matter had not been resolved, and therefore the parties were to be heard on the merits of the grievance.

By agreement, the merits hearing commenced at Halifax on November 16, 2016 and due to a participant’s illness, was adjourned early that afternoon. The hearing recommenced on November 17 and was again adjourned. The hearing proceeded on December 13 & 14, and concluded with argument on December 15, 2016.

Subject to the jurisdictional issue, the parties agreed that the Board was properly constituted and had the power to hear and determine the grievance. All time limits, within which an award had to be rendered, were waived by the parties.

2. *The Halifax Transit Operations*

Halifax Transit operates two bus services, a Conventional bus service, providing transit bus services on regularly scheduled routes and the Access-A-Bus operations, tasked with providing pre-scheduled or “booked” rides and door-to-door transit services to qualified disabled riders.

Unlike the “bus stop” model of the Conventional system, AAB involves pick-up at customer designated locations and transportation of users on a specific needs basis rather than on a specified route. AAB users call the AAB office to “book a trip”.

An example trip, as offered in evidence, may be to get a rider with a mobility issue to and from a medical appointment. Many such trips are booked and the AAB busses serve those needs, operating daily from very early morning to late at night.

3. *The Reorganization Plan*

The reorganization plan was conceived in the early summer of 2014, developed through the fall of 2014, disclosed to the Union leadership on December 10, 2014, and implemented through the first half of 2015. It involved moving the responsibility for certain tasks from unionized Dispatchers to newly created, unionized Trip Reservationists. Other tasks were moved from Dispatchers to non-unionized Dispatch Supervisors.

Prior to the reorganization, the AAB service was comprised of a unionized staff complement including: Bus Operators, Dispatchers, Scheduler/Dispatchers and Schedulers. The AAB service had only one “Service Supervisor – Accessible Transit” who worked a regular, forty hour work week and was not unionized. The Access-A-Bus division operated apart from the “Conventional” bus system although out of the same physical facilities.

The Trip Reservationists classification was staffed with employees drawn from two of three existing AAB Dispatch and Scheduling Division classifications, namely “Dispatchers” and “Scheduler/Dispatchers”. For convenience, both Dispatchers and Scheduler/Dispatchers will be referred to as “Dispatchers”.

Halifax Transit Conventional operations were supervised by more than 30 non-unionized “Service Supervisors” with coverage for up to 20 hours a day, seven days a week.

It appears that an historical legacy has resulted in Conventional services having non-unionized Dispatchers, while the AAB Dispatchers were within the ATU.

Post-reorganization, the AAB joined Conventional services in sharing non-union supervisory specialist employees supporting both the Conventional and AAB operations. The one AAB supervisor joined the more than 30 Conventional supervisors. These specialists were broken into three groups described as: Dispatch Supervisors, Communications Supervisors, and Mobile Supervisors, each with a specific area of responsibility noted by their respective titles.

The stated goals of the reorganization were to bring all the supervisors together, create supervisory specialties for both the Conventional and AAB divisions, and to provide supervisory coverage over AAB operations beyond the forty hour work week, more in keeping with the AAB hours of operation.

The reorganized model adopted the management structure of the Conventional system where Dispatch Supervisors operate outside of the ATU Bargaining Unit. Management believed that the sharing of Dispatch Supervision duties

between AAB and Conventional services would not only allow for specialization and efficiencies, but would also remove the situation where ATU member AAB Dispatchers provided some supervision and direction over their ATU colleague Bus Operators. In the reorganized structure, unionized employees would no longer supervise their Union colleagues.

The reorganization plan called for unionized AAB Dispatchers and Scheduler/Dispatchers to become Trip Reservationists with a specific job description (Exhibit 11). There was to be no change to the Scheduler's duties.

4. *Collective Agreement -- relevant Articles*

The provisions of the Collective Agreement relevant to this grievance deal with Management Rights, the Classifications contained in the AAB division, and the rights of Management and the Union in relation to the movement of work from unionized to non-unionized employees.

The following are the relevant provisions of the Collective Agreement in force at the materials time to this grievance:

- > Article 3 – Management Rights:

3.01 It is recognized and agreed that on the Employer rests the responsibility of operating the public transportation system and promoting and maintaining its welfare. It is agreed that it is in the interest of the employees, as well as the Employer, that the welfare of the business be promoted and maintained.

3.02 It is further agreed that the Employer will be free, therefore to exercise its best judgment in the operation of the public transportation system, without restricting the generality of the foregoing, with respect to increasing or decreasing operations, removing or adding of equipment, the relieving of employees from duty because of the lack of work, the employment, layoff, re-employment and transfer of employees, maintaining discipline and efficiency of employees and the promotion of employees, all subject to the extent provided in this collective agreement.

> Article 6 – Membership Benefits:

6.01(a) The Employer agrees that no employee outside of the bargaining unit will work with tools, drive buses or perform any work covered by classifications in this agreement except where there is a requirement for special skills which are not available in the bargaining unit or in cases of emergency or instruction which will mean instruction necessary to acquaint an employee with their job, tools, equipment or procedures.

> Article 11 – Rate of Pay:

11.05 Should new classifications be required within the bargaining unit, a wage rate and conditions will be established by the Employer. Failure of the Union to agree will result in the matter being referred to arbitration in accordance with the provisions of this Collective Agreement. The final rate and conditions established will be retroactive to date of hiring.

- > Article 48 - [AAB Dispatch and Scheduling Division]
General Provisions:

48.01 All full time employees working in Access-A-Bus Scheduling and Dispatch Office will have a minimum regular work week of forty (40) hours, maximum 5 days per week, minimum 2 consecutive days off. Full-time employees may work, if required by the Employer, all but one of their assigned days off, which must be reserved as a day of rest. Part time employees will not work more than twenty four (24) hours in any week except in cases of replacement for vacation, sickness, authorized Union leave and training of full time and part time staff. [2011].

- > Article 49 – Rates of Pay:

49.01 Rate of Pay – Operations: AAB Dispatch and Scheduling

(Table of Pay omitted)

PART III: THE ISSUE

Has the Employer violated the Collective Agreement by permitting Dispatcher Classification Work to be done by Non-Bargaining Unit Employees, namely Dispatch Supervisors?

The analysis of the issue as noted requires four broad steps.

First, I must consider what work ATU Dispatchers (including Scheduler/Dispatchers) did prior to the reorganization.

Second, I must examine the post-reorganization work of the new classification Trip Reservationists and the work of Schedulers to determine the extent they have assumed duties of ATU Dispatchers.

Third, I must compare the findings of the above analysis with the duties set out in the post-reorganization job description for the non-unionized Dispatch Supervisor, and determine if Dispatch Supervisors are now undertaking duties formerly done by Dispatchers, or whether the work Dispatch Supervisors are doing is work formerly assigned to Service Supervisor-Accessible Transit.

If it is discovered that there have been duties shifted from unionized classifications to non-union Dispatch Supervisors, I must determine if the delegation of those duties to non-ATU members is permissible, partly permissible, or in violation of the terms of the Collective Agreement, focussed particularly on the tensions between Articles 3 and 6.01(a).

PART IV: EVIDENCE AND FACTUAL FINDINGS

The evidence can be broken into two time periods, pre-reorganization and post-reorganization. Within each period, the evidence comes from written job descriptions and from *viva voce* evidence presented by the Union and Employer witnesses.

The evidence is clear and undisputed that Scheduler/Dispatchers, when doing Dispatcher work, did the same work as Dispatchers. Therefore, in my analysis, I have considered the Dispatcher work as done by both Dispatchers and Scheduler/Dispatchers *while doing Dispatcher work*.

1. Pre-Reorganization Work

There are three classifications referenced in Articles 48 and 49 of the Collective Agreement. Those classifications are “Dispatcher”, “Dispatcher/Scheduler” and “Scheduler”.

There are no job descriptions set out within the Collective Agreement. Rather, the Collective Agreement calls for any vacancies in the unionized workforce to be posted, and specifies that the “...Notice of Posting will include the classification and description of the job to be performed, the hours of work, days off and the responsible manager.” (see Article 24.01). These postings are the best source of *objective* evidence for determining the work of the respective Classifications.

There are two sets of duties carried out in the Access-A-Bus Dispatch and Scheduling Division. As the name would suggest, the work is broken into

Dispatching work and Scheduling work. The “Scheduler/Dispatcher” does both sets of duties according to need.

Based solely on the rates of pay, it would appear that the hierarchy in terms of job qualifications and skill sets puts Schedulers at the highest level, followed by Scheduler/Dispatchers, then Dispatchers. The wage differential between Schedulers and Dispatchers is about \$7,000, with Scheduler/Dispatchers falling in between.

(a) Dispatcher -- 2009 Job Description -- Exhibit 5

Upon review of the Dispatcher job description from 2009, the work can be summarized as follows:

- Receiving and processing customer requests (booking trips for customers);

- Receiving and processing customer calls relating to service questions, complaints, fares or service inquiries;

- Communicating with Bus Operators, both in person at Halifax Transit's facility and by radio to Operators of 'in service' busses, mainly to coordinate delivery of services;
- Dispatching Bus Operators according to the schedules and manifests, meaning giving the Operators their instructions and assigning them the appropriate bus;
- Monitoring Bus Operator schedules and locations (to be able to answer customer questions and assist Operators if needed);
- Maintaining data in "run sheets" and other system requirements;
- Dealing with the Spareboard (which is a supply list used to establish the rotation for calling in "spares" to fill in for regular Operators off due to illness, vacations and other absences such as "Off by Permission").

Pre-reorganization, Dispatchers received requests for bookings, changes to bookings and other instructions from clients, then used that information to arrange for the execution of the service delivery by Bus Operators. Along with Schedulers they took customer orders and processed them. Dispatchers were entrusted with seeing that Bus Operators knew what needed to be done. They

monitored the Operators' locations to see that the customers were picked up and delivered as efficiently as possible and presumably to answer questions on timing from customers. That, along with keeping the records for the operations and ensuring the required number of Bus Operators were there and ready to drive (Spareboard), was the essence of the Dispatchers' 2009 job description.

Dispatchers worked alongside Bus Operators and Schedulers and were supervised by the Service Supervisor, Accessible Transit.

(b) Service Supervisor, Accessible Transit -- 2010 Job Description - Exhibit 17

The Service Supervisor, Accessible Transit was a non-union position supervising the Dispatchers and Schedulers and reporting to the Accessible Transit Manager.

The duties were summarized in the job description as "...supervises Access-A-Bus Operators by providing leadership, coaching and mentoring while ensuring efficient safe delivery of specialized transportation to the general public. Manage and deliver on-street transit services by dispatching all work, directing operator activities through Automated Vehicle Location and radio systems...".

The job description contains twenty-two “Duties and Responsibilities”. Relevant to this grievance are the following:

- Resolves conflicts, investigates customer and internal complaints as well as operator behavior;
- Supervises and provides leadership, coaching and mentoring to ensure operators comply with the rules, regulations, Collective Agreement and policies...;
- Takes corrective action...for operators, schedulers, and dispatchers when required;
- Review all operator time cards...and approve them...;
- Conduct investigations...;
- Prepares daily spareboard list for the following day’s work activities;
- Review and approve or deny requests for time off by operators.

(c) Testimony of Ivy Grandy

Ms. Ivy Grandy, who worked for two years as an AAB Scheduler/Dispatcher and has also been an AAB Bus Operator, testified in some detail as to what

Dispatchers, Scheduler/Dispatchers and Schedulers did prior to the reorganization. She described that on some days she would be doing “Scheduler work” and on others “Dispatch work”. Her testimony carefully set out what duties Dispatchers performed before the reorganization.

Ms. Grandy spoke of her firsthand knowledge of the Dispatcher job duties. She presented as a candid and credible witness. Her evidence was clear, well articulated and unchallenged by the Employer through any cross-examination.

Ms. Grandy testified that when serving as the Dispatcher, she arrived at about 4:30 a.m. to start a shift at 5:00 a.m. She would boot up the computer and compare the Scheduler produced, paper based “Manifest” against the computer records in the “Trapeze” scheduling software program. Then, as Bus Operators arrived for their shifts, she would hand out the manifests and thereby, in her words, “dispatch the work”, which is her phrase for the work described in the job description (Exhibit 5) as “Dispatching Bus Operators according to the written schedules...”.

With manifest in hand, the Operators went to their vehicle, did a radio check with the Dispatcher and noted any problems with the vehicle. If substantial defects were found, the Dispatcher would alert maintenance and request a new vehicle for the driver. Otherwise the defect would be marked on the Dispatcher’s worksheet list to be dealt with by maintenance.

When the Operators were on the road providing service to clients, the Dispatcher would maintain open communications – noting any changes in the schedule or in the instructions to the Operators. As well, the Dispatchers provided assistance to Operators in the event of need.

The Dispatcher also had responsibility for updating the Spareboard. When necessary, due to absence, illness or unavailability, the Dispatcher called up the next member listed on the Spareboard to serve. The Dispatcher was responsible for tracking who was “due up” and preparing and updating the Board for the following day depending on who answered the call for “spares”.

Putting the documentary evidence together with that of Ms. Grandy’s subjective evidence provides the basis for determining the nature of the Dispatcher duties prior to reorganization.

2. Post Reorganization:

(a) Job Descriptions -- General

The job description for ATU member Dispatchers did not change. This is so because the Employer transferred all Dispatcher duties elsewhere. The Dispatcher classification still exists, but without anyone filling the role. The

Employer has authority to create new, but not eliminate existing classifications. The transfer of duties within classifications, within limits, is also permitted.

To understand the post-reorganization allocation of the work, it is necessary to examine Exhibits 11, 15, and 20. These three Exhibits were created as a part of the reorganization plan or its implementation and are the documents that assigned duties to various employees, be they unionized or non-unionized.

The Exhibits are:

- > Exhibit 11 – 2014 Job Description Trip Reservationist (ATU);
- > Exhibit 15 – 2015 Job Description Dispatch Supervisor (Non-Union);
- > Exhibit 20 – 2015 Job Description Scheduler (ATU).

(b) Trip Reservationist – 2014 Job Description – Exhibit 11

The relevant element of the Trip Reservationist job description is as follows:

> Communicate all same day service cancellations to AAB Dispatch Supervisors immediately utilizing Trapeze Messaging system for their records and further advisements to in-service AAB Operators;

(c) Dispatch Supervisor – 2015 Job Description – Exhibit 15

Exhibit 15 sets out the duties of the non-unionized Dispatch Supervisors. Specifically, the duties listed are:

- Supervises and provides leadership, coaching and mentoring to bus operators to ensure compliance with the rules, regulation, Collective Agreement and policies and procedures of the organization;
- Dispatches work in a timely fashion to ensure the reliable, efficient and safe delivery of service; manages daily service changes and administers vehicle and operator assignments;
- Compiles Spareboard and arranges vehicles to cover future regular and special event work; reviews and approves or denies requests for time off by Operators;
- Verifies, approves and reconciles Operator time cards for payment prior to forwarding them to Payroll;

- Takes immediate corrective action: including coaching, verbal warnings, rule violations, written warning, suspensions from duty, disciplining, hiring, and terminating when required for operators;
- Conducts investigations by collecting data and preparing reports concerning operator and service related complaints and compliments;
- Promotes a safe work environment;
- Enhances labour relations through teamwork and leadership;
- Works closely with maintenance department to ensure the quota of buses is met each day to ensure on-street service is not compromised;
- Assists and trains new Supervisors in dispatch duties; provides practical training for administrative work and scheduling software;
- Handle confidential information about labour relations;
- Other duties as assigned.

For the Access-A-Bus Dispatch Supervisor, there are four additional duties:

- Administers work using Trapeze scheduling software;

- Issues and adjusts passenger manifests and daily vehicle assignments;
- Coordinates, directs and monitors the operation of in-service busses to maximize schedule effectiveness and efficiency;
- Adjusts, edits and reserves client trips in Trapeze scheduling software.

Upon review of all relevant job descriptions, it is clear that there is different terminology used to mean the same thing. For example, Exhibit 5 (pre-reorganization Dispatcher) uses the language “Dispatch Bus Operators...” whereas Exhibit 15 and Exhibit 17 use the language “Dispatches work...”. All descriptions relate to the assigning of Bus Operators to schedules or manifests. This is an example of the same work described with different vernacular. A reconciliation of language is necessary.

In Table 1 below, the left-hand column provides a detailing of the pre-reorganization Dispatcher work (Exhibit 5) and in the right-hand column sets out where that work was assigned in the relevant Job Descriptions after reorganization (Exhibits 11 and 15).

The highlighted blocks indicate where work listed on the 2009 Dispatcher job description appears in the respective job descriptions assigned to non-ATU

members. The remainder of the work on the Dispatcher job description was assigned to ATU member Trip Reservationists.

This table, along with the testimony of Ms. Grandy relating to the post reorganization duties set out below, provides the basis for the analysis of the work that was ‘taken’ from the ATU and assigned to non-ATU Dispatch Supervisors.

TABLE 1

Exhibit 5 -- 2009 Dispatcher Job Description	Post-Reorganization Assignment
Dealing with Customer Requests; Trip Booking; General Service Inquiry; Questions on Fares and Availability of Services; Issues of Service Standards.	Trip Reservationists (Exhibit 11)
Process Customer Pick Up and Drop Off information to Coordinate Bus Operators Activity	Trip Reservationists (Exhibit 11)
Communications with Bus Operators relating to all aspects of Service Delivery	Dispatch Supervisors (reference bullet 3 in Exhibit 11 – set out above at p. 19)
Dispatching Bus Operators	Dispatch Supervisors (reference bullet 2 in Exhibit 15)
Maintain Master Run Sheets	Trip Reservationists (Exhibit 11)
Monitor Bus Operators (Schedules & Locations)	Dispatch Supervisors (reference bullet 3 AAB list page 2 in Exhibit 15)
Maintain and Keep Client List & Daily Waiting List	Trip Reservationists (Exhibit 11)
Prepare and Maintain Spareboard and Worksheet	Dispatch Supervisor (reference bullet 3 Exhibit 15)
Other Duties as Assigned	

(d) Witness Testimony

Viva Voce evidence for the post-reorganization duties comes from Ms. Grandy, Mr. Ken Wilson, President of Local 508, and Mr. Glen Bannon, Manager, Transit Operations, Halifax Transit.

(i) Testimony of Ken Wilson

Mr. Ken Wilson is the President of Local 508 of the Amalgamated Transit Union. His testimony provided the background to the grievance, how and why it arose. He offered some evidence in respect to the work of Dispatchers and Schedulers. His evidence in respect to the Dispatcher role was sincerely given, but not a great deal of help in trying to discern the roles of Dispatchers and Dispatcher Supervisors.

I afford little weight to his testimony *on the nature of the duties*. When Mr. Wilson was examined on the nature of the work and asked to contrast it with the practice, he used words such as “I assume...” and “I believe”. He used the phrases “no idea” and “not sure...” in respect to certain aspects of the Dispatcher’s duties.

This is not meant as a criticism of Mr. Wilson's testimony, but simply a recognition that he was not the best placed witness to testify as to the duties.

Mr. Wilson did provide helpful information as to the background and the documents which were entered as exhibits. He is very knowledgeable as to the terms of the Collective Agreement and on those related points, his evidence was helpful in 'setting the stage.'

(ii) Testimony of Ivy Grandy

As noted in Table 2, below at p. 31, the Union did lay claim to some work in the Dispatch Supervisor job description. This came by way of the testimony of Ms. Ivy Grandy.

Union counsel took Ms. Grandy through the July 2015 job description for the Dispatch Supervisor (Exhibit 15). Ms. Grandy testified that as a Dispatcher she had performed duties not assigned in her job description, but that are now included in the Dispatch Supervisor's job description.

Ms. Grandy did confirm that of the sixteen items on the Job Description and listed in Table 2, she did most or all of eleven items, part of two, and none of

two. The sixteenth, “other duties as assigned” was on her job description also, but she wasn’t sure what these other duties might be.

In addition to her testimony set out in the pre-reorganization section above, she testified that at the end of the Operators’ shifts, the Dispatcher collected their manifests, taking any advice or guidance from Operators on the clients’ needs, and reviewed and submitted the Operators’ time cards to the payroll office.

Ms. Grandy further testified that she did record absences for illnesses, off by permissions, and other absences as well as late arrivals. She indicated that she had some limited authority to approve the “off by permission” absences. She also had some responsibility to ‘sit’ operators that were not abiding by the rules, for example, if they were improperly outfitted, late, or as she described it “overly celebrating” the night before. She confirmed that “sitting” an Operator was her role, but the imposition of discipline came later when one of the supervisors arrived.

Ms. Grandy testified that she did offer “advice” to Operators in the form of coaching. She also gave verbal warnings – for example, advising what might happen to someone if they didn’t correct a specific behaviour. She did not provide any written warnings, suspensions, discipline, nor did she hire or fire anyone.

She did gather information for supervisory personnel. Usually that would take the form of a 'daily report'. The report might mention "off by permissions", "lates" and other infractions of the rules or Collective Agreement.

Ms. Grandy's testimony was even-handed. When she didn't lay claim to work or where the work was only incidental to her principal duties, she said so. Generally, I found her testimony reflective of the work she performed. Her testimony in relation to coaching, giving advice, and providing warnings was not reflective of those tasks as "duties", but more akin to a colleague giving unsolicited or helpful advice to another colleague.

Her testimony as to the gathering of information for supervisory personnel would not qualify as "conducting investigations" in the sense it is used in Exhibit 15 or Exhibit 17. She acknowledged she had no delegated disciplinary authority.

Subject to the caveat in the preceding paragraph, I accept her evidence as an accurate reflection of what work was being done by Dispatchers that was now included in the Dispatch Supervisor's job description at Exhibit 15.

That is not to say that all the duties in Ms. Grandy's listing were *assigned duties* of the Dispatcher based on the job description, but rather an indication that they were things *she did as a Dispatcher*. I accept that she did do the

tasks she mentioned. The distinction between “assigned duties” and things Ms. Grandy “did as a Dispatcher” is important. Assigned duties are “work covered by classifications in this Agreement”, whereas “things she did” are not.

(iii) Testimony of Glen Bannon

Mr. Bannon was the sole witness called by the Employer. Mr. Bannon, as Manager, Transit Operations, Halifax Transit, had responsibility for both Conventional and AAB Transit operations. He is the architect of the reorganization plan and had the responsibility for its implementation.

He presented as a clear, articulate witness. He described his background in the Canadian Navy and this background was evident in the manner he provided his testimony. Not unlike Ms. Grandy, he was precise, and acknowledged the weaknesses in his testimony. His evidence was thoughtful and credible.

He described the pre-reorganization managerial structure in some detail, identifying the number of supervisory staff and their respective functions, both in Conventional and AAB services.

In Conventional services, the Dispatcher function was and continues to be non-union and supervisory over the Conventional Bus Operators.

With reference to pre-reorganization job descriptions, Exhibits 16 (2012 job description for Service Supervisors) and Exhibit 17 (2010 job description for Service Supervisor, Accessible Transit), Mr. Bannon explained why he believed the AAB organizational structure was less than ideal.

Mr. Bannon explained that in his observations, AAB Dispatchers had too many demands on their time and also had duties that they didn't have authority to carry out. They were tasked to answer calls from Bus Operators and at the same time deal with incoming calls from customers for service changes to that day's schedule. Furthermore, as there was only one "Service Supervisor Accessible Transit" there was insufficient supervisory coverage. Mr. Bannon explained the Service Supervisor Accessible Transit was on duty only 40 hours a week, Monday to Friday, while the service was operating up to 18 or 20 hours a day, seven days a week.

He described the process he followed coming to his view that the reorganization was necessary. Early in his role as Manager, Transit Operations, Mr. Bannon studied what each member of the service delivery team was doing and why. Through his analysis, he determined what each member "should and shouldn't" be doing. He looked at what he described as "repeatable tasks" and believed that consolidating those tasks within classifications would be efficient and reduce costly human errors. It was his belief that providing for

specialization of supervisory staff along functional lines would increase efficiency and effectiveness, which would, in turn, improve quality of working conditions.

That analysis formed the background data for his reorganization plan.

The plan was premised on his conclusion that Supervisors should be specialists, not generalists. He set up the plan to recruit, train and implement specialist supervisors along the three functional lines: Dispatch, Communications, and Mobile (meaning on the road supervisors).

Mr. Bannon testified that the result would maintain the number of unionized employees and reduce non-union employees by two. The Employer claimed that retaining the number of employees in the Union is evidence of its good faith.

In cross-examination, Mr. Bannon acknowledged that some work formerly undertaken by ATU Dispatchers was transferred to non-union Dispatch Supervisors. He acknowledged that “assigning work”, and “communications with in-service operators” had been so transferred. Responsibility for Manifests, Time Cards, and taking fares had also been transferred. He testified that drawing up the Spareboard, while not *fully* an ATU Dispatcher job prior to the reorganization, now falls to Dispatch Supervisors. There was evidence that

“Service Supervisor, Accessible Transit” had some responsibility for the Spareboard. (See Exhibit 17, p. 2).

This transfer of work, in Mr. Bannon’s mind, was not a violation of Article 6.01(a). His rationale was that the new Dispatch Supervisor role was a ‘specialized skill’, not found within the bargaining unit because the skills are “associated with supervisory and leadership functions.” The argument is that to do the job, there was a requirement for authority not found in or available within the bargaining unit.

Mr. Bannon described that there were duties assigned to Dispatchers that required managerial authority, for example one ATU member telling another what to do, resulted in “enforcement problems”, and that provided another rationale for the reorganization.

Mr. Bannon did acknowledge that the new Dispatch Supervisor was responsible for some of the former bargaining unit work, but with an added supervisory role. Thus, he testified, the Employer has the right to transfer the work as part of the general powers to manage the enterprise.

PART V: THE ANALYSIS

Based on the job descriptions and the evidence of the three witnesses, the following Table 2 sets out the work assigned to Dispatch Supervisors and the ATU's claims to that work. The highlighted blocks in Table 2 denote areas where the ATU claims non-ATU employees are doing Dispatcher work.

TABLE 2

	Job Description Dispatch Supervisor - Exhibit 15	Nature of ATU Claim on Work
1	Supervises & Provides Leadership, Coaching, Mentoring to Bus Operators (Compliance – Rules, Regs, CA etc)	No Claim beyond only a passing involvement as a result of other ATU Dispatcher responsibilities (for example information on pay and Drivers' License master numbers)
2	Dispatches work in a timely manner· Manages daily service Changes and administers vehicle and operator assignments	Claim arises from Exhibit 5 bullet 4 -- Dispatches Bus Operators
3	Compiles Spareboard:	Claim arises from Exhibit 5 bullet 8 – Prepare and maintain daily spareboard list
	> Arranges Vehicles to cover future regular and Special Events	(See also Exhibit 17 wherein spareboard list was also assigned to Service Supervisors Accessible Transit)
	> Reviews & Approves or Denies Time off Requests from Operators	Work partially claimed by Ivy Grandy who testified that she approved “Off by Permission” absences in certain circumstances.
4	Verifies, Approves and Reconciles Time Cards	Claim from Ivy Grandy that ATU Dispatchers did this work (See also Exhibit 17)

5	Takes Immediate Corrective Action:	Claimed in part as a non-disciplinary measure as noted below
	> Coaching	Yes, also assigned by Exhibit 17
	> Verbal Warnings	Yes, also assigned by Exhibit 17
	> Rule Violations	Yes, also assigned by Exhibit 17
	> Written Warnings	No
	> Suspension	No
	> Disciplining	No
	> Hiring and Termination	No
6	Collecting Data and preparing reports on Operator and Service related Complaints and Compliments	Claimed through Ivy Grandy – she testified that she gathered information and put into reports for the purposes of Employer investigations (See assignment in Exhibit 17)
7	Promotes Safe Work Environment	As provided for in the Occupational Health and Safety Act’s “Internal Responsibility System” this is everyone’s work
8	Enhances Labour Relations through Leadership and Teamwork	Not claimed
9	Work with Maintenance to ensure busses ready	Partial claim based on testimony of Ivy Grandy
10	Assists and Trains New Dispatch Supervisors	No Claim except as passing involvement arising from other duties
11	Handle confidential Information about Labour Relations	No Claim beyond passing involvement arising from other duties
12	Administers work using Trapeze	Claimed as part of Exhibit 5 bullet 1 or 4
13	Issues and Adjusts Passenger manifests and daily vehicle assignments	Claimed as Dispatch work Exhibit 5 bullet 4
14	(Coordinates, directs and) monitors In-Service Bus (to maximize efficiency)	Claimed by ATU as Exhibit 5 bullet 6 – Monitors Bus Operators (See also assignment in Exhibit 17)
15	Adjusts, edits and reserves Client Trips (in Trapeze)	Claimed arises from Exhibit 5 bullet 1 – Processes customer pick-up and drop off
16	Other duties as assigned	No Claim

1. Employer's Position

The Employer's argument is that where the work is supervisory in nature, the Employer has the right to move work from the Union to the Management (non-Union) workforce pursuant to the Management Rights clause of the Collective Agreement, so long as they act in good faith.

They say Management retains all rights to manage the workplace, subject to the Collective Agreement, legislative restrictions and rights to which they are estopped from exercising, and subject to a duty to act fairly and not undermine the integrity of the bargaining unit.

The Employer points to the evidence of Mr. Bannon to demonstrate both its *bona fides* and the supervisory nature of the work. They say that the plan was to enhance the work of the unionized employees by removing the competing demands on Dispatchers' time and also by removing some of the stress of monitoring their unionized colleagues. The goal was also to create a more efficient process for the Employer wherein Conventional and AAB dispatch operations would be coordinated, specialized and harmonized.

2. Union's Position

The Union accepts it was permissible for the Employer to create the new classification of Trip Reservationists. They did not take issue with the work assigned to the Trip Reservationists as set out in Exhibit 11, the Trip Reservationists' job description. Nor did they argue that the Employer couldn't or shouldn't create a Dispatcher Supervisor role and that that role be outside of the Union.

However, the Union did take issue in the assignment of union work to the non-unionized employees as described in Exhibit 15, the Dispatch Supervisors' job description. The Union argues that in the Collective Agreement the Employer has bargained away some of its rights with respect to the movement of such work [Article 6.01(a)].

3. Consideration of the Parties' positions

(a) Management Rights Argument

It is difficult to fault Mr. Bannon's reasoning for the reorganization. There is a rational basis for the decisions that he and his team made.

The Employer argues Management Rights permit the transfer of work.

It is well established by Arbitrators and Courts alike, as observed by Brown & Beatty, that Management "... is free to do as it sees fit subject to any express terms [of the Collective Agreement] providing otherwise, or legislative restrictions, and subject to any estoppel which may arise, or any duty to act fairly, and in a manner which does not jeopardize the integrity of the bargaining unit." (Brown & Beatty: *Canadian Labour Arbitration* at 4:2310)

In this Collective Agreement, the Union and the Employer have bargained for express restrictions on the Employer's management rights to permit work covered by "classifications in this agreement" to be carried out by employees outside of the bargaining unit. Article 6.01 lists the exceptions, namely instruction, emergency, and special skills, which by agreement of the Employer are not applicable to this grievance. This management right has been surrendered by the Employer upon entering into the Collective Agreement.

The Employer cited the arbitration award of Gregory North (as upheld by the Supreme Court of Nova Scotia) in *CUPE v. Cape Breton (Regional Municipality)*, 2003 CarswellNS 667, 76 C.L.A.S. 231 in support of their argument that the Management Rights clause provide authority for the Employer to reorganize, provided the actions are taken in good faith and not meant to undermine the integrity of the Union.

I accept the evidence of Mr. Glen Bannon, noted above, that there was no intent to undermine the integrity of the Union. However, in this grievance there is a clear, well articulated provision in the Collective Agreement that precludes the Employer from permitting bargaining unit work to be done by non-bargaining unit employees, good faith or not.

In *CUPE v. CBRM*, Arbitrator North found that the work covered by the union classification had become redundant and their collective agreement allowed for elimination of classifications in such circumstances. That is not the case in this grievance.

The evidence is clear and unambiguous that Article 6.01(a) precludes the Employer from using the management rights clause to shift work from ATU classifications to non-ATU employees. Any other conclusion would require re-writing the Collective Agreement.

Nevertheless, the result of Mr. Bannon's reorganization was that listed duties of the Dispatcher, therefore "Union work" as Mr. Wilson described it, was included in the duties transferred to "employees outside of the bargaining unit".

By Mr. Bannon's own admission the Employer did move work from the ATU to non-bargaining unit employees. I need not repeat his view as why this is permissible. It is not, at least to the extent that it is expressly ATU work.

(b) Trip Reservationist Duties

By and large, the duties of the Trip Reservationist are duties formerly of the Dispatcher and the Scheduler. The duties involve taking calls from clients of the AAB service, determining needs, and providing eligibility information. The Trip Reservationists also have responsibility to maintain the database and files.

Transfer of Dispatcher duties to Trip Reservationists is within the authority of the Employer. This authority is subject to agreement on the wages and conditions (See Article 11.05 as this is the only condition for creation of new classifications). Wages and conditions were withdrawn from this grievance by agreement of the Union and the Employer.

(c) "Other" Dispatcher Duties

Most of the duties formerly carried out by unionized Dispatchers are listed on the 2009 job descriptions. Other duties, however, were not listed. For

instance, nowhere in Exhibit 5 are Dispatchers assigned duties around collection of fares, time cards, or given power to approve absences or to sit Bus Operators. While arguably these duties may fall within “other duties assigned”, there is no evidence of any such assignments. Furthermore, if assigned, absent some argument otherwise – which I did not hear, the power of assignment would include a power to “un-assign”.

Those *other duties* noted by Ms. Grandy (except collection of fares) have been specifically assigned to the Service Supervisor, Accessible Transit (Exhibit 17) in one form or another since 2010 and, I find, are assignable to Dispatch Supervisors consistent with the Management Rights Article.

I find that these activities which were at best incidental or ancillary to Dispatcher duties and which do not form part of the Dispatcher job description are properly transferred to Dispatch Supervisors. These are management roles. Included in this category are:

- Supervision of, coaching and warning Operators (including Trip Reservationists and Schedulers) and taking corrective actions;

- Gathering Confidential Information and providing reports for investigative purposes;

- Review and approve time cards;

- Authority to grant time-off and the “Off by Permission”;

- Training.

This grouping of duties is properly within the powers of the Employer to assign to supervisory personnel, to employees with disciplinary authority. It also includes duties appropriately assigned to Dispatch Supervisors because they were formerly assigned to the Service Supervisor, Accessible Transit, by Exhibit 17, (see Table 2 above).

(d) Listed Dispatcher Duties

To the extent that duties *listed on the job description* of Dispatchers have been assigned to Dispatch Supervisors, there is a transfer of work to “employee(s) outside of the bargaining unit” contrary to Article 6.01(a).

I therefore conclude that the following duties transferred to the Dispatch Supervisors on the reorganization plan and listed in the 2009 Dispatcher job descriptions were transferred contrary to Article 6.01(a):

- Dispatching the Work;
- Communications with Bus Operators to deal with changes in schedule, traffic conditions, emergency situations, etc.;
- Preparing and maintaining the daily Spareboard;
- Monitoring Operator schedules and locations,

and the four additional duties listed for those Dispatch Supervisors “if assigned to Access-A-Bus”:

- Administers work using Trapeze scheduling software (see Scheduler Exhibit 20);
- Issues and adjusts passenger manifests and daily vehicle assignments (see Dispatcher Exhibit 5);
- Coordinates, directs and monitors the operation of in-service buses to maximize schedule effectiveness and efficiency (see Dispatcher Exhibit 5);
- Adjusts, edits and reserves client trips in Trapeze scheduling software (see Trip Reservationist Exhibit 11 and AAB Scheduler Exhibit 20).

I am not persuaded by the Employer's argument that these specific Dispatcher duties listed in the 2009 Dispatcher job description and transferred to Dispatch Supervisors, are such that they require special skills that Dispatchers did not already have. While the Dispatchers were not cloaked with managerial authority, they did have a mechanism for ensuring the work got done, by "sitting" an Operator until a Supervisor arrived.

The Employer cannot assign duties that were listed in the job description of the "Dispatcher" to "Dispatch Supervisor" without agreement of the ATU or by other lawful means.

In the absence of my finding any reservation of Management Rights to unilaterally transfer work from unionized employees to non-unionized employees, the conclusion is unescapable; the Employer may not transfer ATU "work" to non-ATU employees.

PART VI: CONCLUSION

I am satisfied that through its reorganization of AAB Dispatch duties, the Employer unilaterally and contrary to Article 6.01(a) of the Collective

Agreement transferred some of the ATU Dispatcher duties to non-ATU employees. The Employer may not rely on its management rights to do so, even if exercised in good faith, as they bargained those rights away in the Collective Bargaining process as clearly provided for in Article 6.01.

The grievance is allowed to the extent that the identified Dispatcher duties *listed in the 2009 job description* were transferred to non-ATU employees.

In particular, and for greater certainty, I find that the following duties were improperly transferred to Dispatch Supervisors:

- Dispatching the Work;
- Communications with Bus Operators to deal with changes in schedule, traffic conditions, emergency situations, etc. (The Trip Reservationist's job description which states: Communicate... service cancellations to *AAB Dispatch Supervisors*);
- Preparing and maintaining the daily Spareboard;
- Monitoring Operator schedules and locations;
- Administers work using Trapeze scheduling software;

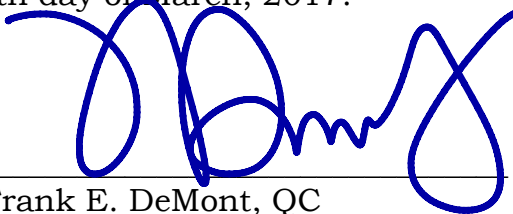
- Issues and adjusts passenger manifests and daily vehicle assignments;
- Coordinates, directs and monitors the operation of in-service buses to maximize schedule effectiveness and efficiency;
- Adjusts, edits and reserves client trips in Trapeze scheduling software.

Having made the above findings I direct the Employer to transfer the duties listed in the preceding paragraphs back to ATU members within 60 days of the publication of this Award.

I will retain jurisdiction in the event the parties encounter difficulty in implementation or require clarification of this award.

I so Order.

DATED at New Glasgow, Nova Scotia, this 9th day of March, 2017.



Frank E. DeMont, QC

Appendix "A" -- Exhibit List

Exhibit Number	Description	Party Entering Exhibit
1.	Grievance Form	Union
2.	Collective Agreement	By Agreement
3.	Labour Relations Board Order 1	Union
4.	Labour Relations Board Order 2	Union
5.	2009 Dispatch Competition	Union
6.	2009 Scheduler/Dispatch Competition	Union
7.	2014 12 10 Letter Brannon to Wilson	Union
8.	2014 12 11 Email Wilson to Bannon with attached Letter	Union
9.	2014 12 11 A Kidwai Memo to ATU Dispatch and Scheduling Staff	Union
10.	2014 12 17 Letter Wilson to ATU Membership	
11.	2014 06 Trip Reservationist Job Description	Union
12.	2014 12 16 Dispatch Supervisor Job Posting (2 Positions)	Union
13.	Comparison Document 2009 Dispatcher vs. 2016 Dispatch Supervisor	Union
14.	CSR Job Description (NSUPE)	Union
15.	2015 Job Description Dispatch Supervisor	Employer
16.	2012 Job Description Service Supervisor (Conventional)	Employer

17.	2010 01 27 Job Description Service Supervisor (AAB)	Employer
18.	Service Supervisor Reorganization Business Case	Employer ✓
19.	Business Case Form	✓
20.	2015 Job Description Scheduler AAB	✓