Dear members of Unifor ACL,

We would like to inform you that we have obtained a decision from an arbitrator that was favourable to the union's position regarding the situation created by the company on the access and purchase of Safety shoes (see attachment).

We have now advised the company that the execution of the resolution of the grievances needs to be processed. In other words, reimbursement of purchased footwear needs to be paid and denial of footwear needs to be reversed.

For members who have filed a grievance, please consult with your shop stewards.

In solidarity,

Roch Leblanc
Telecommunications Director | Directeur des Télécommunications
UNIFOR

IN THE MATTER OF THE *CANADA LABOUR CODE*

AND IN THE MATTER OF AN ARBITRATION

BETWEEN

UNIFOR LOCAL 506

the Union

-and-

BELL CANADA,

the Employer

FOOTWEAR POLICY GRIEVANCE

For the Employer: Jack Graham, K.C., McInnis Cooper
For the Union: Brenda Comeau, Pink Larkin

Arbitrator: Elizabeth MacPherson
Date of Hearing: February 15 and 16, 2024
Date of Decision: February 26, 2024

Background and Facts

1. On November 1, 2021, Unifor Local 506 (Unifor 506 or the Union) filed a policy grievance alleging that Bell Canada (Bell or the Employer) was in breach of Articles 3 and 10.08 of the parties' collective agreement. The grievance was denied by the Employer at Step 3 of the grievance procedure on January 20, 2022.

2. Three related individual grievances were resolved by the parties in June 2022, but settlement discussions related to the policy grievance were unsuccessful. The policy grievance was therefore referred to arbitration before the undersigned. A virtual arbitration hearing using the Zoom platform was held on February 15 and 16, 2024.

3. The policy grievance relates to the interpretation to be given to Article 10.08 of the collective agreement. Subsequent to the filing of the grievance, the parties renegotiated their collective agreement and this article was renumbered as Article 10.09. However, the language remained unchanged and reads as follows:

> 10.08 All employees must wear protective footwear where there is a hazard of a foot injury or an electric shock. Where protective footwear is required, the Company agrees to pay

(with receipt) the actual cost of the footwear up to the following maximum levels of reimbursement:
(a) Four hundred dollars ($400.00) every two (2) years for Line Boots (for employees who regularly climb)
(b) Two hundred and fifty dollars ($250.00) for Safety Boots every two (2) years
(c) Two hundred dollars ($200) for Safety Shoes every two (2) years
(d) One hundred and sixty dollars ($160.00) for Rubber Boots (Line & Splicing) every two (2) years.

An additional forty dollars ($40.00) may be made available, at the discretion of the manager, for employees who justify the need for fully waterproof protective footwear.

4. Two types of protective footwear are at issue in this grievance: safety boots and safety shoes. Article 10.08 must be read in conjunction with an Accident Prevention Process (APP 104) promulgated by the Employer, which sets out the requirements for each type of footwear and the conditions under which each type is to be worn. APP 104 applies to all Bell employees nationwide.

5. APP 104 provides that employees must wear protective boots when their toes, the soles of their feet and ankles require protection. It mandates that safety boots must be worn for the following types of activities:
    - Construction work
    - Rough terrain
    - Ladders with rungs
    - Climbing poles
    - Entering, exiting and working in confined spaces
    - Conditions identified by local management and accepted by the Occupational Health and Safety group.

    These activities will be collectively referred to in this decision as “outdoor” work. Generally, outdoor work requires the wearing of safety boots.

6. APP 104 provides that safety shoes can be worn when toe protection is required, but sole and ankle protection and support are not. Safety shoes are normally adequate for indoor work although it is recognized that there are times when safety boots are required for indoor work (for example, installation of equipment within a residence or building that is under construction).

7. Article 10.08 of the collective agreement and APP 104 apply to all members of the union’s bargaining unit (which consists of some 40 classifications) but are particularly relevant to the 800 employees in Atlantic Canada who work as Customer Service Technicians (CSTs) or Business Service Technicians (BSTs). CSTs install and repair equipment in a residential context while the BSTs support business applications.

8. The parties’ evidence indicates that they agree that a majority of BSTs and CSTs are required to work both indoors and outdoors in the course of performing their duties. Both parties’ witnesses indicated that the amount of indoor and outdoor

work to which a technician may be assigned is relatively equal. Some estimated 50/50 while another estimated 70/30. One of the Union's witnesses testified that, given the nature of his job, he is able to wear safety shoes 95% of the time. The Employer's witness indicated that this is rare and that most BST and CST jobs require safety boots at least half of the time.

Positions of the Parties

9. The Union explains that, until recently, BSTs and CSTs were reimbursed for the cost of both safety boots and safety shoes in accordance with Article 10.08, because they perform work outdoors and indoors. The union called four witnesses, Sandy Brideau, Pierre Levesque, Eric Morais and Jean Claude Gaudet, who all testified that, in the course of their careers as technicians, they had consistently been reimbursed for both boots and shoes until the Employer changed its policy in February 2021 and subsequently refused to reimburse them for the cost of safety shoes that they had purchased.

10. The Union argues that Article 10.08 is clear: where protective footwear is required, the employer has agreed to reimburse the cost of the required footwear to the maximums specified. APP 104 provides that safety boots are required for outdoor work and safety shoes are all that are required for most indoor work. It submits that the employer is attempting to limit its obligation under Article 10.08 by taking the position that BSTs and CSTs only require safety boots.

11. The Union admits that the Employer has the right to develop and amend the APPs. However, it points out that APP 104 specifies circumstances in which safety boots are required and those in which safety shoes are necessary. It submits that Article 10.08 specifically provides for reimbursement of the cost of safety shoes for use in situations where safety boots are not required.

12. The Employer argues that the purpose of Article 10 is safety. Only when a particular type of footwear is required for safety reasons does the employer have an obligation to reimburse the specified amount towards the cost of that footwear. In the Employer's view, safety boots meet all of the requirements for both indoor and outdoor work and therefore the Employer is only obliged to provide reimbursement for the cost of safety boots.

13. In the Employer's submission, it is the company and not the employee who decides what footwear is required. While an employee may prefer to wear safety shoes when working indoors, that preference is for reasons of comfort, not safety. According to the Employer, safety shoes are not required when safety boots are provided to the employee. In other words, the Employer's position is that safety boots can always meet the requirements of both outdoor and outdoor work, but safety shoes cannot. Accordingly, it is sufficient that the Employer reimburse the cost of safety boots and it is not obligated by Article 10.08 to

reimburse the cost of safety shoes as well. The Employer submits that the details about the use of safety shoes that is provided in APP 104 applies to classifications other than BSTs and CSTs.

14. The employer points out that the technicians who testified for the Union all work in New Brunswick. The evidence provided by the Employer's witness, Dana Lones, who is the Director of Field Operations for Atlantic Canada, was that at the time he assumed his position, there were inconsistencies in the approval process across Atlantic Canada and that he introduced a revised reimbursement policy to achieve a consistent approach.

Analysis and Decision

15. The principles of contract interpretation are well established. As summarized in Brown & Beatty, *Canadian Labour Arbitration*, 5th ed. at III Interpretation of Collective Agreements, B The Object of Construction: Intention of the Parties, § 4:20 Introduction (footnotes omitted):

> It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it.[1] As one arbitrator, quoting from Halsbury's Laws of England, stated in an early award:
>
> > The object of all interpretation of a written instrument is to discover the intention of the author, the written declaration of whose mind it is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as is possible, and as the law will permit.
>
> And further:
>
> > But the intention must be gathered from the written instrument. The function of the Court is to ascertain what the parties meant by the words they have used; to declare the meaning of what is written in the instrument, not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent to the intention.[2]
>
> A more recent articulation of the proper approach has been as follows:
>
> > The modern Canadian approach to interpreting agreements (including collective agreements) and legislation is encompassed by the modern principle of interpretation which, for collective agreements, is:
> >
> > > In the interpretation of collective agreements, their words must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object and the intention of the parties.[3]
>
> And, in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions.[4] Thus, where the parties had detailed in the collective

agreement specific elements of management rights, without limitation as to the manner in which they would be applied, an arbitrator was held to have erred in implying that those rights were to be exercised fairly and without discrimination, although this view has, more recently, been supplanted by the Supreme Court when it recognized a general organizing principle of good faith in contractual performance and, as a result a duty to act honestly in the performance of all contractual obligations.[5] Generally, however, the implication of a specific term into a collective agreement is limited to situations where it is necessary, on occasion, to give effect to the collective agreement and where both parties would without hesitation have agreed to its insertion.[6] But where a collective agreement is silent on an issue, yet a legislative provision is presumed to be incorporated and must be applied by the arbitrator, such a provision "must be interpreted on its own terms and not in light of the understandings of the parties".[7]

In any event, when faced with a choice between two linguistically permissible interpretations, arbitrators have been guided by the purpose of the particular provision,[8] the reasonableness of each possible interpretation,[9] administrative feasibility,[10] and whether one of the possible interpretations would give rise to anomalies.

(emphasis added)

16. What was the intent of the parties when they negotiated Article 10.08 of the collective agreement? It would appear that the provision has two purposes. The first is a safety purpose, namely to incorporate into the collective agreement the requirement that employees wear protective footwear in certain circumstances, as determined by the Employer. The second is an economic purpose, namely to ensure that employees do not have to bear the entire cost of complying with the safety purpose that the Employer has established.

17. The parties agree that the requirement for protective footwear is established by the Employer in APP 104 and that the Employer has the right to amend this APP without consulting the Union.

18. The current version of APP 104 is clear as to where safety boots are required. It states that employees must wear safety boots for construction work; rough terrain; ladders with rungs; climbing poles; entering, exiting and working in confined spaces and conditions identified by local management and accepted by the Occupational Health and Safety group. Employees are instructed to wear safety boots when their toes, the soles of their feet and ankles require protection.

19. APP 104 also specifies where safety shoes are required. Employees are instructed to wear protective shoes when toe protection is required, but sole and ankle protection and support are not. Examples provided are handling tools, materials in warehouses, shops, loading docks; vehicle maintenance (mechanics); public telephone repairs, counting and handling coins; and installing and rearranging telephone equipment in offices.

20. The pre-condition to entitlement to reimbursement for safety footwear under Article 10.08 is that the footwear be required by the Employer. APP 104 sets out the circumstances in which each type of footwear is required. Employees are required by APP 104 to wear safety shoes for the types of indoor work identified in the

document. However, APP 104 does not contain any express provision stating that safety boots are required for indoor work. In other words, an employee may wear safety boots to perform indoor work but is not required to do so.

21. The Employer's interpretation of Article 10.08 would result in a situation in which an employee who has safety boots must wear them all of the time (i.e., while working both outdoors and indoors) and would never qualify for reimbursement for the cost of safety shoes.

22. The Employer's interpretation runs counter to the economic purpose of Article 10.08. The evidence provided indicates that safety boots wear out more quickly when they are worn all the time, particularly if the employee is frequently required to climb poles. The parties agree that approximately one-half of a technician's time is spent doing indoor work that only requires the type of protection provided by safety shoes. To oblige a technician to wear safety boots for work that does not require the degree of protection provided by such boots runs the risk of causing the boots to wear out before the employee would be entitled to reimbursement for the cost of replacement boots. In other words, an employee would be required to bear the full cost of replacement safety boots if his/her boots wear out before the two-year time limit has elapsed.

23. To achieve the Employer's desired interpretation of Article 10.08, I would have to read subparagraph (c) of the Article to include the words "provided the employee does not have safety boots". Article 16.07 of the parties' collective agreement expressly provides that an arbitrator does not have the power to amend, cancel or add to the terms of the agreement. Consequently, I am prevented from adopting the Employer's interpretation of Article 10.08.

24. No evidence was presented as to the history of Article 10.08 or how it has been interpreted and applied in the Atlantic provinces other than New Brunswick. However, given the analysis set out above, it is not necessary to rely on past practice in reaching the conclusion that the Employer's interpretation of Article 10.08 cannot be sustained.

The Union's policy grievance is consequently allowed.

DATED at Kemptville, Ontario, this 26th day of February, 2024.

Elizabeth MacPherson
Arbitrator