

# KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 61**

Date: **2025 05 05**  
File No.: KBG-RG-02888-2022  
Judicial Centre: Regina

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BETWEEN:

SASKATCHEWAN TELECOMMUNICATIONS

APPLICANT

- and -

UNIFOR, LOCALS 1S AND 2S

RESPONDENTS

- and -

THE HONOURABLE TED ZARZECZNY, K.C., sitting as an Arbitrator  
pursuant to a Collective Agreement and the *Canada Labour Code, Part I*

RESPONDENT

**Counsel:**

Susan Barber, K.C. and Calen Nixon for the applicant  
Andrea Johnson for the respondents, Unifor, Locals 1S and 2S  
No one appearing for the respondent, The Honourable Ted Zarzeczny, K.C.

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JUDGMENT

BERGBUSCH J.

May 5, 2025

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## I. INTRODUCTION

[1] This dispute concerns the interpretation of a provision in a Collective Agreement [Collective Agreement] between Saskatchewan Telecommunications [SaskTel] and Unifor, Locals 1-S and 2-S [Union].

[2] The provision authorizes SaskTel to declare redundant employment

positions surplus and to permanently transfer affected employees to other, vacant positions. These involuntary transfers permit SaskTel to redeploy employees while avoiding layoffs. As SaskTel has interpreted and applied the surplus declarations provision in the Collective Agreement for several decades, affected employees' "bumping rights" are exercisable only within a limited subgroup of employees holding similar positions or fulfilling similar functions. From SaskTel's perspective, its interpretation and application of the provision aligns with its management rights and minimizes the disruption from employee redeployment. For the Union, SaskTel's interpretation improperly restricts seniority rights by limiting the group of employees subject to bumping.

[3] This disagreement resulted in the Union filing a grievance on October 6, 2020, challenging SaskTel's "continuing the use of bracketed names behind Job Classifications when declaring surplus, contrary to the letter of Estoppel issued January 29, 2019 as part of the bargaining process." [Grievance]

[4] The Honourable Ted Zarzeczny, K.C., was appointed to hear the arbitration of the Grievance as a single-person arbitration board [Arbitrator]. In his decision dated May 17, 2022 (*Unifor, Locals 1-S and 2-S v Saskatchewan Telecommunications* (17 May 2022), Regina, SC-2020-05 (Sask LA) [*Decision*]), the Arbitrator concluded that the term "classification" as used in Section 1, Article 11, Clause 2 [Article 11(2)] of the Collective Agreement is not ambiguous and is capable of only one interpretation. He upheld the Grievance, finding that SaskTel must, in interpreting and applying Article 11(2) in circumstances of surplus declarations or involuntary transfer, recognize the seniority rights of all affected employees in the "classification", without additional "bracketed" qualifiers. He further held that, in the affected location, bumping and other seniority rights are exercisable throughout the classification.

[5] SaskTel has applied to quash or set aside the *Decision*, contending that it is unreasonable on numerous grounds. The Union objects to the judicial review application on the ground that it was not initiated in a timely manner and submits, in any event, that the *Decision* is reasonable and should be upheld. SaskTel also objects to portions of an affidavit filed by the Union in response to the application.

[6] The issues to be decided are the following:

- (a) Should SaskTel's judicial review application be dismissed because of undue delay?
- (b) Should portions of the Affidavit of Dave Kuntz [Kuntz Affidavit] be struck or disregarded?
- (c) Was the Arbitrator's interpretation of the contractual provision unreasonable?
- (d) Was the Arbitrator's decision that the estoppel notice brought the Union's acquiescence to an end unreasonable?

SaskTel's application raises several sub-issues concerning the principles for interpreting collective agreements and the Arbitrator's identification and application of same.

[7] For the reasons that follow, I have concluded that SaskTel's application was brought in time. A portion of the Kuntz Affidavit that contains opinion or argument is struck. Finally, having regard for the applicable standard of review, the *Decision* is reasonable and SaskTel's application is dismissed.

## II. BACKGROUND

### A. The Collective Agreement

[8] SaskTel has been a unionized employer for more than 70 years. During that lengthy period, SaskTel and unions representing SaskTel's in-scope employees have negotiated successive collective agreements. Since 2013, Unifor, Locals 1-S and 2-S has represented roughly 2,600 in-scope employees employed by SaskTel.

[9] The relevant Collective Agreement is dated November 15, 2019, and covers the period March 17, 2019, to March 16, 2024. The agreement is organized into five broad sections: Section 1 – General, Section 2 – Craft, Section 3 – Clerical and Administrative Staff, Section 4 – Systems Staff, and Section 5 – Wage Schedules.

[10] The focus of the Grievance was the interpretation and application of one of the provisions in the general section of the Collective Agreement. Article 11(2) governs what happens when SaskTel declares a position surplus without reducing its total staff complement. Like the Arbitrator, I will reproduce the provision in full:

#### **SECTION 1 - GENERAL**

#### **ARTICLE 11 - TRANSFERS AND TRAVEL EXPENSE (Continued)**

#### 2. Permanent Involuntary Transfers or Reclassifications

Where it becomes necessary to involuntarily transfer and/or reclassify employees and no net reduction of the Company's total staff will result:

- (i) The most junior employee in the location, in the surplus classification, who can meet the requirements of the vacant position with minimal training and job experience, not to exceed eight (8) weeks, will be designated for transfer and/or reclassification.

The employee so designated in paragraph (i) shall have the right to bump the most junior employee in the same or similar classification in the same location, providing the designated employee can meet the requirements of the bumped position with a reasonable amount of retraining, not to exceed eight (8) weeks, and that the bumped employee can meet the requirements of the vacant position with a reasonable amount of retraining, not to exceed eight (8) weeks. The bumped employee will then be transferred and/or reclassified to the vacant position and has no further bumping rights related to this particular involuntary transfer and/or reclassification.

- (ii) Employees so designated or bumped under the terms of this clause shall receive a minimum of fourteen (14) calendar days' notice prior to the effective date of the transfer and/or reclassification.
- (iii) The Company [SaskTel] will notify the Union at least seven (7) calendar days prior to any notification being given to the employees concerned.
- (iv) Every employee involuntarily transferred and/or reclassified by the Company, shall be afforded the opportunity, upon request in writing, to retransfer and/or reclassify to their former classification or a similar classification for which the employee is qualified, at the original location from which such employee was transferred, when the opportunity arises. The order in which such employees may retransfer shall be in accordance with their seniority.

The Company will not fill a vacancy in the same or similar classification, in the

original location, for which an employee who has been involuntarily transferred and/or reclassified could qualify, by new hires or appointments from outside the location.

- (v) All employees transferred under this clause, either voluntarily or involuntarily, and/or subsequently retransferred, will have all normal moving expenses paid by the Company in accordance with the provisions of Corporate Procedure 144.01.

[the provision does not contain a paragraph (vi)]

- (vii) Employees reclassified in accordance with this clause will remain at the same step of their previous wage band if such is above the maximum rate of their new classification and wage band; however, such employee will be eligible to receive general Union increases. Employees whose wage rate is not above the maximum rate of their new classification and wage band at the time they are reclassified, will continue on wage progression on their previous wage band until their wage rate equals or surpasses the maximum rate of their new classification and wage band.
- (viii) Employees temporarily reclassified under the terms of this clause to a higher rated position having the same basic hours of work, shall be placed on the new wage band at the step which provides the nearest higher rate of pay than their previous wage rate and progress in the normal manner on that wage band.

If their new position entails an increase in the basic hours of work, they will be placed on their new wage band in accordance with the foregoing paragraph,

but with an adjustment of one additional wage step on that band.

- (ix) No employee shall be permanently reclassified to a higher-rated position (i.e. no permanent upgrade) through the implementation of this clause, unless mutually agreed by the Company and the Union. An employee temporarily reclassified to a higher-rated position under the terms of this clause shall not remain in such position for longer than twelve (12) months without mutual agreement of the Company and the Union.
- (x) All requests for voluntary transfer and/or reclassification will be considered prior to implementing the initial involuntary move provisions of this clause.  
  
In such cases, after canvassing each of the employees in the affected area or group, the most senior qualified volunteer will be permitted to transfer/reclassify. In the event of voluntary transfers, the retransfer provisions of paragraph (v) above are not applicable.
- (xi) The Company and the Union agree that, due to compassionate grounds, the seniority provisions of this clause may be waived following negotiation between the parties.
- (xii) If employees are transferred and/or reclassified for just cause, the Company will notify the Union immediately of the reasons for such action.
- (xiii) Employees designated for transfer and/or reclassification or bumped under this clause shall have the option to take a voluntary location layoff in accordance

with the applicable provisions of Article 12.

[Emphasis added]

[11] The provision establishes a procedure for SaskTel to designate an employee in a surplus classification for involuntary transfer to a vacant position. The designated employee then has the right to exercise his or her seniority rights by bumping a more junior employee in the same or similar classification, in the same location, provided the designated employee can meet the requirements of the bumped position with a reasonable amount of retraining and the bumped employee can also meet the requirements of the vacant position with a reasonable amount of retraining. The amount of retraining cannot exceed eight weeks.

[12] The arbitration turned on the correct interpretation of the word “classification” and its “derivatives” (*i.e.*, reclassify, reclassified, reclassification) as used in Article 11(2). The term “classification” is not defined in the Collective Agreement. In Article 11(2), “classification” is used without any qualifying words.

[13] Classification and its “derivatives” also appear, without qualifying language, in many other places in the Collective Agreement. This includes, notably, Section 5 – Wage Schedules. Section 5, Article 2 [Wage Schedules Section] sets out a list of “Job Classifications”, listing various positions or functions (e.g., Office Cleaner, Shop Technician, Service Representative, etc.) divided into 11 wage bands (listed as Bands 1-10 and Systems) associated with various pay rates.

[14] In other places in the Collective Agreement, “classification” is used along with a “bracketed descriptor” (to use the parties’ terminology). When a classification is followed by words in brackets or parentheses, this refers to a particular function, position, or job title. In Section 3 – Clerical and Administrative Staff, Article 1 includes references to Senior Clerical Associate (Assignment Centre), Senior Clerical Associate (Frame), and Senior Clerical Associate (Staff Scheduling), to give a few examples. The

classification is “Senior Clerical Associate”, while the additional words in parentheses refer to the function, position, or job title. The Union filed in evidence a list of in-scope job descriptions providing many examples of job titles that included a job classification followed by a more specific job function and the associated wage band (Exhibit U-3, Tab 2). This concept is also alluded to in Section 2 – Craft, Article 2(4), which deals with movement of craft employees: “It is agreed that there are various functions within classifications and wage bands.”

[15] The words, “same or similar”, that qualify “classification” in Article 11(2), paragraph (i) are informed by the way these terms are used in Article 12(1)(xi), which sets out the layoff procedure. “Same or similar” refers to the classifications in the applicable section of the Collective Agreement, namely Craft, Clerical and Administrative Staff, and Systems Staff. If an employee covered by Section 2 – Craft is declared surplus, all classifications in Section 2 – Craft are considered to be “same or similar” for the purpose of exercising bumping rights. It appears that the parties are agreed on this point (SaskTel Brief of Law at para. 23(g)).

[16] The Union (or its predecessor) acquiesced in SaskTel’s method of applying the involuntary transfers provision for many years. However, the Union raised the issue with SaskTel in 2011 and in 2017. At the start of collective bargaining in January 2019, the Union gave SaskTel an estoppel notice, stating its intention to enforce what it viewed as the strict language of the Collective Agreement. Eventually, following ratification of the current Collective Agreement and new surplus declarations by SaskTel, the Union filed the Grievance.

[17] Both parties stipulated that they considered the Grievance to be a “policy grievance.” The Union asked the Arbitrator to grant declaratory relief only, abandoning any claim to compensation for employees directly affected by recent surplus declarations by SaskTel.

**B. Evidence of the Parties**

[18] The Record of Proceedings includes the *Decision*, the Grievance (Exhibit U-1), the Collective Agreement (Exhibit U-2), a binder of Union documents (Exhibit U-3), and a binder of SaskTel documents (Exhibit E-1). Among other things, the exhibits include copies of historical collective agreements, examples of surplus declarations, correspondence between the parties, and notes of bargaining sessions involving representatives of SaskTel and the Union.

[19] The Union called David Kuntz, a 35-year SaskTel employee and president of Unifor Local 1-S. Mr. Kuntz was a member of the Union’s negotiating committee for several collective agreements, including the most recent. He explained the structure of the Collective Agreement generally. He also provided his understanding of the columns under the heading, “Job Classifications,” in the Wage Schedules Section. The first column lists 11 wage bands (Bands 1 to 10 and a separate wage band for “Systems”). The second column lists various job classifications next to the wage band that applies to them. The third column identifies the department or sections of SaskTel’s operations in which the job classifications are employed. The fourth column specifies whether vacancies are filled through external hires or internally.

[20] According to Mr. Kuntz, the second column represents the job classifications of in-scope employees. Over time, SaskTel unilaterally added further descriptors in brackets, after the job classifications, which identify the functions or positions performed by employees within SaskTel’s organizational structure. These “bracketed descriptors” were used by SaskTel to administer the surplus declaration and involuntary transfer or reclassification provisions of Article 11(2). SaskTel did not apply Article 11(2) to all employees within a classification affected by a surplus declaration, but rather restricted it to the subset of employees within that classification performing a particular job function denoted by the bracketed descriptor. Mr. Kuntz

acknowledged that the Union had acquiesced in SaskTel's use of the bracketed job classifications in administering involuntary employee transfers for many years. However, the Union's view is that SaskTel's approach unduly restricts seniority rights.

[21] Mr. Kuntz gave examples to show how, in the Union's view, Article 11(2) should operate. According to Mr. Kuntz, when a position is declared surplus, SaskTel has three options. First, SaskTel must first give any senior qualified volunteers affected by the surplus declaration the opportunity to voluntarily accept a transfer or reclassification to a vacant position. Second, if there is no volunteer, the provisions of Article 11(2), paragraphs (i) and (ii) are applied. The most senior employee in the whole of the classification can bump a more junior employee designated by SaskTel for transfer. Third, SaskTel can voluntarily lay off an employee.

[22] Mr. Kuntz testified that the Union raised its concerns with SaskTel about its application of Article 11(2) in 2011. When the parties could not reach an agreement, the Union filed a grievance but later withdrew the grievance and referred the issue to the 2019 collective agreement negotiations. The Union also issued an estoppel notice to put SaskTel on notice that, from the effective date of the new Collective Agreement, the Union would apply Section 6, Article 2 (now Section 5, Article 2 – the Wage Schedules Section) in accordance with its strict language “in regard to how surplus is declared and applied using job classification as listed” (Exhibit U-3).

[23] Under cross-examination, Mr. Kuntz reviewed job descriptions issued by SaskTel for various job classifications with bracketed descriptors, related to positions in different areas of SaskTel's operations. He accepted that the qualifications required in disparate areas of the company's operations could differ significantly. Not every Administrative Assistant, Technical Assistant, or Senior Clerical Associate would have the qualifications or ability to perform the duties required in specified (bracketed) areas of SaskTel's operations, even though their position might have the same classification

as the positions in those areas. Mr. Kuntz also agreed that the Collective Agreement does not define the word “classification” and, in provisions other than Article 11(2), references to job classifications include bracketed descriptors. Mr. Kuntz acknowledged that SaskTel had followed the same practice for more than 30 years of using the limiting factor of bracketed functions when applying Article 11(2). He agreed that the Union’s interpretation of Article 11(2) could lead to many tens of employees being bumped, in a “cascading fashion”, before the most junior employee in the classification would be reached, while SaskTel’s interpretation would impact far fewer employees. However, he explained, that is how seniority and bumping rights work.

[24] Mr. Kuntz also testified that the parties had been unable to resolve their disagreement over Article 11(2) through bargaining, which had led the Union to file the Grievance.

[25] Carver Farrell, SaskTel’s Manager of Industrial Relations, testified about SaskTel’s administration of surplus declarations under Article 11(2). SaskTel regularly issued job descriptions for in-scope positions, which included the applicable wage band, job description, and job qualifications. The “bracketed job descriptions” were created by SaskTel and indicated employees’ roles or functions. The administrative assistant job classification includes 28 bracketed job descriptions and was held by 80 to 100 employees. The clerical associate job classification has 28 bracketed job descriptions, and approximately 60 to 80 employees. The senior clerical associate classification has 42 bracketed job descriptions, and 100 to 150 employees. Mr. Farrell testified that employees holding positions within a job classification would not necessarily be qualified to perform the duties associated with other positions within the same classification.

[26] Mr. Farrell testified that, under Section 1, Article 30 of the Collective Agreement, new classifications or new positions were referred to a joint SaskTel-Union

evaluation committee to determine the wage band and qualifications attributable to particular job descriptions. He also testified that SaskTel and the Union often referred to bracketed job descriptors in discussions about employment issues.

[27] Mr. Farrell testified about the process used by SaskTel for more than 30 years to declare positions surplus, which occurs in 20 to 40 positions annually. Vacant positions are needed for the surplus declaration process to work. SaskTel put in evidence a chart, prepared by Mr. Farrell on June 27, 2000, which outlines the process SaskTel follows in cases of surplus declarations and involuntary transfers (Exhibit E-1, Tab 1). SaskTel also put in evidence examples of memoranda of agreement between SaskTel and the Union which included job classifications with bracketed descriptors assigned by SaskTel and accepted by the Union. Mr. Farrell testified that SaskTel considers and applies the bumping provisions in Article 12 when an involuntary transfer takes place under Article 11(2). In sum, Mr. Farrell's evidence was that SaskTel had a long practice of using the bracketed descriptors in the surplus declaration process, which is administratively efficient and limits the impact of involuntary transfers to the smallest number of employees.

[28] SaskTel also called Heather Janier, who from 1992 until her retirement in 2018 had been SaskTel's Director of Human Resources, Compensation, Benefits, and Industrial Relations. She was directly involved in surplus declarations and involuntary transfers. During her career, SaskTel had never laid off permanent employees. When a business line was eliminated, employees were moved into other positions. She corroborated Mr. Farrell's testimony regarding the process followed by SaskTel over 30 years in administering Article 11(2). To the extent that the Union had raised SaskTel's use of bracketed descriptors during collective bargaining, the parties had not agreed to change the surplus declaration process.

[29] Ms. Janier confirmed on cross-examination that the lists of job

classifications in prior collective agreements, similar to the list in the Wage Schedules Section, did not ever contain the “bracketed descriptors” used by SaskTel. This was consistent with Mr. Kuntz’s testimony.

### **C. Overview of the Award**

[30] The Arbitrator noted that it was common ground between the parties that he was to interpret the word “classification” as that term is used in Article 11(2) of the Collective Agreement: *Decision* at para 8.

[31] The Arbitrator summarized relevant provisions of the Collective Agreement. He cited the parties’ synopses of their respective positions. The Union’s position was that all employees within a job classification in a particular SaskTel location should be included in the surplus declaration process, not just the employees holding a particular job title or “bracketed” function within that job classification. SaskTel’s position was that its practice followed the clear meaning of Article 11(2). However, if the term classification in Article 11(2) was ambiguous, the parties’ past practice must be used to interpret this term. According to SaskTel, for 30 years classification has meant “bracketed classifications or sub-classifications or job titles, when they are applicable”: *Decision* at para 13.

[32] After outlining the parties’ positions, the Arbitrator explained that the arbitration concerned the proper interpretation, application, and operation of Section 1, Article 11 of the Collective Agreement.

[33] The Arbitrator reviewed at length the testimony of witnesses called by the parties: *Decision* at paras 24 to 55. The summary of the evidence set out above is drawn from the *Decision*.

[34] As explained by the Arbitrator, the arbitration pitted SaskTel’s interpretation of Article 11(2), informed by its view of its management rights and its

goal to maximize efficiency and minimize adverse impacts on its operations and on affected employees, against the Union's view that SaskTel's Article 11(2) process inappropriately restricted the exercise of seniority rights. The Arbitrator characterized this as a good faith disagreement: *Decision* at paras 56-57.

[35] The Arbitrator noted that the parties' difference of opinion centred on their competing interpretations of the term "classification" as used in Article 11(2) and the Wage Schedules Section. SaskTel also took the position, in the alternative, that the parties' differing interpretations must mean that the term is ambiguous and its interpretation should be informed by past practice: *Decision* at para 58.

[36] The Arbitrator observed that both parties relied upon the same authorities that articulate the principles applicable to the interpretation of collective agreements. The parties concurred that the consensus authority on collective agreement interpretation is the decision of Arbitrator Elliott in *Imperial Oil Strathcona Refinery v C.E.P., Loc. 777 (Re)* (2004), 130 LAC (4th) 239 [*CEP, Local 777*]. The Arbitrator cited a lengthy extract from *CEP, Local 777*, as quoted in another arbitral decision involving the same parties: *SaskTel v Unifor, Locals 1-S and 2-S*, 2021 CanLII 16415 (SK LA). The Arbitrator referred to other recent arbitral decisions that have affirmed the analytical framework in *CEP, Local 777*, supplemented by the decision of the Supreme Court in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633 [*Sattva*]. He affirmed that a contextual approach is to be used in interpreting collective agreements, having regard for the surrounding circumstances known to the parties when the agreement was formed: *Decision* at paras 63-66. As the Arbitrator observed, the challenge he faced was the application of these established principles to the parties' competing interpretations of Article 11(2).

[37] The Arbitrator addressed briefly the effect of the estoppel notice provided by the Union to SaskTel, finding that an estoppel can be brought to an end by reasonable

notice and holding that the Union's notice had satisfied that requirement: *Decision* at para 68.

[38] The Arbitrator turned to SaskTel's position, which SaskTel had advanced in the alternative, that if the term "classification" in Article 11(2) was ambiguous, then the parties' past practice could be used to inform its interpretation. He held that past practice supported SaskTel's interpretation that "classification" includes "bracketed qualifier[s]" where they exist: *Decision* at para 69.

[39] The Arbitrator then summarized his understanding that an ambiguity must be established before either past practice or contextual analysis can be used to interpret the ambiguous word or clause. He added that extrinsic evidence may also be used to "inform the decision as to whether or not an ambiguity in the disputed language exists": *Decision* at para 70. The Arbitrator explained that such extrinsic evidence was admissible and admitted on the arbitration, and he had used it to determine whether an ambiguity existed.

[40] The Arbitrator explained that he had considered the words of Article 11(2) and other provisions referencing "classifications," including the Wage Schedules Section. He had also considered the past practice used by SaskTel when administering Article 11(2) to deal with surplus declarations and involuntary transfers. As found by the Arbitrator, the evidence of past practice established that for decades SaskTel had applied Article 11(2) and the rights of employees "as a function of their classification including bracketed qualifiers where they exist": *Decision* at para 72. The exercise of seniority rights was confined to the function identified in the bracketed qualifier, rather than to the entire classification affected. The Union had acquiesced in this past practice, until it provided the estoppel notice to SaskTel and subsequently filed the Grievance: *Decision* at para 72.

[41] Finally, the Arbitrator explained that he had concluded the meaning of

“classification” as used in Article 11(2) was not ambiguous. He found that its interpretation could be determined using a contextual analysis. The meaning of classification was informed by its use in the Wage Schedules Section, which contains the wage provisions and wage schedules that apply to the job classifications of SaskTel’s in-scope employees. This was “arguably ... the most important section of the Agreement since it sets out the pay scales and increases over the life of this Agreement”: *Decision* at para 74. He reviewed the testimony of SaskTel’s witnesses that the listing of job classifications in the Wage Schedules Section does not contain, and has never contained, any bracketed qualifiers. He further found: “The bracketed qualifiers used by SaskTel to administer the provision of Article 11 of the Agreement were a unilateral construct and the sole creation of the Company, were never negotiated for nor agreed to with and by the Union nor any of its predecessors”: *Decision* at para 75.

[42] The Arbitrator observed that the Collective Agreement does contain provisions that refer to classifications and use bracketed qualifiers. He then reviewed SaskTel’s written submission, in which SaskTel submitted that the use of “classification” in different parts of the Collective Agreement was variable because of changes to the agreement over time, but what had not changed was Article 11 or the practice of the parties. SaskTel pointed to instances in the Collective Agreement where “classification” is used with bracketed titles and other ways in which bracketed titles are used. The Union highlighted other instances where “classification” is used in the Collective Agreement without bracketed titles or descriptors: *Decision* at paras 76-78. The Arbitrator concluded that, where the term “classification” is used with bracketed descriptors in the Collective Agreement, the parties have agreed to qualify the meaning of classification. Where the parties have not agreed to qualify the term, the Collective Agreement simply refers to “classification,” as in Article 11(2) and the Wage Schedules Section: *Decision* at para 79.

[43] The Arbitrator held that SaskTel’s practice, which the Union had

accepted for decades, restricted the exercise of seniority rights to the classification, as limited by bracketed descriptors, affected by the surplus declaration. The Union sought to confirm that this limitation was inconsistent with the use of “classification” without qualifying language in Article 11(2): *Decision* at para 80.

[44] The Arbitrator concluded that the word classification and its derivatives as used in Article 11(2) has a clear and unambiguous meaning. SaskTel’s practice of limiting the meaning of classification to a bracketed work function was contrary to that meaning: *Decision* at para 81. The Grievance was upheld.

### **III. SASKTEL APPLICATION TO STRIKE PORTIONS OF KUNTZ AFFIDAVIT**

[45] SaskTel objects to some statements in the Kuntz Affidavit on the grounds that they amount to speculation and opinion. Rule 13-30(1) of *The King’s Bench Rules* provides that “an affidavit must be confined to facts that are within the personal knowledge of the person swearing or affirming the affidavit.” Speculation is inadmissible, as are expressions of opinion from lay witnesses: *Yashcheshen v Teva Canada Ltd.*, 2022 SKCA 49 at paras 76-78, [2022] 8 WWR 60.

[46] At paras. 7 to 9 of the Kuntz Affidavit, Mr. Kuntz states that the Union expects the next round of collective bargaining will be complex and comments that the timing of the Court’s decision could affect the Union’s preparations for negotiations and lead to a delay in bargaining. Mr. Kuntz can speak from his own knowledge and experience about the Union’s planning for negotiations and the timeline for bargaining, and how those might be affected by the timing of this decision. None of this is impermissible speculation or opinion. However, the last sentence in para. 9, which describes possible prejudice to the Union’s membership from delay and possible labour tension, is inadmissible speculation. The last sentence of para. 9 is struck.

#### IV. UNION APPLICATION TO DISMISS APPLICATION FOR UNDUE DELAY

[47] The Union submits SaskTel's application for judicial review should be dismissed because of undue delay, relying on Rule 3-56(3) of *The King's Bench Rules*. That Rule reads:

3-56 ...

(3) Subject to rule 3-63 and any enactment limiting the time in which an originating application for judicial review may be made, if there has been undue delay in making an originating application, the Court may refuse to grant any remedy sought if the order:

(a) would be likely to cause substantial hardship to or substantially prejudice the rights of any person; or

(b) would be detrimental to good administration.

[48] Rule 3-56(3) confers on the Court a discretion to dismiss a judicial review application for undue delay. As the Rule suggests, determining whether an application for judicial review should be dismissed for undue delay involves a two-step inquiry. First, the Court must determine whether the amount of time elapsed between the date of the decision and the initiation of the application for judicial review is "undue." If it is, the second step of the inquiry is engaged, focusing on the explanations for the delay. The Court must consider whether the order sought is likely to cause substantial hardship to or substantially prejudice the rights of any person or would be detrimental to good administration. If one of those circumstance exists, then the Court may exercise its discretion and refuse the application: *Saskatchewan (Workers' Compensation Board) v Gjerde*, 2016 SKCA 30 at para 29, 395 DLR (4th) 331.

[49] From the date of the *Decision* to SaskTel's application, the delay in this case was seven months. In the circumstances, I conclude the delay was not undue for several reasons. First, the issues in the Arbitration and this application are somewhat

complex and the potential impact of the *Decision* on SaskTel's operations is not trivial. It is understandable that SaskTel needed some time to analyze the *Decision* and its impact on SaskTel's business before deciding to bring this application. Second, as found by the Arbitrator, SaskTel's interpretation and application of Article 11(2) had been unchallenged for many decades. The Union first questioned SaskTel's interpretation of the provision in 2011, and only brought the issue to a head when it filed the Grievance. Against that backdrop, a delay of seven months to initiate this proceeding is not unreasonable. Third, the Union has not referred the Court to any decisions from this jurisdiction where a delay of seven months was fatal to an application for judicial review. While the inquiry is fact-specific, the absence of an example where judicial review was refused in comparable circumstances is telling.

[50] Finally, the Kuntz Affidavit provides some insight into the impact that delay might have on the Union's negotiating preparations and on collective bargaining. Accepting the Union's concerns at face value, it appears that delay could cause the Union a degree of inconvenience. However, the Union has not demonstrated that it will suffer substantial prejudice or hardship if SaskTel's application is heard and determined on its merits.

[51] For the foregoing reasons, the Union's preliminary objection to SaskTel's judicial review application is dismissed.

## **V. STANDARD OF REVIEW APPLICABLE TO THE *DECISION***

[52] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the Supreme Court adopted a revised framework for determining the standard of review applicable to the merits of an administrative decision. Presumptively, the standard of review is reasonableness. Reviewing courts should only depart from this standard when required by a clear indication of legislative intent or by the rule of law.

[53] Reasonableness review is concerned “with ‘the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes’”: *Vavilov* at para 86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. As explained in *Vavilov* at para 86:

[86] ... Reasonableness, according to *Dunsmuir*, “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process”, as well as “with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *ibid.* In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

[Emphasis in original]

[54] The Supreme Court also explained how the reasonableness standard should be applied. To determine whether a decision as a whole is reasonable, the reviewing court must ask whether the decision bears the hallmarks of reasonableness: justification, transparency, and intelligibility. The reviewing court must also ask whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at para 99.

[55] The party challenging the decision bears the burden of showing that it is unreasonable. Shortcomings in the decision must be sufficiently serious that the decision does not exhibit the requisite degree of justification, intelligibility, and transparency. The shortcomings must be sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100.

[56] A decision is reasonable if it is based on internally coherent reasoning.

The decision must be rational and logical, and the reviewing court must be able to follow the decision-maker's reasoning without encountering fatal flaws in its overarching logic: *Vavilov* at para 102. A review for reasonableness is not a line-by-line search for error. A decision will not be reasonable if the reasons, read as a whole, fail to reveal a rational chain of analysis or disclose an irrational chain of analysis. A decision will also be unreasonable if the conclusion cannot follow from the analysis or if the reasons read in conjunction with the record do not make it possible to understand the decision-maker's reasoning on a critical point: *Vavilov* at para 103.

[57] A decision must also be justified in relation to its legal and factual context. The decision may be constrained by a number of contextual factors, which include: the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and the facts of which the decision-maker may take notice; parties' submissions; past practices and decisions of the administrative body; and the potential impact of the decision on the parties: *Vavilov* at para 106.

[58] McCreary J.A. explained in *P&H Milling Group a Division of Parrish & Heimbecker, Limited Saskatoon v United Food and Commercial Workers Local 1400*, 2023 SKCA 14, 478 DLR (4th) 604 [*P&H Milling*] how a *Vavilov* reasonableness review should be undertaken in the context of judicial review of a labour arbitration award. She wrote at para. 8:

[8] At a high level, a reasonableness review is concerned with a decision-maker's reasoning process and the outcomes of the decision. It determines whether the decision in question is based on an internally coherent and rational chain of analysis that is defensible in relation to the relevant facts and the law. Conceptually, there are two types of fundamental flaws that tend to render a decision unreasonable. The first is a failure of rationality internal to the decision-maker's reasoning process. The second is when the decision is untenable in some respect, given the relevant factual and legal constraints that bear on it. ...

[59] A reviewing Court must start its analysis with the reasons of the administrative decision-maker in order to avoid slipping into a review on the standard of correctness, rather than reasonableness: *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 79, 485 DLR (4th) 583.

## VI. ANALYSIS

[60] The parties agree, correctly, that the standard of review applicable to the *Decision* is reasonableness.

[61] During the arbitration, the parties also appear to have agreed on the applicable principles for interpreting collective agreements. In their written and oral submissions on the judicial review application, they seem to agree that the Arbitrator articulated those principles correctly in the *Decision*. Where they disagree is over his application of those principles to the issues raised by the Grievance.

[62] I will review briefly the applicable principles of contract interpretation before I turn to the specific errors SaskTel claims the Arbitrator made.

[63] In its brief of law, SaskTel refers to the consensus approach to the interpretation of collective agreements, as set out in *P&H Milling* at para 11:

[11] In Saskatchewan, arbitral consensus accepts and adopts the approach to interpreting collective bargaining agreements outlined by Arbitrator Bob Pelton in *SEIU-West v Saskatoon Regional Health Authority*, [2010] SLAA No 9 (WL) at paras 87–88 [*SEIU-West*]:

... The modern principle of interpretation is a method of interpretation rather than a rule, but still encompasses the many well-recognized interpretation conventions. The modern principle directs interpreters:

1. to consider the entire context of the collective agreement.
2. to read the words of the collective agreement

- in their entire context
  - in their grammatical and ordinary meaning
3. to read the words of a collective agreement harmoniously
- with the scheme of the agreement
  - with the object of the agreement and
  - with the intention of the parties.
- ...

Once an interpretation is settled upon, it should be tested by asking these questions:

- is the interpretation plausible – is it reasonable?
- is the interpretation effective – does it answer the question within the bounds of the collective agreement?
- is the interpretation acceptable in the sense that it is within the bounds of acceptability for the parties and legal values of fairness and reasonableness?

[64] In *P&H Milling* at para 12, McCreary J.A. explained that the foregoing is consistent with the approach to contractual interpretation articulated by the Supreme Court in *Sattva* and in *Corner Brook (City) v Bailey*, 2021 SCC 29, [2021] 2 SCR 540. As McCreary J.A. wrote: “The core principle of this approach is that the language of a collective agreement must be interpreted purposefully and in its context.”

[65] The interpretive framework approved by the Court of Appeal was drawn from *CEP, Local 777*, in which Arbitrator Elliott explained the modern Canadian approach to interpreting legislation and agreements, including collective agreements. As noted earlier in these reasons, the *Decision* expressly adopted that analytical framework. In addition, drawing from SaskTel’s written submission, the Arbitrator

also referred to *Saskatchewan Telecommunications v UNIFOR Locals 1-S, 2-S and 3 (ESL Top-Up and Requalification Grievances)*, [2018] SLAA No 31 (QL) (Sask LA), which discussed the contextual approach to the interpretation of contracts, citing *Sattva*, and affirmed that this approach applies to the interpretation of collective agreements.

[66] The Arbitrator adopted the principles of interpretation articulated in these arbitral decisions. He confirmed that the applicable interpretive principles were not in dispute, but rather their application to the interpretation of Article 11(2) of the Collective Agreement and, more particularly, the meaning to be given to the word, “classification” and derivatives of this word.

[67] SaskTel contends that the Arbitrator erred in his application of the modern approach for interpreting collective agreements. In its brief of law, SaskTel formulates its criticisms of the reasonableness of the *Decision* in several ways (at paras. 46 (a) to (g) and para. 128 of SaskTel’s Brief of Law). I have distilled these alleged errors to the following grounds:

- (a) The Arbitrator failed to consider the purpose, function, and factual matrix of Article 11(2).
- (b) The Arbitrator adopted outdated principles of law and failed to consider the meaning the parties had given to Article 11(2).
- (c) The Arbitrator unreasonably determined Article 11(2) is unambiguous and the Union’s interpretation was clear.
- (d) The Arbitrator failed to appreciate that Article 11(2) preceded the Wage Schedules Section and failed to consider whether Section 5 states that it overrides Article 11(2).
- (e) The Arbitrator failed to test the Union’s proposed interpretation of

the disputed provision and failed to view the parties' competing interpretations through a practical lens.

- (f) The Arbitrator made unreasonable and unsupported findings about the parties' historical use of bracketed job titles.

[68] Each of SaskTel's arguments is directed in some fashion at the Arbitrator's finding that Article 11(2) is not ambiguous. In reviewing an arbitral decision for reasonableness, the Court should take a deferential approach to an arbitrator's analysis of contractual ambiguity:

[22] In my view, considerable deference should be given to an arbitrator's assessment of ambiguity, the weight attached to extrinsic evidence, and its interpretation of the collective agreement in the context of that evidence when a reviewing court is undertaking a reasonableness review.

*[Regina Professional Firefighters Association, IAFF Local No. 181 v Regina (City), 2020 SKQB 134 [RPFA]]*

[69] I will now review SaskTel's submissions that the *Decision* is unreasonable. Although I analyze each ground raised by SaskTel separately, my analysis regarding one issue often applies to other issues as well.

**A. The Arbitrator considered the purpose of Article 11(2) within the context of the Collective Agreement as a whole**

[70] SaskTel contends that the Arbitrator failed to contextualize Article 11(2) by considering the Collective Agreement as a whole, instead focussing on the Wage Schedules Section and Article 12 (which addresses job security and layoffs) to inform his understanding of Article 11(2). SaskTel submits that the Arbitrator failed to consider the purpose of the Collective Agreement, as expressed in its preamble, of maintaining "harmonious relations and settled conditions of employment" (SaskTel Brief of Law at para. 64). Further, SaskTel submits that the Arbitrator neglected to consider the purpose of Article 11(2), which is to enable SaskTel to reassign employees from surplus

positions to areas of need, providing an alternative to layoffs for the benefit of the employer and employees.

[71] SaskTel does concede that the Arbitrator discussed some of this context at paras. 23 and 56 of the *Decision*. However, SaskTel contends that the Arbitrator did not incorporate the entire context of the agreement into his interpretation. Instead, he considered how “classification” is used in Article 11 and the Wage Schedules Section. The Arbitrator referred to the Wage Schedules Section as “arguably” the most important provision in the Collective Agreement. SaskTel argues that a provision listing rates of pay does not inform the meaning of another provision concerned with the unrelated topic of involuntary transfers. SaskTel submits that the Arbitrator should have focussed on the purpose either of the Collective Agreement as a whole, or of Article 11(2). Had he done so, he would have preferred an interpretation that promoted “certainty and cohesion” and an “alternative path to layoffs” (SaskTel Brief of Law at paras. 64-65). SaskTel submits that the Arbitrator erred in this case much as the arbitrator had done in *P&H Milling*. In *P&H Milling* at para 14, the Court of Appeal held that the arbitrator had not performed an analysis of the language related to benefit entitlement and simply concluded that the language was clear.

[72] At paras. 74-80 of the *Decision*, the Arbitrator did conduct a purposive and contextual analysis of the Collective Agreement to determine the meaning of the term “classification” and its derivatives in Article 11(2). He expressly stated that the meaning of this term could be determined using a contextual analysis. He reviewed other provisions of the Collective Agreement where the term is used. This included the Wage Schedules Section, which sets out the pay bands and wage schedules that apply to in-scope job classifications. He referred to the testimony of witnesses that this provision does not and has never included words qualifying the job classifications listed in that provision (SaskTel contends that the latter point was a factual error. I will return to that later in this decision.). He commented that this was “arguably” the most

important provision of the Collective Agreement since it sets out wage scales and increases. While SaskTel contends that the Arbitrator misdirected himself in this regard, his point was hardly novel. The chapter on compensation in a leading text opens this way:

Wages and related forms of remuneration are among the most important provisions in all collective agreements. For most people, the compensation package is the cornerstone of the employment relationship. ...

David M. Beatty, Donald J. Brown & Adam Beatty, *Canadian Labour Arbitration*, loose-leaf, (Rel 6, August 2023) 5<sup>th</sup> ed (Toronto: Thomson Reuters Canada, 2019), §8:1 [Brown and Beatty].

[73] Moreover, the Arbitrator did not consider only the Wage Schedules Section in his contextual analysis. The Arbitrator noted that provisions in the Collective Agreement that refer to classifications do include and use bracketed qualifiers. The Arbitrator quoted from SaskTel’s written submission, in which SaskTel asserted that the word “classification” as it is used in different parts of the Collective Agreement is variable because of changes to the Collective Agreement over time. According to SaskTel, what had not changed was Article 11(2) or the practice of the parties. SaskTel pointed to places in the Agreement where bracketed descriptors were used in association with the term “classification”. The Union also provided numerous examples where the term “classification” was used without bracketed descriptors.

[74] SaskTel does not explain how a contextual analysis of the Collective Agreement as a whole should have led the Arbitrator to conclude that “classification” as used in Article 11(2) must be read narrowly, as though it is qualified, when the parties omitted modifying words in this provision while including them in others. SaskTel refers to an arbitral decision, *Johnson Controls L.P. Automotive Systems Group v CAW-Canada, Local 222* (2007), 89 CLAS 343 (WL) (Ont LA) [*Johnson Controls*], which has some factual similarity to the present case in that it involved the interpretation of

the term “classification” in the layoff provision of a collective agreement. The relevant sentence in the layoff provision was the following:

When the Company determines a reduction in the workforce or a portion of the workforce, associates will be removed from the classifications directly or indirectly affected according to plant seniority (least senior first) and will be placed elsewhere in the plant or laid off according to plant seniority. ...

The term “classifications” is expressly qualified in this clause. The arbitrator concluded that the “classification directly affected” had to refer to the “product zones and classifications” set out in the preceding section of the collective agreement. The arbitrator supported this conclusion by noting that different product zones required different skills and the collective agreement did not require the employer to provide training to displaced employees. These features make the *Johnson Controls* fact situation distinguishable from the present one.

[75] In my view, it was reasonable for the Arbitrator to conclude that, where the term classification was used with additional words describing particular functions or positions, the parties had agreed to qualify what classification meant for the purposes of those provisions. Where the Collective Agreement just uses the term “classification,” as in Article 11(2) and the Wage Schedules Section, the Arbitrator concluded, reasonably, that the parties had not agreed to limit the term’s meaning.

[76] SaskTel contends that a satisfactory contextual analysis would have emphasized the purpose of the Collective Agreement, as stated in its preamble, of maintaining harmonious relations and settled conditions of employment. Further, the contextual analysis should have been informed by the purpose of Article 11(2), which is to facilitate the redeployment of employees from redundant positions as an alternative to layoffs. The Arbitrator did not refer to the purpose of Article 11(2) as part of his contextual analysis. Nonetheless, he commented earlier in the *Decision* that Article 11(2) was used by SaskTel to redeploy employees declared surplus as a result of

business changes: *Decision* at para 23. He also noted that SaskTel applied Article 11(2) in the way that had the least impact on its efficient operation and on affected employees: *Decision* at para 56. A reasonableness review requires the Court to consider the *Decision* as a whole.

[77] The Arbitrator's review of the Collective Agreement as a whole led him to conclude that, where bracketed descriptors were used in relation to "classifications" in the Collective Agreement, the parties had agreed to this. When "classification" was used in the Collective Agreement without qualifiers, that also reflected the parties' agreement. He found the latter to be the case with respect to Article 11(2) and the Wage Schedules Section.

[78] The Arbitrator found that SaskTel's practice, which the Union had acquiesced in for decades, applied the term "classification" in a manner that restricted the exercise of seniority rights of employees to the affected classification "as limited by the bracketed descriptors." The Union first objected to this interpretation of Article 11(2) in 2011. The Arbitrator concluded that the Union was not seeking a novel interpretation of the word "classification", only confirmation that the term means what it says.

[79] The Arbitrator concluded at para. 81 of the *Decision*, "there is only one interpretation that is clear and unambiguous with respect to the meaning of 'classification' and its derivatives as used in Article 11(2) and Section 5." He held that SaskTel's practice of limiting the application of Article 11 to a bracketed work function as a qualifier was contrary to the provisions of Article 11(2) and the Wage Schedules Section.

[80] Reading the *Decision* as a whole, I conclude that the Arbitrator considered the entire Collective Agreement when he conducted a contextual analysis of Article 11(2). He considered provisions in the agreement that employ the term

classification with bracketed qualifiers and others that do not. He understood the purpose of Article 11(2) was to permit SaskTel to declare positions surplus and to effect involuntary transfers or reclassifications of employees into vacant positions, thereby avoiding layoffs. SaskTel emphasizes only those aspects of the context that favour its interpretation. However, the Arbitrator had to consider that the exercise of seniority rights is also a feature of the procedure in Article 11(2): *Decision* at para 81.

[81] SaskTel has not established that the Arbitrator failed to conduct a contextual analysis of Article 11(2) or that his interpretation of Article 11(2) was uninformed by the entire context and the purpose of the Collective Agreement.

**B. The Arbitrator did not follow outdated principles of contractual interpretation**

[82] SaskTel argues that the Arbitrator followed outdated principles of law in interpreting the Collective Agreement. SaskTel submits that the Arbitrator unreasonably determined that he must first find ambiguity before considering the past practice of the parties. Put another way, SaskTel contends that the Arbitrator failed to consider extrinsic evidence in order to determine whether the meaning of “classification” in Article 11(2) was ambiguous.

[83] At para. 78 of its brief of law, SaskTel explains this ground as follows:

78. In relation to admitting past practice as evidence to inform the interpretation of Article 11, the Arbitrator stated that: “What is clear from my review of these cases and authorities is that an ambiguity must first be established before either past practice or contextual analysis informs the interpretation.” The Arbitrator did not consider past practice in interpreting Article 11.

[Footnote omitted]

SaskTel further submits that the Arbitrator “seemingly adopted outdated principles of law despite being directed to the proper authorities.” (SaskTel Brief of Law at para. 80).

SaskTel refers to several authorities that explain the modern approach to contractual interpretation.

[84] The first of these authorities is *Sattva*. As explained in *Sattva*, an arbitrator may consider extrinsic evidence of the surrounding circumstances (*i.e.*, the factual matrix) known to the parties at the time the contract was formed to ascertain their intent and the scope of their understanding. This evidence may be considered to “deepen a decision-maker’s understanding of the mutual and objective intentions of the parties as expressed in the words of the contract”: *Sattva* at para 57. However, the interpretation of a written contractual provision must be grounded in the text and read in light of the entire contract, and the surrounding circumstances cannot be used to rewrite the agreement. In *Sattva*, Rothstein J. explained that the evidence of surrounding circumstance must consist only of objective evidence of background facts known or that reasonably ought to have been known by the parties at or before the date of the contract: *Sattva* at para 58.

[85] SaskTel also cites an arbitral decision that explains how *Sattva* is applied in the labour arbitration context. In *Elementary Teachers’ Federation of Ontario v Elementary Teachers’ Federation of Ontario Staff Association* (2021), 324 LAC (4th) 351 (CanLII) (Ont LA) at para 68 [*ETFO*], Arbitrator Surdykowski briefly explained *Sattva* as follows: “[t]he Supreme Court of Canada made it clear in *Sattva* that extrinsic evidence of context is admissible as an aid to interpretation.” As SaskTel points out, prior to *Sattva* the prevailing view was that extrinsic evidence was only admissible as an aid to interpretation after a party had established that contractual language was ambiguous. SaskTel cites *Westfair Foods Ltd. v United Food and Commercial Workers, Local 1400*, 2006 SKCA 8 at paras 32-34, 263 DLR (4th) 397, as an example of the obsolete approach.

[86] The modern approach to contractual interpretation was also addressed by

McCreary J. (as she then was) in *RPPFA* at paras 15 to 27. After referring to relevant labour arbitration decisions to explain how extrinsic evidence may be used in interpreting collective agreements, she wrote at para. 20:

[20] As a general rule, extrinsic evidence is admitted as an aid to interpret the language of a collective agreement only if that language is ambiguous. However, arbitration boards are permitted to consider extrinsic evidence to establish whether some degree of ambiguity exists in the language: *Nanaimo Times Ltd (Re)*, [1996] BCLRBD No 40 (QL) [*Nanaimo Times*].

She added at para. 24 that “evidence of past practice may be admitted to reveal an ambiguity about a provision in dispute even when that ambiguity was not apparent when the provision was read in isolation.”

[87] Regarding SaskTel’s claim that the Arbitrator relied on outdated authority, SaskTel pointed to an excerpt from para. 70 of the *Decision*, cited above. I find it useful to reproduce the entire paragraph:

70. At paragraphs 63-84 of SaskTel's Brief of Law, it goes on at length to discuss many of the cases and authorities that deal with ambiguity and the impact that past practice and the use of a contextual approach informs disputed language in a Collective Agreement. What is clear from my review of these cases and authorities is that an ambiguity must first be established before either past practice or contextual analysis informs the interpretation of the ambiguous word or clause. These forms of "extrinsic evidence" may also inform the decision as to whether or not ambiguity in the disputed language exists. Such extrinsic evidence, as was the case in this arbitration, is admissible and was admitted. I have considered it in determining whether or not an ambiguity exists with respect to the interpretation of the word classification and its derivatives in Article 11, paragraph 2 of the Collective Agreement.

[Emphasis added]

In the next paragraph, the Arbitrator expressly referred to McCreary J.’s decision in *RPPFA*.

[88] The Arbitrator then explained the approach he had followed, at para. 72 of the *Decision*:

72. The approach I have followed is to consider both the express provisions of Article 11, paragraph 2 and, as urged by counsel for both of the parties, other provisions of the agreement referencing "classifications" including, importantly, Section 5. I have considered the decades of past practice as testified to by all the witnesses, establishing the past practice utilized by SaskTel when dealing with and administering the Article 11, paragraph 2 (and predecessors) provisions to deal with surplus declarations and involuntary transfers. That evidence establishes:

1. That for decades the Employer applied the provisions of Article 11, paragraph 2 and the rights of employees as a function of their classification including bracketed qualifiers where they exist. The exercise of employee seniority rights was confined to the function or work area identified in the bracketed qualifier and not to the whole of the classification affected (without qualifiers);
2. That this constituted the past practice of the Employer for decades acquiesced in by the Unions, Unifor and its predecessors, until objection was raised in 2011, leading to the "Estoppel Notice" issued in January of 2019 and subsequently the filing of this Grievance and now arbitration.

[89] The Arbitrator's explanation of the use he could make of extrinsic evidence is in line with *Sattva*, *RPFA*, and other modern authorities. The Arbitrator recognized that he could use extrinsic evidence of past practice to determine whether the disputed provision was ambiguous. He also understood that, if he found that the term was ambiguous, he could also consider extrinsic evidence to inform his interpretation. As he said, he did admit evidence of past practice and used it to decide whether the meaning of "classification" in Article 11(2) was ambiguous.

[90] I conclude that the Arbitrator did not rely on outdated principles of contractual interpretation.

**C. The Arbitrator's determination that Article 11(2) is unambiguous was reasonable.**

[91] SaskTel contended that the meaning of “classification” as used in Article 11(2) was clear from a contextual and purposive reading of the Collective Agreement as a whole: according to SaskTel, the term’s established meaning was job title, function, or position, as SaskTel had interpreted and applied it for decades. In the alternative, SaskTel argued that the term was ambiguous and, accordingly, the Arbitrator should have considered the parties’ past practice to resolve that ambiguity.

[92] The concept of contractual ambiguity is explained by the arbitrator in *ETFO* as follows:

69. Ambiguity is a concept of contract interpretation. A contractual ambiguity exists when there is an obvious (i.e. patent) or hidden (i.e. latent) disconnect between the contractual language and the actual mutually intended meaning, either because the language used can reasonably be interpreted in more than one way (patent ambiguity), or the language does not reflect the mutually intended meaning (latent ambiguity). Extrinsic evidence is admissible to establish or resolve an alleged ambiguity by establishing an agreed to meaning not disclosed by the language used.

[93] The following explanation of contractual ambiguity from the Manitoba Court of Appeal is also instructive:

25 When is a contract or a phrase ambiguous? Difficulty in interpreting a contract is not synonymous with ambiguity (*Paddon-Hughes Development Co. v. Pancontinental Oil Ltd.*, [1999] 5 W.W.R. 726 (Alta. C.A.)). An ambiguous phrase has been described as one that is “reasonably susceptible of more than one meaning” (*Hi-Tech Group Inc. v. Sears Canada Inc.* (2001), 52 O.R. (3d) 97 at para. 18 (C.A.)), and as one with a “double or devious meaning, that is to say, one word or one expression or a series of expressions capable on its face or in its application of two or more meanings” (*Eco-Zone Engineering Ltd. v. Grand Falls-Windsor (Town)* (2000), 5 C.L.R. (3d) 55 at para. 9, 2000 NFCA 21, quoting *Leitch Gold Mines Ltd. et al. v. Texas Gulf Sulphur Co. (Incorporated) et al.*, [1969] 1 O.R. 469

at 524 (H.C.). This cannot be determined until the full text of the contract is considered, in light of the surrounding circumstances at the time of its execution, if necessary.

[*Geoffrey L. Moore Realty Inc. v. The Manitoba Motor League*, 2003 MBCA 71, [2003] 9 WWR 385]

[Emphasis added]

[94] SaskTel submits that it was open for the Arbitrator to find ambiguity given the inconsistent use of “classification” in the Collective Agreement, which reveals an “obvious disconnect” between the contractual language and the actual, mutually intended meaning. SaskTel contends that, in some provisions, classification refers to a position or function (citing as examples Article 11(2) and provisions where a bracketed position is referred to as a classification) and in others it refers to a set of jobs organized for wage schedules (citing the Wage Schedules Section).

[95] SaskTel does not explain why Article 11(2) should be grouped with provisions in the Collective Agreement where the term “classification” is expressly qualified. As previously noted, in Article 11(2) classification is used without bracketed descriptors, as is also the case in the Wage Schedules Section. More to the point, the term “classification” is not used to mean different things throughout the Collective Agreement. Rather, sometimes classification appears with a “bracketed descriptor”; when that is the case, it refers to the particular function, position, or job title indicated by the qualifying words. Where classification is not qualified, it refers to the generic list of job categories set out in the Wage Schedules Section. I could find no instance in the Collective Agreement where the unmodified word “classification” means something else.

[96] SaskTel cites additional arbitral authorities for the proposition that past practice can be used as an interpretive aid to clarify an ambiguous provision, including the leading authority of *Re Int'l Ass'n of Machinists, Local 1740, and John Bertram & Sons Co. Ltd.* (1967), 18 LAC 362. I agree that, if the Arbitrator had determined the

term “classification” in Article 11(2) was ambiguous, then he could have looked to the parties’ past practice to resolve the ambiguity. In that scenario, the fact that SaskTel had applied the term narrowly for several decades and the Union had acquiesced would very likely have led the Arbitrator to prefer SaskTel’s interpretation, given his conclusion at para. 72 of the *Decision*.

[97] However, the Arbitrator did not agree that there is an obvious disconnect between the contractual language and the parties’ intended meaning. He found that, where the term classification is used in association with qualifiers or bracketed descriptors, the parties intended the term to refer to specific positions or functions. Where the parties used the term classification without any qualifying language, he reasonably concluded that the parties intended a broader meaning. He found, in so many words, that “classification” used without bracketed descriptors is reasonably susceptible of only one meaning.

[98] In my view, SaskTel’s position invited the Arbitrator and now this Court to read into Article 11(2) words that are absent, so that the term “classification” is qualified to mean function, position, or job title. The Arbitrator was not empowered to amend the Collective Agreement: Collective Agreement, Article 8(4). Further, the surrounding circumstances of the agreement cannot be used to rewrite it: *Sattva* at para 57.

**D. The Arbitrator did not err by disregarding the interpretive principle that older provisions have precedence over more recent ones**

[99] SaskTel contends that the Arbitrator erred by failing to consider the history of Article 11(2) and the Wage Schedules Section. More particularly, SaskTel argues that the Arbitrator should have taken account of the fact that Article 11(2) predates the Wage Schedules Section and is presumed to take precedence over it, unless the later provision clearly states that it overrides the older one.

[100] SaskTel refers to Brown and Beatty as well as several arbitral authorities for this interpretive principle. Brown and Beatty acknowledges that there is authority for this proposition, without endorsing it. In a section entitled, “Presumption that all Words Have Meaning,” the learned authors state the general guide to interpretation that “it should be presumed that all of the words used were intended to have some meaning,” adding that “it is to be presumed that they were not intended to be in conflict”: Brown and Beatty at §4:22. If the only permissible construction is that provisions are in conflict, the conflict may be resolved by applying several presumptions, which they proceed to enumerate. With that background, the authors then address the specific case of a conflict between earlier and later clauses, writing at §4.22:

... And, in the case of conflict between an earlier and later clause, there is authority to the effect that “the part of the contract which is written first overrides that which is written later, and it is only otherwise when the later clause clearly spells out the overriding effect intended”, although the better view would seem to be that effect should be given to that part which best carries out the real intention of the parties.

[Footnotes omitted]

[Emphasis added]

[101] The citation in the above passage is taken from *Re United Steel Workers and Steel Co. of Canada Ltd.* (1959), 10 LAC 169 (WL) (Ont LA) at para 8, which has been cited in other arbitral decisions, including *Simcoe County District School Board v Elementary Teachers’ Federation of Ontario (Class Size Grievance)* (2012), 112 CLAS 268 (WL) (Ont LA) at para 41.

[102] Assuming the Arbitrator should have borne this interpretive principle in mind, I will consider SaskTel’s submissions on this point.

[103] SaskTel submits that Article 11(2) predates the Wage Schedules Section. Further, SaskTel contends that nothing in the Wage Schedules Section indicates that it overrides Article 11(2). More particularly, nothing in the Wage Schedules Section

suggests that the meaning attributed there to “classification” is intended to displace the meaning of “classification” as the term is used in Article 11(2). Therefore, SaskTel argues, the Arbitrator should not have looked to the Wage Schedules Section to inform the interpretation of “classification” in Article 11(2).

[104] SaskTel’s position is premised upon its view of the history of the provisions. To support its contention that the Wage Schedules Section is of more recent vintage, SaskTel explained that it had engaged with the Union on a “decades-long process of consolidating job classifications and families, moving them through a joint job evaluation program and putting them in a list broken down by band in what is now referred to as Section 5 of the Collective Agreement”: *Decision* at para 76.

[105] However, while Section 5 was gradually introduced into successive collective agreements, a version of the Wage Schedules Section is found in earlier collective agreements. Each of the four collective agreements predating the Collective Agreement in issue (Exhibits E-1, Tabs 63 to 66) contained a wage schedule associated with specified job classifications. In earlier versions, the wage schedules were distributed throughout various sections of the collective agreement, while later collective agreements, beginning with the agreement effective March 25, 2001, contained a consolidated wage schedule with job classifications. SaskTel’s witnesses were cross-examined about the Wage Schedules Section and earlier versions of the listing of job classifications as contained in prior collective agreements. Ms. Janier acknowledged that these provisions never used words qualifying the meaning of classifications: *Decision* at paras 55 and 75. From his reasons, the Arbitrator was alive to this history.

[106] In its reply brief of law, SaskTel disputes the factual accuracy of Ms. Janier’s testimony, as understood by the Arbitrator. SaskTel says that, in fact, earlier versions of the wage schedules did include bracketed qualifiers. SaskTel provides

specific examples from the 1986-1991 collective agreement (Exhibit E-1, Tab 63) and the 1991-1993 collective agreement (Exhibit E-1, Tab 64). Having reviewed the wage provisions in these agreements, I conclude that they generally refer to classifications without qualifiers, but there are also occasional references to specific classifications with bracketed qualifiers. For example, Section 2 – Craft, Article 3 of the 1986-1991 collective agreement mostly refers to job classifications without descriptors, but there are instances where a job classification is used with a bracketed descriptor (e.g., Line and Station Installer (Repairman)) (Exhibit E-1, Tab 63, p. 51). There are more examples in the 1991-1993 collective agreement where bracketed descriptors are used to qualify job classifications in the various wage schedules. The most that can be said is that bracketed descriptors were used occasionally and inconsistently in the wage schedules of these two collective agreements.

[107] However, when a single, consolidated wage schedule provision was introduced in the 2001-2004 collective agreement, none of the job classifications listed in that provision were qualified using bracketed descriptors. References to classifications with bracketed descriptors appear in other provisions of that collective agreement, just as they are found in the current Collective Agreement.

[108] While the Wage Schedules Section in its current iteration was drafted after Article 11(2), not much turns on this when one examines closely the history and evolution of the wage schedules. Inconsistency in how “classification” was used in some of the wage schedules in the 1986-1991 and 1991-1993 collective agreements was not the issue before the Arbitrator. Furthermore, since the 2001-2004 collective agreement, “classification” has been and is used in the broader, generic sense in both the consolidated wage schedules provision and in Article 11(2).

[109] SaskTel’s argument presupposes that the meaning of “classification” in the Wage Schedules Section conflicts with the meaning in Article 11(2). As noted

above, the starting presumption is that the words are not in conflict. The Arbitrator reached the conclusion that the word “classification”, used without qualifying language, meant the same thing in Article 11(2) and the Wage Schedules Section. This was in keeping with established interpretive principles. Further, if “classification” is used harmoniously in the two provisions, as the Arbitrator concluded, then it cannot be said that one overrides the other. In short, the interpretive principle that a prior clause override a later one unless the overriding effect is clearly expressed did not apply.

**E. The Arbitrator did not fail to test the parties’ competing interpretations**

[110] Next, SaskTel contends that the Arbitrator unreasonably failed to test the Union’s proposed interpretation of Article 11(2) and failed to view the parties’ competing interpretations through a practical lens.

[111] SaskTel submits that the Union’s interpretation is unreasonable as it would maximize disruption to all parties, contrary to what the parties intended in agreeing to Article 11(2) and Article 12 (the layoff provision). SaskTel characterizes the practical effect of the Union’s interpretation as follows:

114. The Union’s interpretation of Article 11 is untenable as it requires “reading in” a cascading, chain-bumping process of involuntary transfers of potentially hundreds of employees who may have little to no comparable qualifications and skills, in order for SaskTel to address labour surplus. It defies practical contemplation.

(SaskTel Brief of Law at para. 114)

[112] As explained in *P&H Milling*, once an interpretation of a contractual provision is settled upon, it should be tested to see whether it is plausible, effective, and acceptable. SaskTel cites the following passage from *Brown and Beatty* at §4:20, which is a good distillation of the practical inquiry:

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

[Footnotes omitted]

[113] The textbook authors go on to say the following:

.... where there is no ambiguity or lack of clarity in meaning, effect must be given to the words of the agreement, notwithstanding that the result may be unfair or oppressive, or that they were deliberately vague to permit continuing consensual adjustments.

[Brown and Beatty at §4:21]

[Footnotes omitted]

[114] The process of testing an interpretation only applies where there are several competing interpretations. Given that the Arbitrator found that the term “classification” in Article 11(2) was not ambiguous and bore the meaning the Union supported, he did not have to undertake the exercise of testing to decide whether SaskTel’s or the Union’s proposed interpretation was more reasonable and administratively feasible.

[115] In any event, the Arbitrator was aware of the practical implications of the Union’s position. The Arbitrator reviewed in some detail the parties’ evidence of the potential “cascading effect” of employees exercising their “bumping” rights based upon seniority from among a larger pool of employees. The Arbitrator reviewed Mr. Kuntz’s direct evidence on this point at para. 28 of the *Decision*, where Mr. Kuntz acknowledged that the Union’s process had the potential for a “‘cascading’ effect within the entire job classification not one just restricted to the function or area of SaskTel’s operations represented by the narrower bracketed job classification.” The Arbitrator added that the negative effect of SaskTel’s interpretation on employees’

seniority rights was obvious: “[s]ince there are more employees in the whole classification than in the smaller ‘bracketed’ classification, fewer employees can exercise their seniority rights in the latter group.”

[116] The Arbitrator later summarized Mr. Kuntz’s testimony during cross-examination about the “cascading” effect of employees’ exercising their bumping rights under the Union’s interpretation:

38. ... He explained and acknowledged that many tens of employees could face bumping and dislocation impacts before the most junior seniority rated employee in the classification (without bracketed qualification) would be reached. The most junior seniority employee under the Union’s argued for process would bear the final consequences of the surplus declaration process. But, he explained, that is how seniority and bumping rights work. He acknowledged that the Company’s interpretation of and approach to the implementation of Article 11 would impact a far fewer number of employees than the Union’s interpretation.

[*Decision* at para 38]

[117] While the Arbitrator did not situate these comments in the analysis portion of his *Decision*, it is clear that he did consider the practical implications of the Union’s and SaskTel’s respective interpretations of Article 11(2). The procedure favoured by the Union had the potential to be more disruptive; however, it also provided scope for the exercise of seniority rights.

[118] SaskTel contends that the Union’s interpretation is “untenable” because it could potentially affect hundreds of employees “who may have little to no comparable qualifications and skills...” (SaskTel Brief of Law at para. 114). This ignores one of the important features built into Article 11(2), which limits the designated employee’s right to exercise seniority rights by bumping a more junior employee by requiring that the designated employee and the bumped employee have to be able to meet the requirements of their new positions with a reasonable amount of retraining, not to

exceed eight weeks. Among other things, the provision deals with SaskTel's concern that employees who do not have required qualifications and skills could be swept up in the chain bumping process, by incorporating a retraining limit. SaskTel fails to grapple with this limitation on seniority rights when it suggests that "SaskTel would have to presumably spend years and waste significant resources facilitating the movement of under-skilled and unqualified employees to new positions (including training costs and wage protections, for example), instead of more simply targeting a surplus function and a corresponding business need" (SaskTel Brief of Law at para. 32).

[119] The Arbitrator recognized the interpretation favoured by the Union would produce greater disruption because more employees could exercise bumping rights, but also considered that SaskTel's interpretation left little room for the exercise of seniority rights.

[120] Reading the *Decision* as a whole, I am not persuaded that the Arbitrator failed to consider the practical consequences of his interpretation. He was not bound to accept the interpretation that would result in less disruption to SaskTel's business operations.

**F. The Arbitrator did not make unreasonable and unsupported findings about the historical use of "classification" with bracketed descriptors**

[121] Finally, SaskTel contended that the Arbitrator made unreasonable and unsupported findings about the parties' historical use of bracketed job titles.

[122] SaskTel contends that it was unreasonable for the Arbitrator to conclude that provisions in the Collective Agreement referring to "classifications" with bracketed titles were bargained as specific exceptions to the general term "classification" without qualifying terms or descriptors. SaskTel asserts that the Arbitrator was required to explain why the parties reached an agreement to use classification in more than one way and to point to evidence of such agreements. The Arbitrator concluded that

“classification” meant a larger group of employees when it was not qualified, and a smaller group of employees when it was followed by words in parentheses. It was open to the Arbitrator to infer that, by choosing the language in the Collective Agreement, the parties had agreed to differentiate between those situations.

[123] SaskTel contends that the Arbitrator “misconstrued the evidence that bracketed classifications or job titles were not widely used until the Wage Schedules were implemented and consolidated” (SaskTel Brief of Law at para. 123). SaskTel submits the Arbitrator found facts not supported by the Record of Proceedings, when he held SaskTel’s witnesses had confirmed that prior collective agreements did not contain bracketed job descriptions. SaskTel submits there are many examples of the use of bracketed titles in the Record of Proceedings going back to the 1986-1991 collective agreement. SaskTel contends that this error undermines the central finding in the *Decision*, which is that the meaning of “classification” in Article 11(2) can be discerned from its use in the Wage Schedules section.

[124] SaskTel’s submission misconstrues the Arbitrator’s findings at paras. 55 and 75 of the *Decision*. While I have previously referred to these paragraphs, I find it useful to reproduce them here:

55. On cross-examination by Union counsel, Ms. Janier also accepted, as had Mr. Kuntz, that the job classifications or classifications as contained in prior collective agreements (similar to now Section 5 of the Agreement) did not, in prior Agreements, ever contain the bracketed descriptors developed and used by the Company.

...

75. Section 5, under the heading “Job Classifications”, lists 11 wage “Bands” from Band 1 to 10 and a separate listing for Systems. In the second column, it lists the specific job classifications without bracketed qualifiers. Mr. Farrell, in his evidence, and Ms. Janier during her many years as Director of Human Resources at SaskTel, both acknowledged that the

listing of the job classifications in Section 5, Article 2 do not contain, nor have they ever contained, any bracketed qualifiers. The bracketed qualifiers used by SaskTel to administer the provisions of Article 11 of the Agreement were a unilateral construct and the sole creation of the Company, were never negotiated for nor agreed to with and by the Union nor any of its predecessors.

[Emphasis in original]

[125] The Arbitrator found the Wage Schedules section and the predecessor wage schedules scattered throughout prior collective agreements did not use the term “classifications” with qualifying language. He reached this conclusion based upon the testimony of SaskTel’s witnesses. He did not find that earlier collective agreements did not use “bracketed descriptors” at all, as SaskTel seems to argue.

[126] I have reviewed this at length in an earlier section of this decision. The wage schedule provisions in the 1986-1991 and 1991-1993 collective agreements did contain occasional references to bracketed descriptors, which is contrary to the evidence of SaskTel’s witnesses. However, once the wage schedules were consolidated into one provision, “classification” was used in that provision without bracketed qualifiers.

[127] SaskTel disputes the Arbitrator’s conclusion that the “the bracketed qualifiers used by SaskTel to administer the provisions of Article 11 of the Agreement were a unilateral construct and the sole creation of the Company, were never negotiated for nor agreed to with and by the Union nor any of its predecessors”: *Decision* at para 75. Mr. Farrell did testify that SaskTel regularly issues its versions of current in-scope job descriptions and that the bracketed descriptors were created by management: *Decision* at para 42. He also testified that new classifications or new positions are referred to the SaskTel-Union joint evaluation committee to determine the wage band and qualification attributable to any particular job description: *Decision* at para 44.

[128] SaskTel contends the Record of Proceedings established that the use of bracketed job titles increased following the introduction of the wage schedules and the job evaluation process.

[129] Reading the Arbitrator's finding in context, I conclude he is referring to SaskTel's administration of Article 11(2) (*i.e.*, the surplus declaration and involuntary transfer procedure) when he says the use of bracketed qualifiers was a unilateral construct by SaskTel and was not negotiated with the Union. Obviously, SaskTel decides which positions are surplus and prepares the surplus declarations, which historically have referred to job classifications with bracketed descriptors. The Arbitrator clearly understood that the Collective Agreement contained references to classifications with bracketed descriptors, so I do not read his statement in para. 75 of the *Decision* to mean that SaskTel and the Union had never agreed to use bracketed descriptors in any context.

[130] However, if I am misreading the *Decision* and the Arbitrator did conclude that the Union never agreed to use bracketed descriptors in any context, SaskTel must show how this factual error was sufficiently central or significant to render the *Decision* unreasonable. Whether SaskTel unilaterally imposed the use of bracketed descriptors on the Union or not has little bearing on how "classification" should be interpreted when it is used without bracketed descriptors in Article 11(2). In my view, if the Arbitrator made the factual error alleged, this finding did not taint his ultimate conclusion.

**G. The conclusion that the estoppel notice brought the Union's acquiescence to an end was not unreasonable**

[131] Finally, SaskTel alleges that the Arbitrator erred in holding that the estoppel notice given by the Union was effective and the Union was entitled to rely upon a strict interpretation of Article 11(2) going forward.

[132] As noted earlier, on January 29, 2019, the Union provided an estoppel notice to SaskTel to give notice that, from the effective date of the Collective Agreement, the Union would apply Section 5, Article 2 in accordance with its strict language “in regard to how surplus is declared and applied using job classification as listed” (Exhibit U-3).

[133] In the *Decision*, the Arbitrator addressed this issue briefly, as follows:

68. I will firstly deal with the question of the Union's position having, for many decades, acquiesced in SaskTel 's process using bracketed descriptors in job classifications to administer the provisions of Article 11. In doing so, I will also comment upon the impact of this acquiescence upon the interpretation of "classification" as used in Article 11. The Union, as noted, seeks to overcome the estoppel raised by its acquiescence through the issuance of the Estoppel Notice which it did January 29, 2019. I accept the law as reviewed by the Union in its Brief of Law at paragraphs 71-74 supporting the conclusion that where an estoppel has arisen through past practice, it can be brought to an end by a notice of an intention to revert to the strict terms of the Agreement. An estoppel can be brought to an end by reasonable notice and I accept the Estoppel Notice given by the Union to the Company as satisfying that requirement.

[134] In short, the Arbitrator accepted that the Union could bring the estoppel by acquiescence to an end by reasonable notice and found that the Union had done so by providing the estoppel notice to SaskTel. The Arbitrator addressed this issue again briefly at para. 80 of the *Decision*.

[135] SaskTel's argument on this point may be briefly summarized. SaskTel contends that the meaning of “classification” in Article 11(2) is ambiguous. The ambiguity should have been resolved in favour of SaskTel's proposed interpretation, because that interpretation was the only reasonable one, given SaskTel's past practice in applying the surplus declaration provision, which was acquiesced in by the Union. Moreover, and this is the key point, where past practice is used as an aid to interpretation

of an ambiguous provision, a party cannot terminate the effect of past practice by giving notice that it no longer accepts the meaning. Accordingly, SaskTel says, the Union's estoppel notice could not, in effect, unilaterally amend the Collective Agreement by bringing an accepted interpretation of the ambiguous term "classification" to an end. To amend the term "classification" in Article 11(2) so that it bears the broader meaning desired by the Union can only be achieved through bargaining.

[136] SaskTel relies upon the analysis provided by Arbitrator Surdykowski in *ETFO*, in which he explained the difference between ambiguity and estoppel at paras. 69-70. An estoppel does not amend the contract; it can be terminated by the representor giving appropriate notice, after which the representor can rely upon the strict words of the contract. The resolution of an ambiguity also does not amend the contract; it clarifies the parties' mutual understanding of the contract. However, it cannot be unilaterally terminated by one party giving notice to the other: *ETFO* at paras 71 and 73. The Union cited other arbitral decisions to the same effect.

[137] SaskTel contends that the Arbitrator failed to appreciate the distinction between giving notice to end an estoppel and unilaterally changing the accepted meaning of a provision. SaskTel's argument could only succeed before the Arbitrator if the Arbitrator had also accepted SaskTel's principal point – that the term "classification" in Article 11(2) was ambiguous, and the ambiguity could be resolved by reviewing the parties' bargaining history and past practice.

[138] In short, SaskTel's argument is not a stand-alone basis for challenging the *Decision*. For SaskTel to succeed on this ground, the Court must agree that the term "classification" was ambiguous and the Arbitrator's conclusion to the contrary was unreasonable. Further, the Court would have to conclude the only reasonable interpretation is the one SaskTel advances, informed by the parties' past practice.

[139] The Arbitrator found that the meaning of "classification" in Article 11(2)

was not ambiguous. The effectiveness of the Union's estoppel notice rests on this conclusion. The Union could insist upon the parties' following the strict wording of Article 11(2), but only after it gave SaskTel notice of its intention to do so.

[140] Since I have concluded that the Arbitrator's interpretation of Article 11(2) was reasonable, it follows that his conclusion that the Union could revert to the strict wording of the provision by giving effective notice to SaskTel was also reasonable.

## VII. CONCLUSION

[141] As noted earlier, review for reasonableness is not a line-by-line search for error and a reviewing Court must avoid slipping into a review on the correctness standard.

[142] The Arbitrator's determination that the term "classification" as used in Article 11(2) is clear and unambiguous and bears the same meaning as in the Wage Schedules Section was justified and followed an internally coherent and rational chain of analysis. In addition, it was supportable, given the relevant facts and the applicable law governing contractual interpretation. Looking at the *Decision* as a whole, I have concluded that it falls within a range of defensible outcomes.

[143] Accordingly, SaskTel's application for judicial review is dismissed, with costs on column 2.

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J.  
P.T. BERGBUSCH