ARBITRATION BOARD

CANADA
PROVINCE OF QUÉBEC

File No.:

Date: November 6, 2006

THE HONOURABLE ANDRÉ SYLVESTRE, Attorney

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA (CEP)

And

BELL CANADA OPERATOR SERVICES EMPLOYEES,

IN GRIEVANCE NO. T2006-1 CHALLENGING THE PHASING OUT OF THE PAID ABSENCE PRIOR TO PENSION (PAPP) PLAN

Counsel for the Union: ME MICHEAL COHEN

Counsel for the Employer: ME RENO VAILLANCOURT

ARBITRATION AWARD

THE EVIDENCE

[1] In the following document dated December 19, 2005, management informed employees that certain benefit programs would be ending, including the *Paid Absence Prior to Pension* (PAPP) plan:

> *Dear Colleagues:*
>
> *I have important news concerning specific changes made to some of your benefits and other programs. For many employees, these changes will have little or no impact. For the others, they will improve their present situation.*
>
> *. . .*
>
> 4. ***Paid Absence Prior to Pension (PAPP)**: This constitutes prior notice that the PAPP will be phased out over a period of three years beginning in 2007. The PAPP is a discretionary lump sum paid to employees who retire as of age 55 and have at least 30 years of service. This discretionary payment varies with length of service, i.e. from one (1) month of basic salary for employees with 30 years of service to six (6) months of basic salary for employees with 45 years of service. According to recent comparative studies, this type of program has virtually disappeared from the market. For more detailed information on the phasing out of the plan, which will be completed in 2009, please consult the "HR policies" section of the Human Resources site.*
>
> *Note: The PAPP plan does not apply to employees of Bell ExpressVu, Bell Conferia or BDI (retail sales).*
>
> *. . .*
>
> *Bell Canada has made a commitment to offer high quality benefits and programs. Fulfilling this commitment, however, poses certain challenges. At a time when we absolutely must reduce our costs to maintain our edge in a highly competitive market, we have to examine all the services we offer, to our clients and our employees, in order to ensure that they are managed in an efficient and profitable manner. We also have to take into account amendments to legislation that affects certain benefits.*

The changes announced today will reduce our costs, thus enabling us to continue offering you excellent benefits and programs while maintaining the competitive edge we need to ensure the Company is successful.

For more information about Omniflex, the Group RRSP or Pension Plan, visit the Benefits Web site. For more information about the changes to the PAPP and the Supplemental Allowance Plan for Maternity and Parental Leave, visit the Human Resources Web site.

Yours truly,

[2] The Union challenged the decision announced by filing a grievance on January 10, 2006:

***Nature of the grievance or complaint (including alleged loss or damage)**: The Company's announcement that it will be phasing out the Paid Absence Prior to Pension (PAPP) plan for the Operator Services group.*

***In the case of a grievance, indicate the provisions of the Collective Agreement that have allegedly been breached**: Articles 8 and 25 as well as any other pertinent article.*

***Desired settlement**: For the Company to maintain the plan for the term of the Collective Agreement.*

[3] The Employer responded on February 10 as follows:

Dear Sir:

The Company has reviewed the Union's position concerning the grievance indicated above.

Bell Canada's position is that the "Paid Absence Prior to Pension" is a discretionary lump sum that is not governed by the Collective Agreement.

The Company maintains that there has been no breach of the Collective Agreement and that this dispute may not be referred for arbitration.

[4] At this stage, Me Vaillancourt objected to the arbitrator's jurisdiction to hear the grievance. The undersigned will provide the arguments submitted by both sides after summarizing the evidence.

[5] Me Cohen stated that the written evidence produced at this stage established that the plan covered by the grievance had been in existence for more than 30 years, thus prior to the certification obtained in 1975. In this case, the arbitrator surely has jurisdiction. In fact, paragraph 25.01 of the Collective Agreement covers the plan since the general brevity of paragraphs 25.01 to 25.05 give rise to that coverage. The documents filed show that the Employer did not fulfil its obligations before deciding to eliminate the plan and announcing the elimination, as it failed to give the Union the required 30 days prior notice and obtain its consent, which the Union could not have refused without a valid reason. In support of his submissions, Me Cohen discussed certain documents, including the following text issued by the Human Resources Department:

PAID ABSENCE PRIOR TO PENSION

Paid absence prior to pension is a privilege (not a right) granted primarily in recognition of long-term service with the Company.

Eligibility

If you have 30 or more years of service, you are entitled to receive a lump-sum payment equal to one to six months of basic salary, depending on your years of service. This benefit is not linked to age.

Benefits based on years of service

Completed years of service	*Months of basic salary*	*Completed years of service*	*Months of basic salary*
30	*1.0*	*38*	*4.0*
31	*1.5*	*39*	*4.5*
32	*2.0*	*40*	*4.5*
33	*2.5*	*41*	*5.0*

34	*3.0*	*42*	*5.0*
35	*3.5*	*43*	*5.5*
36	*3.5*	*44*	*5.5*
37	*4.0*	*45 and over*	*6.0*

Terms of payment

Your PAPP amount may be paid either as a lump sum or transferred to an RRSP account.

If you elect to transfer your PAPP amount, or a portion of it, to an RRSP, the eligible amount will be deposited directly into your RRSP without tax deductions at source.

Authorization process

If you are eligible for the paid absence prior to pension, you will be advised of the amount you are entitled to on a form, which you must have approved by your immediate supervisor. This form, as well as other documents pertaining to your pension, will be sent to you by Employee Services on a timely basis.

Questions

Should you have any questions on paid absence prior to pension, please contact Employee Services at 1 888 391-0005.

[6] This document was subsequently made available on the intranet under *Life and Work@Bell*. Me Cohen also produced General Circular 204.1, which was applicable from 1985 until the intranet system was introduced; section 7 of said General Circular is titled *Pensions and annuities* and provides a general description of the pension plan. The relevant paragraphs of the various collective agreements preceding the present one were not changed over the years, except for a difference in numbering.

[7] At this point, Me Vaillancourt called the first witness, Mr. Bilodeau. Having joined the Employer in 2001, Mr. Bilodeau acts as Senior Vice-President and President of Corporate Services. In this capacity, he oversees the team of professional who develop the main policies applied to certain

strategic sectors of the Company, namely actuarial services, pension plans, compensation and benefits. As the officer in charge, he was involved in the decision to phase out the PAPP plan, which decision was based on a pressing need to better control the Company's operating costs. The Company has being undergoing profound change for some time now: it benefited from a telephone monopoly for decades and is now facing very stiff competition. It therefore has to offer its clients new services, including Internet, wireless telephone and video services. While these services are proving to be profitable despite the fierce competition, they are less so than the traditional telephone services. In light of the decrease in revenues and the virtual impossibility of replacing revenues quickly, the solution was to reduce the cost structure in all possible ways in order to maintain profitability and ensure the survival of the Company.

[8] Management called upon the presidents of the business units and the corporate officers in an effort to pinpoint all possible ways of improving the organization's efficiency and making it more competitive. It appeared that the Company had been offering some plans for a long time that were no longer required, including the PAPP. The PAPP is intended for managers and other long-term employees and grants them an accumulated vacation benefit. It is essentially a gift to employees with 30 years of service or more and is designed to facilitate the transition from the time they leave the Company to the time their retirement begins.

[9] When cross-examined, Mr. Bilodeau acknowledged that management did not deem it necessary to consult the Union or ask for its opinion about the decision before publishing the notice announcing the end of the plan. Management did not feel an obligation to take such an approach.

[10] Ms. Dutil was then heard. An actuary by profession, she is a senior advisor with the Company's financial services. She supervises the operations

of the pension plan group and ensures communications between the pension plan group and the benefits group. She was involved in this case when the organization made the decision to phase out the PAPP. Her group, together with labour relations, first ensured that the plan was not covered by the collective agreements and, more specifically, that it was not among the programs identified in article 25, which includes the pension plan. The PAPP and the pension plan are fundamentally different: the PAPP provides for a single payment which is made to an employee when he or she retires, while the pension plan provides for regular payments which are made throughout the employee's retirement. The pension plan and the law make no mention of plans like the PAPP. No specific fund exists from which the PAPP is paid: the Employer makes PAPP payments from its revenues, which enables employees to benefit from a tax shelter if the payment is made into a plan like an RRSP. When changes are made to the pension plan, management must follow a mandatory procedure: it determines the desired amendments, has the labour relations group check them to make sure they comply with the agreements in effect, has the Board of Directors approve them, and has them registered by government authorities. However, in the case of the elimination of the PAPP, management did not seek the approval of the Board of Directors or registration from the Superintendent of Financial Institutions. According to management, elimination of the PAPP was not an amendment to the pension plan. The only document that defines the pension plan is titled *Bell Canada Pension Plan* and, had it been amended by adding the PAPP plan to it, the PAPP would have been included in this document, but it was not.

[11] Ms. Dutil discussed section 7 of General Circular 204.1, the first version of which dates back to approximately 1985. This document remained in effect until the web site was launched. The purpose of this General Circular was to provide managers with information so that they could give employees preparing to retire simplified information on the PAPP. This information is now available on the intranet. Any employee wishing to obtain information about

his or her particular case can go to the *Life and Work@Bell* site, and select the heading *My retirement,* the title of the column that includes *Paid Absence Prior to Pension*. By clicking on *Paid Absence Prior to Pension*, the employee can call up the following page, which is the only place where the PAPP is discussed:

Employees – Your Pension and Savings Plans – Pension Plan – Paid Absence Prior to Pension

Paid Absence Prior to Pension

Paid absence prior to pension is a privilege (not a right) granted primarily in recognition of long-term service with the Company.

Eligibility

If you have 30 or more years of service, you are entitled to receive a lump-sum payment equal to one to six months of basic salary, depending on your years of service. This benefit is not linked to age.

Benefits based on years of service

Completed years of service	*Months of basic salary*	*Completed years of service*	*Months of basic salary*
30	*1.0*	*38*	*4.0*
31	*1.5*	*39*	*4.5*
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33	*2.5*	*41*	*5.0*
34	*3.0*	*42*	*5.0*
35	*3.5*	*43*	*5.5*
36	*3.5*	*44*	*5.5*
37	*4.0*	*45 and over*	*6.0*

Terms of payment

Your PAPP amount may be paid either as a lump sum or transferred to an RRSP account.

If you elect to receive a lump-sum payment, a cheque, with the applicable taxes deducted at source, will be sent to you after the scheduled pension date.

If you elect to transfer your PAPP amount, or a portion of it, to an RRSP, the eligible amount will be deposited directly into your RRSP without tax deductions at source.

Authorization process

If you are eligible for the paid absence prior to pension, you will be advised of the amount you are entitled to on a form, which you must have approved by your immediate supervisor. This form, as well as other documents pertaining to your pension, will be sent to you by Employee Services on a timely basis.

Questions

Should you have any questions on paid absence prior to pension, please contact Employee Services at 1 888 391-0005.

[12] The following information is found in section 7 of General Circular 204.1 titled *Pensions and annuities*; the general introduction indicates the purpose of the section:

1.01 This section is intended as a guide to management in:

a) meeting the objectives of the provisions for pensions in the Plan for Employees' Pensions, Disability Benefits and Death Benefits, referred to as the Plan,

. . .

e) authorizing paid absence prior to pension;

[13] In the table of contents, chapter 10 includes the title *Paid absence prior to pension*. This chapter states the following:

10.01 Paid absence prior to pension (PAPP) is a privilege (not a right) which is granted primarily in recognition of long service. In some instances, it may assist management in retiring an employee at the proper time to the satisfaction of both the employee and the company.

10.02 In general, it is expected that the maximum period applicable will be authorized. However, when the employee is being retired because of serious and wilful misconduct, no absence with pay should be authorized.

10.03 Paid absence may be granted following a period of disability benefits, except that the period of paid absence shall be reduced as required so that the total period of paid absence and period of disability benefits does not exceed 52 weeks; this applies to any employee who has not returned to work for a continuous period of 13 weeks following a period of disability benefits.

POSITION OF THE PARTIES

[14] Me Cohen argued that the Employer may not unilaterally eliminate the PAPP plan, since it is required to comply with the procedure provided for in paragraphs 25.01, 25.02 and 25.03 of the Collective Agreement:

25.01 The Company shall maintain for the duration of this Agreement, insofar as it applies to employees covered by this Agreement, the program of benefits provided under the following Plans:

- *the Pension Plan*
- *the Income Protection Plan*
- *the Transition Benefit plan*
- *the Vision Care Plan*
- *the Dental Plan*

It is understood that the Company's overall program of Benefits will change during the life of the Collective Agreement. As a result, insofar as they apply to the employees covered by this Agreement, the above undertaking applies to these Plans as they exist as of the date of signing of this agreement until such time as they are modified. From then on, this undertaking will apply to these plans as modified.

It is understood that any reference to any benefit, including sickness absence, in the Collective Agreement refers to the benefit then in force

and should be read with the necessary modifications, including any reference to benefits in this Article.

25.02 At least 30 days prior to modifying any of the Plans listed in section 25.01, the Company shall inform the Union of the changes to be implemented and request representation in that respect.

25.03 For the duration of this Collective Agreement and insofar as they apply to the employees covered by this Agreement, the Plans listed in section 25.01 shall not be modified, except with the consent of the Union, which shall not be unreasonably withheld.

[15] The background of the case proved the existence of the plan, as evidenced by section 7 of General Circular 204.1. Paragraph 25.01 of the Collective Agreement encompasses a certain number of programs, including the pension plan which covers the PAPP. The PAPP is part of the pension plan within the meaning of the Collective Agreement and not under legislation, or in light of the opinions of the pension plan actuary, Ms. Dutil, or the senior vice-president, Mr. Bilodeau. Since the PAPP is covered by the Collective Agreement, it is clear that the employer did not comply with the provisions of article 25. Mr. Bilodeau referred to the need felt by the Employer to be competitive, but management was required to present this situation to the Union, which could have accepted its proposal or rejected it even if it meant bringing the matter to arbitration. The evidence in support of the grievance therefore appears in General Circular 204.1, which clarifies the ambiguity of the wording of article 25. This Circular, published more than 20 years ago, is very familiar to all employees. It clearly states that the PAPP is part of *pensions and annuities*. Paragraph 10.01 of the Circular specifies that the plan is a “privilege” and not a right. Paragraph 10.02 indicates that management has some discretion, but that the plan is nonetheless included in the benefits covered by paragraph 25.01 of the Collective Agreement. Management may not abolish it without the Union’s agreement.

[16] Practically speaking, the way in which the Employer presents the PAPP to employees can only have them understand that the plan is part of the benefits covered by the Collective Agreement. In this case, the arbitrator must be careful not to give the provisions of article 25 a narrow, limited interpretation; rather, he must put the PAPP in its historical context. The practice of the parties shows that the PAPP is part of the pension plan. In support of his submission that the pension plan must comply with the practice of the parties, Me Cohen referred to the comments of Blouin and Morin on the question, which appear in the 5th edition of their book Droit de l'arbitrage de grief (Les Éditions Yvon Blais, 2000, II 63):

> *Following a pernickety and somewhat overly cautious evolution of the jurisprudence, it nonetheless emerges that a grievance arbitrator may consider practice when interpreting a conventional rule, but only if he is convinced that the clause in question is ambiguous because of a discrepancy between the wording and the behaviour of the parties. This concept refers exclusively, at least in Québec, to a situation in which the party intending to establish the existence of a practice brings the arbitrator to judge that the terms used in the clause under scrutiny can in all likelihood carry, on their very face, a meaning contrary to the usual meaning that such terms would normally be given or that the opposing party would give them. Québec jurisprudence does not generally make the distinction between "patent ambiguity" and "latent ambiguity" that is sometimes accepted in common law provinces; the ambiguous clause must be taken on the very face of the dispositif. The ambiguity normally develops because of the profound duality of a term, the lack of precision of expressions, or the equivocation of the whole. The alleged practice must be proven and the demonstration is subject to extrinsic evidence.*

[17] In response to these arguments, Me Vaillancourt, as indicated at the start of the hearing, submitted that the arbitrator does not have jurisdiction to hear the grievance since the plan in question is in no way covered by the Collective Agreement. Paragraph 25.01 of the Agreement provides a list of plans, but does not include the plan forming the subject matter of this grievance. Since the Collective Agreement does not mention the PAPP plan, the arbitrator does not have jurisdiction in this matter, unless he overrules the objection to decide, as contemplated by paragraphs 25.02 and 25.03, whether the pension plan was amended or not.

[18] The evidence presented by counsel for the Union about the practice of the parties is too incomplete to be accepted because it is limited to General Circular 204.1 and its supplements and, as such, does not meet the required criteria. Moreover, the case does not provide any evidence that employees perceived the PAPP plan as being part of the pension plan. The General Circular is not part of the Collective Agreement and states that it is intended as a guide for management, not employees. It can therefore not have legal effect. It is true that the document on the *Life and Work@Bell* site is available to employees, but solely for the purpose of informing them about what happens at retirement and not for incorporating the PAPP into the pension plan.

[19] The pension plan mentioned in paragraph 25.01 would have been amended had the PAPP plan been made a part of it, but that is not the case. That clause refers strictly to the pension plan and its amendments. When the Employer amends the pension plan, it must do so in a clear manner, as evidenced by the series of amendments included in the document after the procedure was complied with. The arbitrator's jurisdiction is limited to assessing whether the pension plan was amended or not, which requires an analysis of the pension plan. Yet such an analysis reveals that the pension plan makes no reference to the PAPP. General Circular 204.1 did not add anything to it. Had the parties intended to integrate the directives in the General Circular into the

Collective Agreement, they would have done so, but they did not. That is the reason why management never submitted the PAPP plan to the Superintendent of Financial Institutions. The sum provided for by the PAPP is paid before retirement begins and is therefore not part of the retirement plan. It is not because of the existence of two General Circulars that the PAPP is part of the pension plan.

[20] Section 4 (2) b) of the *Pension Benefits Standards Act* expressly excludes PAPP-type benefits from a pension plan. The evidence also revealed that the PAPP is excluded from the pension plan since the sums paid under it do not come from pension plan funds. Since the arbitrator cannot find that the PAPP is part of the pension plan, the Employer is not required to comply with paragraphs 25.02 and 25.03, since it is not modifying the plan mentioned in paragraph 25.01. The Employer therefore did not have to request the Union's opinion because the plan in question is not a benefit contemplated.

[21] Me Vaillancourt then mentioned the terms of paragraph 14.01:

> *A "grievance shall mean any difference relating to the interpretation, application, administration or alleged violation of any provision of this Agreement, or to matters not covered by this Agreement which relate to working conditions."*

[22] This step obviously encompasses many subjects, but paragraph 15.01 limits the scope of the next step:

> *When a grievance relating to the interpretation, application, administration or alleged violation of any provision of this Agreement is still unresolved after the grievance procedure has been exhausted, there shall be no stoppage of work, but the Union or the Company may institute arbitration proceedings in the manner, and subject to the terms, set forth below.*

[23] The first sentence of paragraph 15.02 states:

> *It being agreed that the right to arbitration does not extend to any matters other than those expressly mentioned in section 15.01 of this Article. . .*

[24] Thus, matters not provided for in the Collective Agreement may be subject to a grievance, but may not be referred to arbitration.

REASONS AND DECISION

[25] The grievance challenges the decision announced by the Employer to eliminate the Paid Absence Prior to Pension (PAPP) plan under which a sum was paid to operators with long-term service prior to retirement. The grievance refers more specifically to the provisions of articles 8 and 25 of the Collective Agreement and is claiming, as a remedy, that the PAPP plan be maintained for the term of the Collective Agreement.

[26] Mr. Bilodeau, the senior vice-president, explained that because of the pressing needs the Employer was facing, management had to adopt means of controlling its costs more tightly. After consulting the departments directly concerned, including actuarial services, the pension plan group and labour relations, management decided to eliminate the plan but did not deem it necessary to consult the Union because it did not feel it had an obligation to do so. After management announced its intention to phase out the plan, Ms. Dutil, an actuary, consulted the labour relations group to see whether the plan was covered by the Collective Agreement. After looking into the matter, the people in charge of the group informed her that it was not. Indeed, paragraph 25.01 covers the *Pension Plan*, a plan which, by its very nature, cannot include a gift like the PAPP.

[27] Nonetheless, section 7 of General Circular 204.1, the basic content of which dates back more than 20 years, provides a description of the PAPP plan, which is now available on the *Life and Work@Bell* site under the heading *My retirement*. Under the title *Employees – Your Pension and Savings Plans – Pension Plan – Paid Absence Prior to Pension*, it is explained that the PAPP is a privilege (not a right) granted in recognition of long-term service with the Employer. Thus, employees with 30 years of service or more are entitled to receive a lump-sum payment equal to one to six months of basic salary, depending on the number of years of service. This benefit is not related to age. The PAPP amount may be paid in cash or transferred to the employee's RRSP account. It is also explained that if an employee is eligible for the plan, he/she will be advised of the amount to which he/she is entitled on a form, which must be approved by the employee's immediate supervisor.

[28] In support of his claim, counsel for the Union referred to practice. In fact, documents issued by management have for some 30 years mentioned the PAPP, a privilege granted to employees in appreciation of long-term service with the Company. According to the Union's submissions, this plan is part of the pension plan mentioned in paragraph 25.01 of the Collective Agreement. However, for recourse to practice to be accepted, the clause to be interpreted must be ambiguous and the evidence on the practice must serve to solve the problem created by the ambiguity. Authors Blouin and Morin continued their thinking in the paragraph following that referred to by Me Cohen (II 64):

> *When practice is received in evidence, it is used as a means of interpreting the conventional law binding the parties. . . In short, practice is involved only in the interpretation of an already established conventional rule: it clarifies the existing formal rule of law. Recourse to practice presupposes the existence of an imprecise, obscure or ambiguous rule, while the actual experience of the parties makes it*

> *possible to identify a more precise meaning and it can be assumed from the actions of the parties that such experience is shared.*

[29] The authors then referred to the comments of the Court of Appeal in the judgment **Ville de Montréal v. Association des pompiers de Montréal**, C.A., Montréal, No. 500-09-000025-783, p. 14:

> *The jurisprudence is to the effect that when it comes to the arbitration of grievances, the arbitrator may sometimes resort to usage to interpret the provisions of the collective agreement related to the matter submitted to him, but only if the wording of the said provisions does not make it possible to determine the intention of the parties. In short, recourse to usage is permitted only when it is impossible to identify the intention of the parties from the actual provisions of the collective agreement because of an ambiguity.*

[30] After studying the evidence, the arbitrator, for the reasons stated above, found that the expression *pension plan* used by the parties in paragraph 25.01 is crystal clear and does not require recourse to the practice created by General Circular 204.1 and the *Life and Work@Bell* site to understand its meaning.

[31] A few arbitrators have decided on the coverage of different plans offered by the Employer and provided for in the Collective Agreement. In one of them, Me Alain Corriveau dealt with the matter in an unreported award dated July 1999, **Bell Canada and CEP, grievances of Marie-Noël Tremblay and Émilie Côté**. The two complainants, claiming that the voluntary separation plan was part of the Collective Agreement, reproached the Employer for having amended the plan participation dates. At the hearing, the Employer raised two objections, the first of which was to the effect that the grievance submitted to the arbitrator did not concern matters that were part of the Collective Agreement, since the Collective Agreement did not cover the voluntary separation plan. Arbitrator Corriveau checked whether the

Collective Agreement contained a provision enabling him to hear the grievances and to deal with them according to the evidence or whether the grievances were inadmissible because they were not in respect of the application or interpretation of the Collective Agreement. After analysis, it was found that the voluntary separation plan set up by the Employer was totally outside the Collective Agreement. The arbitrator thus allowed the first objection and held that he had no jurisdiction to hear the grievances.

[32] On June 30, 2000, arbitrator Harvey Frumkin decided to the same effect in another unreported award, **Bell Canada and CEP, grievances of Ms. Ouimet**. The three grievances of this complainant sought to obtain recognition of her right to participate fully in the voluntary separation plan offered to employees for a specific period. She applied for this plan, but did so after the deadline; her application was thus refused by the Employer. At the start of the hearing, counsel for the Employer raised a preliminary objection to the arbitrator's jurisdiction on the grounds that the plan was not covered by the Collective Agreement and thus did not raise any question regarding the application or interpretation of the Agreement. Me Frumkin, after producing paragraphs 25.01, 25.02 and 25.03 emphasized the following (on page 15):

> *These provisions clearly stipulate that the employer must maintain inter alia its pension plan; that is a fact. However, the tribunal does not see how the voluntary separation plan raises in any manner whatsoever a question as to the maintenance of the employer's pension plan; the application of the voluntary separation plan was intended to offer employees an incentive to leave the company on a strictly voluntary basis, by increasing their pension plan benefits through payment of an sum or an increase in credits.*

[33] This arbitrator allowed the objection and held that he had no jurisdiction to hear the grievance.

[34] Paragraph 25.01 does not provide for the PAPP plan, but rather refers to the *Pension Plan*, which clearly designates the plan identified in the document produced as the *Bell Canada Pension Plan*, *effective January 1, 1987 as restated on October 28, 1999 and including attached amendments #4 to #6*. This document provides the following definition of the plan in paragraph 1.17:

> *"Plan" means of revised pension plan which is established on and shall have an effective date of January 1, 1987, as amended from time to time; this Plan continues the pension plan in effect on December 31, 1986;*

[35] No provision of the plan or its appendices mentions the PAPP. Moreover, clause 4 (2) b) of the *Pension Benefits Standards Act*, R.S., c. 32 (2nd Supp.) stipulates the following:

> *4. (1) . . .*
>
> *(2) In this Act, "pension plan" means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute, whether or not provision is also made for other benefits or for benefits to other persons, and includes a supplemental pension plan, whether or not the employer is required to make contributions under or in accordance with the supplemental pension plan, but does not include*
>
> *(a) . . .*
>
> *(b) an arrangement to provide a "retiring allowance" as defined in subsection 248(1) of the* Income Tax Act*; . . .*

[36] Had the parties wanted to integrate the PAPP into the pension plan, a program the ins and outs of which the Union was, at all material times, aware, they would have mentioned it in paragraph 25.01. In this respect, the arbitrator agrees with the following comments by Judge Pierre Jasmin

appearing in judgment **Syndicat des employés de production du Québec et de l'Acadie v. Jean-Yves Durand et Société Radio-Canada**, 500-05-008127-944, which Me Corriveau referred to his judgment mentioned above:

> *It must be emphasized that according to the evidence appearing in the file, the employer's program already existed when the collective agreement forming the subject matter of this grievance came into effect. It would have then been possible for the parties to include a clause in the collective agreement giving an arbitrator jurisdiction in respect of the application of the program, even if the program had been developed outside the framework of the collective agreement and prepared unilaterally by the employer.*

[37] In light of the foregoing, the evidence, the jurisprudence and the conventional texts, statutory instruments and legislation, the arbitrator must find that paragraph 25.01, which requires management to maintain the program of benefits, including the pension plan, does not cover the PAPP.

[38] For these reasons, the arbitrator must allow the objection of counsel for the Employer and hold that he does not have jurisdiction to hear the grievance.

(signed)

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ANDRÉ SYLVESTRE, Attorney