



## Canadian Union of Postal Workers

# HEALTH & SAFETY

Bulletin no.123

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### ARBITRATOR PICHER DENIES

#### NATIONAL GRIEVANCE N00-00-00012

When members are injured on the job, they have to fill out various forms as part of the compensation process, including the claim forms from their provincial workers' compensation board. Canada Post also has to fill out various forms to meet its obligations under the *Canada Labour Code*, including the Supervisor Accident Investigation Report (SAIR). The SAIR is an employer document filled out by the first-line supervisor, which is essentially used to gather relevant information about an accident, such as the location, time, witnesses and preventative measures to be implemented. However, this document also enables the supervisor to add personal comments regarding the accident. These comments can have a direct impact on the decision to accept or reject a claim or can be used to challenge a decision. Accordingly, the importance and truth of the information contained in this document are essential to any claim.

Before the SAP system was introduced at Canada Post, the SAIR was a paper document filled out during the investigation of a workplace accident. According to employer directives at the time, this was done in the presence of a union representative, either a shop steward or a member of the Local Joint Health and Safety Committee (LJHSC). The representative could immediately check whether the information contained on the SAIR was accurate. If it was, the document was signed and the Union could immediately obtain a copy. If the information was inaccurate, the union representative would note it writing on the document or refuse to sign it. Then, in May 2003, Canada Post informed the Union in writing that it was changing its policy regarding the SAIR and that the presence of a union representative would no longer be authorized when accident-related documents, including the SAIR, were filled out. In response, the Union filed national grievance N00-00-00012.

The first hearing in this grievance took place in Ottawa before arbitrator Michel Picher in June 2004. The main issue is whether the Union has the right to have a union representative in attendance when the accident investigation forms are filled out by the injured member and when the SAIR is filled out by the supervisor. During the 10 days of hearing that took place over four years, the Union argued that its rights were not limited to the accident investigation, but also included the right to take part in the drafting of documents relating to a workplace accident, including the SAIR, which, in its opinion, was an integral part of the investigation. The employer's position was that the collective agreement gave the Union the right to take part in the investigation, but that this right did not include taking part in the drafting of documents, including the SAIR.

Arbitrator Picher rendered his decision on December 17, 2008. He denied the grievance and deemed that, following his review of past practice and of the provisions found in the collective agreement and the *Canada Labour Code*, the Union did not have the contractual right to take part in the drafting of accident-related documents, including the SAIR.



In explaining his decision, the arbitrator stated from the outset that there was no disagreement between the parties regarding the fact that the Union had an absolute right to take part in the investigation of any accident report, as set out in clause 33.06 of the collective agreement. Then he added that the Union also had an opportunity to review the SAIR and to add comments if it disagreed in part or in whole with its content. He also wrote that the Union, through the L/HSC, receives a copy of the SAIR and is entitled to request additional information from the person who conducted the investigation, as set out in clause 33.06 (a) of the collective agreement. Finally, the arbitrator stated that even though the Union did not have the right to take part in the drafting of the SAIR, it had an opportunity to contribute to its preparation, at least during the investigation, to ask for further investigation, if it so wished, and to register its disagreement with the contents.

Union representatives will have to be vigilant and refuse to sign the SAIR if they did not take part in the investigation. They will also have to indicate on the SAIR whether they disagree in part or in whole with its content. Union representatives on the L/HSC will still have an opportunity to ask for additional information and to record their disagreement with the supervisor's comments on the SAIR. It should be noted that this arbitration decision in no way changes the fact that an injured member ~~can~~ request the help of a union representative to fill out the appropriate documents. If the employer refuses the presence of a union representative, a grievance should be filed. As can be seen, despite denying the grievance, the arbitrator underlined the rights of the union and its representatives during the investigation of an injury on duty.

In solidarity,



Serge Champoux  
National Union Representative,  
Health and Safety

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