WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 734/10

BEFORE: N. Jugnundan: Vice-Chair

HEARING: April 8, 2010, at Kitchener
Oral

DATE OF DECISION: May 18, 2010

NEUTRAL CITATION: 2010 ONWSIAT 1187

DECISION(S) UNDER APPEAL: WSIB Appeals Resolution Officer (ARO) dated December 22, 2008

APPEARANCES:

For the worker: E. Mroczek, Paralegal

For the employer: Not participating

Interpreter: N/A

REASONS

(i) Introduction to the appeal proceedings

[1] The worker appeals a decision of the Appeals Resolution Officer (ARO) dated December 22, 2008, which concluded that the worker did not have entitlement to labour market re-entry (LMR) services or to loss of earning (LOE) benefits from September 21, 2007 to December 10, 2007, March 21, 2008 to March 31, 2008, May 12, 2008 to May 31, 2008 and from November 21, 2008 onwards.

[2] The ARO rendered a decision following an oral hearing.

(ii) Issues

[3] The issues under appeal are as follows:

1. Entitlement to labour market re-entry (LMR) services.
2. Loss of earnings (LOE) benefits from September 21, 2007 to December 10, 2007, March 21, 2008 to March 31, 2008, May 12, 2008 to May 31, 2008 and from November 21, 2008 onwards.

(iii) Background

[4] The following are the basic facts. This now 49 year old worker was employed as a labourer when she sustained a left shoulder injury on June 20, 2001. The diagnosis in this claim was left rotator cuff tendonitis.

[5] Following a non-economic loss (NEL) assessment on December 12, 2002 she received a 13% NEL award.

[6] The worker was laid off subsequent to September 21, 2007. The worker had returned to work as a grader, which was within her physical restrictions, from 2003 onward until she was laid off September 21, 2007.

[7] She found work with another employer as a grader from November 5, 2007 through to December 10, 2007. She worked 30 to 35 hours depending on how many hours were available with this employer. She was earning $16.25 an hour with the new employer and had been earning $16.10 per hour with the accident employer. When this work became unavailable she returned to the accident employer on December 10, 2007 the recall date, because she wanted to remain with the accident employer.

[8] The worker was then assigned to the splice face take-off position which was to be permanent at no wage loss. This job was considered suitable for the worker.

[9] On September 24, 2007, the worker contacted the Board and informed them that she had been laid off. The worker requested LMR services which were not provided.

[10] The worker was laid off on March 21, 2008. She was called back to work on March 31, 2008, but was placed in the samples job, the only job available within her restrictions

with the accident employer at that time. When this job became unavailable she began working in a stock room position until she was again laid off on May 12, 2008. The worker remained in the stockroom position from May 31, 2008 through to November 5, 2008 at which time the job was eliminated. The worker went back to the sampler department but was laid off on November 21, 2008.

[11] On appeal, the ARO noted that the worker had a skill base and the physical capacity to find work elsewhere. She noted that the worker demonstrated her ability to find work as a grader outside of the accident employer. The ARO noted that the worker, in finding other employment, demonstrated that her injury did not pose a barrier to acquiring new employment, or that her physical restrictions were a significant barrier to finding alternative work, given her numerous transferrable skills. The ARO then determined that the worker was not entitled to LOE benefits or LMR services.

[12] These issues are now for determination before the Tribunal.

(iv) Law and Policy

[13] Since the worker was injured on June 20, 2001, the *Workplace Safety and Insurance Act, 1997* (the "WSIA") is applicable to this appeal. All statutory references in this decision are to the WSIA, as amended, unless otherwise stated.

[14] Subsection 13(1), concerning insured injuries, states in part:

> 13. (1) A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

[15] Subsection 43(1) describes when LOE benefits will be payable. It states in relevant part:

> **43(1)** A worker who has a loss of earnings as a result of the injury is entitled to payments under this section beginning when the loss of earnings begins. The payments continue until the earliest of,
>
> (a) the day on which the worker's loss of earnings ceases; …
>
> (d) the day on which the worker is no longer impaired as a result of the injury.

[16] Board OPM Document No. 15-06-01 titled "Entitlement Following Work Disruptions: General" provides in relevant part:

> **Policy**
>
> The WSIB may provide a worker who is unable to continue working due to a work disruption, and whose employability is affected by his/her work-related impairment/disability and associated clinical restrictions, with
>
> additional loss of earnings (LOE) benefits …
>
> …
>
> **Guidelines**
>
> **Definitions**
>
> Work disruption - includes a layoff (short-term…

Bumping - refers to the practice of one worker displacing another worker from a job by virtue of seniority.

Employability - refers to the worker's ability to earn income and find alternate employment in the general labour market. Factors that influence a worker's employability include but are not limited to

work-related impairment(s)/disabilities

other non-compensable disabilities

level of education (including special certificates/licenses), and/or

transferable skills and aptitudes.

…

Partial workforce - means that only a portion of the employees in the company, plant or department is off work. This situation may or may not involve "bumping."

…

Principles for entitlement

Focus on employability

The focus of the policies is on employability and is in keeping with the purpose of the *Workers' Compensation Act* or the *Workplace Safety and Insurance Act* (the Act) which is to facilitate workers' return to work with the accident employer and, when this is not possible, their re-entry into the labour market.

Work disruptions of a short duration

During a work disruption that is of a short duration, the worker's benefit status is generally maintained. However, the WSIB may provide additional benefits/services to workers whose employability is clearly affected by their work-related impairment/disability and associated clinical restrictions.

Indicators that employability is affected

...

NOTE

See the relevant work disruption policy for the indicators/factors that decision-makers need to consider when determining entitlement to additional benefits/services. …

[17] Board OPM Document No. 15-06-02 titled "Entitlement Following Work Disruptions: Short-term and Long-term Layoffs" provides in relevant part:

Policy

A worker who is unable to continue working due to a short-term or long-term layoff, and whose employability is clearly affected by his/her work-related impairment/disability and associated clinical restrictions, may qualify for

additional loss of earnings (LOE) benefits.

Short-term layoffs

. . .

A work disruption should be treated as a short-term layoff unless it is known to be permanent from the start, e.g., a plant closure

. . .

Likely exceptions to the general rule

The following factors suggest that the worker's employability is clearly affected by the work-related impairment/disability and associated clinical restrictions and that additional WSIB benefits/services may be in order

1. The worker is in the early phase of recovery (i.e., there is a recent date of accident/recurrence/deterioration).
2. The worker is still receiving WSIB-approved active (non-maintenance) health care treatment (e.g., physiotherapy) on a frequent basis.
3. The worker is on a graduated return to work program.
4. The worker requires a high degree of accommodation. (Tasks and work processes have been specifically accommodated for the worker's impairment/disability and are not likely to exist with or be provided by another employer.)
5. The worker has an impairment/disability that is significant enough that it clearly presents an obstacle to the worker finding alternate employment. (Workers who have more than one work-related impairment/disability may be significantly impaired/disabled due to the combination of their impairments/disabilities.)

[18] This policy goes on to discuss short-term layoffs involving only part of the employer's workforce. It directs the decision-maker to consider the employer's re-employment obligations, the co-operation obligations of the workplace parties in ESRTW, and the cause of the loss of earnings, that is, whether the worker's loss of earnings during a layoff is primarily due to the employment situation or to the work-related impairment.

[19] The policy goes on to discuss how the decision-maker determines the cause of the loss of earnings:

3. Determining the cause of the loss of earnings

If there is no evidence that the employer has breached the re-employment and/or cooperation obligations, and the worker has met his/her co-operation obligations, then decision-makers use the following table. This table helps decision-makers determine if the worker's loss of earnings during the work disruption is due primarily to the employment situation or the work-related impairment/disability.

Decision-makers need to consider and weigh all the factors; in some cases, factors on both sides may be present. If the factors suggest that the worker's loss of earnings is caused primarily by the worker's work-related impairment/disability, the worker may be entitled to additional benefits/services.

Factors suggesting employment situation	**Factors suggesting work-related impairment/disability**
The worker's lack of qualifications (i.e., worker with more qualifications would not be laid off).	The worker is still receiving WSIB approved active (non-maintenance) health care treatment (e.g., physiotherapy) on a frequent basis
The worker is working for a new employer (i.e., has demonstrated that the worker's injury does not pose a barrier to acquiring new employment).	The worker is in the early phase of recovery (i.e., recent date of accident/recurrence/ deterioration
The worker needs minimal or no accommodation	The worker requires a high degree of accommodation; tasks and work processes have been specifically accommodated for the worker
The worker's lack of seniority (i.e., worker with more seniority would not be laid off). The worker chooses not to exercise bumping rights or chooses to be laid off.	The worker is unable to bump a coworker with less seniority due to his/her work-related impairment/disability. Decision-makers need to exercise judgment in these cases to make sure there isn't more than one injured worker able to bump into the same job. If there is more than one, only the worker with the highest seniority would get the benefit of this factor weighed in his/her favour. The significance of the worker's permanent impairment(s)/disability. Workers with more than one work-related impairment/disability may be significantly impaired/disabled due to the combination of their impairments/disabilities.

(v) The worker's testimony

[20] In summary, the worker gave the following account:

- She began working with the accident employer in 1999. Prior to that she worked in a factory doing sewing. She also worked in a home day care.
- She completed Grade 12 in 1978 and thereafter took a college course as a legal secretary in 1979. She never worked in this job as she had student fees to pay off and there were no jobs available in that area at that time.
- Following the accident in June 2001, she worked as a grader for the accident employer from 2003 until her lay-off on September 21, 2007. In September 2007, another department had closed down. Senior employees from that department bumped her from her job.

Despite her seniority she was not able to bump anyone from their job as she was limited in what work she could undertake due to her restrictions.

- During her lay-off on September 24, 2007 she contacted the Board and indicated that the accident employer did not have any suitable sustainable work that met her restrictions. The claims adjudicator told her that she did not qualify for LMR services or LOE as she had the skills to find other employment.
- She did manage to find employment as a grader with another employer from November 5, 2007 through to December 10, 2007. Although she was earning more per hour, she was working fewer hours than with the accident employer. She left this job when the accident employer called her back. She preferred returning to the accident employer because of her seniority and the benefits. When she returned to work in December 2007 she was not grading but performing other suitable modified work at a minimum wage loss.
- At the time of each lay-off she was informed that the reason for her lay-off was the accident employer's inability to accommodate her restrictions. She was also told that the lay-offs were indefinite.
- It was her physical restrictions resulting from the workplace injury that prevented her from taking other work within the accident employer.
- When she was laid off in November 2008, the job of grader was eliminated at the accident employer.

[21] In summary the worker's representative made the following submissions:

- The decision made by the claims adjudicator in September 2007 was two days after the worker contacted the Board. The Board determined that the position of grader was available in the general workforce without undertaking a job market analysis. LMR services were denied on the grounds that the SEB of grader was suitable for the worker. This is not true.
- There was no work available other than at the accident employer and the employer where the worker found work for a short period of time and which subsequently closed. In noting that the job of grader had been eliminated at the accident employer and that there is no other prospective employer in the area who would be able to offer such a position the job was/is not readily available.
- The letters of lay-off from the accident employer confirm that the worker was to be laid off indefinitely due to her work restrictions and their inability to accommodate those restrictions.
- The job of a grader was suitable but not sustainable.
- A labour market re-entry assessment (LMRA) ought to be allowed to determine the worker's appropriate SEB. In the alternative, the present job is to be used as the appropriate SEB.

(vi) Analysis

(a) The worker's entitlement to LMR services

[22] In summary, it is the worker's submissions in this appeal that she be allowed LOE benefits after the 72 month final review period and a LMR assessment based on the following reasons:

- She never returned to her pre-accident employment.
- Her employability following the workplace injury of June 20, 2001 wad limited to modified work and that, during the periods for which she seeks entitlement to LOE benefits she was unable to apply her "bumping" rights within the accident employer due to the physical restrictions resulting from the workplace injury.
- Prior to each of the lay-offs, the accident employer indicated by way of a termination letter that her lay-off was indefinite and that they were not able to accommodate her due to her restrictions.
- She was only re-instated after a lay-off when work became available if someone else went on leave.

[23] Section 42(1) of the WSIA requires the Board to offer an LMR assessment if the employer is unable to provide work that restores a worker's pre-accident earnings.

[24] Of relevance to this claim is whether the Board was obligated to provide the worker with an LMR assessment pursuant to section 42(1), the time-frame during which the worker requested LMR services, the Board Adjudicators review of the request and the worker's subsequent return to the accident employer on modified duties.

[25] I note that prior to the worker's claim for LMR services she had been employed with the accident employer for approximately four years on modified work. Three months subsequent to the 72 month review the worker testified that she was given her first notice of lay-off which stated that her lay–off was for an indefinite period due to her physical restrictions resulting from her workplace injury. While this letter of termination is not in the Case Record, I note that the subsequent lay-off letters provide similar reasons for the worker's lay-off.

[26] I accept the worker's testimony that when it became clear to her that she was only substituting for people that were going on leave and that there was uncertainty in her future as to whether the accident employer would be able to provide her with sustainable and suitable work, she contacted the Board for LMR services.

[27] It is my view that an LMR assessment is a mandatory obligation, if the following criteria as set out in subsection 42(1) of WSIA are met:

> **42(1)** The Board shall provide a worker with a labour market re-entry assessment if any of the following circumstances exist:
>
> 1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury.

> 2. If the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings.
> 3. If the worker's employer is not co-operating in the early and safe return to work of the worker.

[28] If any of the three circumstances enumerated in ss. 42(1) exist then the Board has an obligation, as evidenced by the mandatory language "shall", to provide the worker with an LMR assessment. In other words, the Board has no discretion with respect to an LMR assessment once any of the three enumerated conditions are met.

[29] In response to the worker's claim for LMR services, the claims adjudicator in Board Memo No. 39 dated September 26, 2007, a decision made while the worker was on lay-off, provided the following reasons why she did not qualify for LMR services:

> I advised the worker that she is not entitled to LOE or LMR services as the job she was performing would be available in the general workforce. I also advised her that she has the skills and abilities to find alternate employment. Worker did not understand and insisted she should be entitled to LOE and LMR….
>
> The worker advised she was laid off as the accident employer did not have any other alternate work within her limitations. I advised worker that her limitations would not prevent her from finding alternate work in the general workforce.

[30] For the reasons noted below, I do not find that the worker has had an LMR assessment under s. 42(1).

[31] I find that the accident employer was unable to offer the worker sustainable employment that met her restrictions. It was the nature of her compensable injury that limited the nature of work which could be offered to the worker. Based on this reasoning the worker meets the criteria for an LMR assessment.

[32] I note that the worker was accommodated at the accident employer for four years, in order to meet her physical restrictions. I do not find objective evidence in the Case Record that supports the claims adjudicator findings that similar work was available to the worker in the general workforce. In my view, the claims adjudicator based her determination that this work was available in the general workforce, solely on the opinion of the accident employer, as noted in Board Memo No. 40 dated September 26, 2007. I find no objective evidence of a job market availability/analysis undertaken by the Board to determine the availability of this job. I accept the worker's testimony that the only lumber manufacturers in the area she resided in was the accident employer and the place where she found employment after the first lay-off but that that employer had closed by the summer of 2008.

[33] In regard to the claims adjudicator finding that the worker had transferrable skills and a reference to a diploma, the worker testified that she had a diploma for a legal secretary in 1979 but that she had never worked a day in that job. I accept her testimony and note that obtaining a position as a legal secretary without further assistance would be an unreasonable goal.

[34] In noting the above, I cannot conclude that the worker received an LMR assessment since the legal secretary training had been taken some thirty years earlier and in my opinion was

outdated. Under s. 42(1), given these circumstances, I find that the Board was obligated to provide the worker with an LMR assessment and this was never carried out. Her entitlement to an LMR plan will need to be reviewed following the LMR assessment. I note the worker is currently working at a wage loss.

[35] The worker is entitled to an LMR assessment. The need for an LMR plan will be determined based on the outcome of the LMR assessment.

(b) The worker's entitlement to LOE benefits

[36] Of relevance to the determination of this claim is that the worker's final LOE review took place on June 20, 2007. As such, in addressing the worker's appeal for entitlement to LOE benefits for several periods of temporary lay-offs which occurred after the 72 month LOE review period, I have considered the application of s. 44, which defines what criteria needs to be met, for the consideration of LOE benefits subsequent to the 72 month period. In order to receive LOE benefits, the worker must fall within one of the exceptions listed in section 44(2.1).

[37] The relevant portion of section 44 for the purposes of the worker's appeal reads as follows:

> 44(1)Every year or if a material change in circumstances occurs, the Board may review payments to a worker for loss of earnings and may confirm, vary or discontinue the payments.
>
> (2) Subject to subsection (2.1), the Board shall not review the payments more than 72 months after the date of the worker's injury.
>
> (2.1) The Board may review the payments more than 72 months after the date of the worker's injury if,
>
> (a) before the 72-month period expires, the worker fails to notify the Board of a material change in circumstances or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan;
>
> (b) the worker was provided with a labour market re-entry plan and the plan is not completed when the 72-month period expires; or
>
> (c) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that results in a redetermination of the degree of the permanent impairment under section 47;
>
> (d) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that results in a determination of a permanent impairment under section 47;
>
> (e) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that is likely, in the Board's opinion, to result in a redetermination of the degree of permanent impairment under section 47;
>
> (f) after the 72-month period expires, the worker suffers a significant temporary deterioration in his or her condition that is related to the injury; or
>
> (g) when the 72-month period expires,
>
> (i) the worker and the employer are co-operating in the worker's early and safe return to work in accordance with section 40, or

(ii) the worker is co-operating in health care measures in accordance with section 34. 2002, c. 18, Sched. J, s. 5 (5); 2007, c. 7, Sched. 41, s. 3 (1, 2).

[38] Thus, it is clear from a plain reading of s. 44 that the *Act* does not allow for the review of LOE benefits beyond 72 months unless the worker's circumstances clearly fall within one of the limited exceptions as per s. 44(2 .1). In this case, the exceptions in sections 44(2.1) (a) and (b) are not present or claimed. The only potentially relevant exceptions are sections 44(2.1) (c) (f) and (g).

[39] As per 44(2.1) (c) and (f) the issue is whether there was a significant temporary or permanent deterioration of the worker's compensable left shoulder condition after 72 months in order for LOE benefits to be reviewed.

[40] The basis of the claim for LOE benefits is the left shoulder injury, a diagnosis of left rotator cuff tendonitis. The worker was granted a 13% Non-Economic Loss (NEL) award subsequent to an assessment on December 12, 2002. There was no redetermination of this award. The worker did not raise the issue that her compensable condition had worsened. At the hearing the worker testified that her condition had not deteriorated or worsened. I do not find any objective medical evidence of an organic worsening of the worker's condition. In addition, I find that the worker was able to maintain employment with the accident employer for approximately four years post-accident, at no wage loss, even though she was on modified work duties.

[41] While I accept the worker's reasoning that her work–related impairment affected her employability subsequent to the compensable injury and that she has only been able to return to modified work since the compensable injury, I do not find that her compensable condition had worsened temporarily or permanently which would engage the exception contained in s. 44(2.1) (c) and (f).

[42] In regard to the worker's claim for LOE benefits for the periods September 21, 2007 to December 10, 2007, March 21, 2008 to March 31, 2008, May 12, 2008 to May 31, 2008 and November 21, 2008 onwards, I find that s. 44(2.1)(g) applies.

[43] This exception is discussed in greater detail in *Operational Policy Manual* Document No. 18-03-06 "Final LOE Benefit Review" which states:

Co-operating in ESRTW at 72-months

The WSIB defines the workplace parties' co-operation in ESRTW activities to include

- the accident employer and worker initiating and maintaining communication with each other throughout the worker's recovery and impairment
- identifying and securing suitable and available work (employer attempting to provide suitable work/worker assisting the employer to identify suitable work)

- providing relevant worker's information to the WSIB concerning the worker's return to work
- notifying the WSIB of any difficulty or dispute concerning return to work, see 19-02-02, The Goal of ESRTW and the Roles of the Parties.

The WSIB generally considers the workplace parties to be co-operating in ESRTW at the 72-month period if

- the employment relationship between the workplace parties has been maintained
- the workplace parties are actively attempting to identify suitable and available jobs or in the process of arranging a return to work consistent with the worker's functional abilities
- neither workplace party is refusing to abide by his, her or its co-operation obligations, see 19-02-03, Workplace Party Co-operation.

When considering whether to conduct a review of LOE benefits after the 72-month period for workers who are co-operating in ESRTW, the WSIB considers the following factors such as whether

- job suitability/sustainability concerns existed prior to the 72-month period
- the job being performed post-72 months is highly accommodated
- the worker experiences further or additional reduction of earnings after the final review due to a job change or another situation directly related to the injury
- there is evidence that the worker is having difficulty performing the job (e.g., frequent lost time from work due to the work injury, inability to increase or need to decrease the number of hours of work), and/or
- there is an indication that the accommodated job is temporary or could cease due to employment circumstances. For additional information on accommodated employment, see 18-04-11, Supplements for Programs and LMR Plans Before and After 24 Months.

[44] In this case, I find the worker and the employer were engaged in and cooperating in ESRTW at the time of the 72 month period in June 2007. Both parties were maintaining the employment relationship and were attempting to identify suitable and available jobs. I find there were job sustainability concerns since the employer's letters of termination stated that the worker's lay-off was due to an inability to accommodate her physical restrictions.

[45] The worker experienced a further reduction of earnings after the final review due to job changes and lay offs. The worker was switched from a grader position, to a splice face take off position, to a samples job and then to a stockroom position. I accept the worker's testimony that these other positions she was performing were at a minimum wage loss. I accept that around or shortly after the expiry of the 72 month period expired, there was evidence that the worker's accommodated job was temporary and could cease due to employment circumstances and a lack of sustainable work that could accommodate the worker's restrictions. I accept the worker's testimony that she would not have been able to find this type of work outside of the employer since it was modified and there were no other potential employers in the same field in the area where she could have found work since the other possible employer involved in this field closed in 2008.

[46] Given my finding that the worker was cooperating in ESRTW at the time of the 72 month review, I find the worker is entitled to a further LOE review under s. 44(2.1)(g). Under s. 44(2.4.4) the worker's LOE benefits can be reviewed under s. 44(2.1)(g) up to 24 months after the date of the expiry of the 72-month period. Given that all of the periods of LOE at issue fall within this 24 month period, I find I have jurisdiction to adjudicate these issues under the exception in s. 44(2.1)(g). Similar to the analysis in *Decision No. 1641/08*, I interpret s. 44(2.4.4) to mean that the worker's LOE benefits can be reviewed at any time during the 24 month period and on more than one occasion.

[47] For the period September 21, 2007 to December 10, 2007, I find the worker made reasonable efforts to obtain employment during this period and did in fact obtain employment with another employer. Accordingly, the worker is entitled to full LOE benefits from September 21, 2007 to November 4, 2007. The worker obtained employment with the other employer on November 5, 2007. The worker is entitled to partial LOE benefits from November 5, 2007 to December 10, 2007 based on the worker's actual earnings as a grader with the other employer.

[48] I find the worker was entitled to full LOE benefits from March 21, 2008 to March 31, 2008 and May 12, 2008 to May 31, 2008. Given the short periods of time at issue it was unreasonable for the worker to seek alternate employment. Accordingly, full LOE benefits should be awarded.

[49] The worker has entitlement to LOE benefits from November 2008 onwards. Since I am unclear on the worker's self-directed LMR efforts and also since the LMR assessment has yet to be completed, the quantum and duration of LOE benefits from November 2008 onwards are to be determined by the Board, subject to the worker's usual right of appeal.

DISPOSITION

[50] The appeal is allowed as follows:

1. The worker is entitled to an LMR assessment.
2. The worker is entitled to full LOE benefits from September 21, 2007 to November 4, 2007. The worker is entitled to partial LOE benefits from November 5, 2007 to December 10, 2007 based on the worker's actual earnings earned as a grader with the other employer.
3. The worker is entitled to full LOE benefits from March 21, 2008 to March 31, 2008.
4. The worker is entitled to full LOE benefits from May 12, 2008 to May 31, 2008.
5. The worker has entitlement to LOE benefits from November 2008 onwards. The quantum and duration of the benefits are to be determined by the Board, subject to the worker's usual right of appeal.

DATED: May 18, 2010

SIGNED: N. Jugnundan