IN THE MATTER OF AN ARBITRATION

Between

GREATER VANCOUVER REGIONAL DISTRICT

(the "Employer")

-and-

GREATER VANCOUVER REGIONAL DISTRICT EMPLOYEES' UNION

(the "Union")

(Shaun Dunne - Rental Reduction Grievance)

ARBITRATION BOARD:	John B. Hall, Chair Ray Haynes, Union Nominee Michael A. Wagner, Employer Nominee
APPEARANCES:	Craig T. Munroe, for the Employer Craig Bavis, for the Union
DATE AND PLACE OF HEARING:	January 28, 2004 Vancouver, British Columbia
DATE OF AWARD:	February 13, 2004

AWARD

I. INTRODUCTION

Shaun Dunne is employed by the Greater Vancouver Housing Corporation (the "GVHC") as a Resident Caretaker. As suggested by the title of the position, Resident Caretakers live and work in GVHC housing projects. As part of their compensation, they receive a 50% rental reduction for the unit they occupy in a project. The actual amount of the reduction varies depending on the specific unit.

Mr. Dunne has been unable to work since early 1999 because of a neck injury. He qualified for short term injury benefits, and later received LTD benefits until they were discontinued by the insurer. The issue before us is whether Mr. Dunne is entitled to the rental reduction when he is not actively employed as a Resident Caretaker.

The parties each advance different and alternative interpretations of the relevant collective agreement provisions. The Union's primary submission is that Resident Caretakers are entitled to the rental reduction so long as they are employed in the position. Its alternative argument is that the rental reduction is a component of pre-disability salary. Therefore, it must be taken into account when calculating the level of LTD benefits for Resident Caretakers.

The Employer advances an admittedly strict interpretation of the collective agreement to suggest that Resident Caretakers are only entitled to the rental reduction if they are actively employed. This argument relies on language stating the reduction is for "the occupied unit in the project where they live *and work*" (emphasis added). Alternatively, the Employer contends the rental reduction is a benefit which, according to mutually agreed principles, need only be continued for six months where employees are entitled to LTD coverage.

The facts giving rise to this dispute are relatively straightforward and will be recounted in a moment. In addition to Mr. Dunne's circumstances, the parties led evidence concerning negotiation of the rental reduction. There is no material difference over what was discussed during collective bargaining. Thus, the answer to the grievance turns on questions of contract interpretation.

II. BACKGROUND

Mr. Dunne began working with the GVHC as a Resident Caretaker on May 1, 1998. He was hired to take care of two projects in Ladner. One of the projects was Lynden Court where he lived and received a 50% rental reduction on the unit as part of his compensation. The annual value was taxable and reported at the end of the year on the T4 slip issued by the Employer. Mr. Dunne's duties included collecting rent, minor maintenance, supervising and reporting on the work of contractors, responding to tenant complaints, handing out eviction notices, and other general apartment duties. His regular hours of work were 8:00 am to 4:30 pm, Monday to Friday.

Mr. Dunne injured his neck on January 29, 1999 while at home. He has not been able to work regularly since his injury. He received six months of short term illness and injury benefits until he began receiving "own occupation" LTD benefits in July 1999. The latter are provided through Manulife.

Mr. Dunne had surgery in November 1999 which resulted in his C5-C6 vertebrae being "fused". Additional healing time was required, and even after recovery his neck problems persisted. He qualified for "any occupation" LTD benefits in July 2001. Mr. Dunne was eventually sent for an MRI in September 2003 which showed herneation of the C6-C7 disc. He is presently booked for a fusion of those vertebrae. Prior to the MRI, in August 2003, Manulife advised Mr. Dunne that his LTD benefits would be discontinued effective November 30, 2003. He is now obtaining medical reports to appeal that decision.

Mr. Dunne continued to live at Lynden Court and receive the rental reduction after his injury in January 1999. In a letter dated March 2, 2001 the GVHC confirmed earlier advice that the rental reduction would be discontinued in June:

> You have now been on short term sick leave and long term leave for over two years. While you have been working to recover from your neck problem sufficiently to be able to return to work we have covered your duties with a temporary person during your absence.
>
> In order to adequately serve the needs of both the Corporation and our residents we feel it is necessary to make a more permanent change at this time, particularly given the uncertainty around your long term ability to recover sufficiently to rejoin the work force.
>
> The subsidy you and your family have continued to receive will be discontinued effective June this year (per my previous email). If you wish to remain on site as a tenant, or would like to be offered housing elsewhere within our portfolio, give us a call and we'll do everything we can to accommodate your needs.

For reasons which were not explained at arbitration, the GVHC did not act on this notice. It sent another letter on October 4, 2001 advising that the rental reduction would end effective November 30, 2001 because Mr. Dunne was no longer performing the duties of Resident Caretaker:

> This letter will inform you that effective November 30, 2001, the 50% rent reduction you have been receiving will cease. This payment is made in recognition of employees who are performing the duties of a Resident Caretaker, and you have been unable to perform the essential duties of this position since February, 1999.

The Union grieved this second notice. It asserted the rental reduction constituted a substantial portion of Mr. Dunne's wage package and could not be discontinued:

> The Union is grieving your decision to deny the portion of Mr. Shaun Dunne's wages that correspond to the fifty-percent rent reduction for the accommodation related to his employment as a Resident Caretaker. This subsidy compromises a substantial portion of Mr. Dunne's wage package. The Employer has acknowledged this rent subsidy since Mr. Dunne

> became disabled from performing the duties of his position in February 1999. Your notification by letter to Mr. Dunne dated October 4th, 2001 advising him of the discontinuation of the subsidy effective November 30th, 2001, is discriminatory and a violation of Mr. Dunne's rights to disability coverage.
>
> As a resolution to this grievance the Union requires that the letter of October 4th be withdrawn and that Mr. Dunne's entitlement to the rental subsidy be reinstated.

The Employer revisited the question of Mr. Dunne's entitlement. In a letter dated November 28, 2001 it took the position that the rental reduction was a benefit that could be eliminated after six months of LTD coverage:

> With respect to the matter of Mr. Dunne's rental subsidy elimination, I offer the following information:
>
> - The negotiated 'attachment letter #2' with respect to the Housing Corporation is enclosed for your review. This letter separates wages and job descriptions (attachment #1) form the rental reduction benefit described in attachment #2. As stated in attachment #2, the rental reduction is available "for the occupied unit in the project where they live and work".
>
> - The employer does not believe that the decision to eliminate the rental reduction benefit constitutes a violation of Mr. Dunne's access to disability coverage described in the collective agreement.
>
> Mr. Dunne's medical situation throughout his LTD period, and potential to return, has been 'uncertain'. As a result, the employer did not adequately consider the matter of the elimination of rental reduction in a timely fashion. Following consultation with Human Resources, I understand that, in the future, 'rental reduction elimination' shall occur after 6 months LTD coverage, consistent with Section 3, part (i) (page 79) of the collective agreement.

The Union responded again on December 4, 2001. It maintained Mr. Dunne remained eligible for the rental reduction so long as he was employed as a Resident

Caretaker:

> The Union has received a letter from Ms. Kathleen Crossley dated November 28th, 2001, denying that above grievance. Ms. Crossley relies upon "Attachment #2" of a document that has since been incorporated into the Collective Agreement in the "Notes" section at the end of "Schedule A Bi-weekly Salaries". The Union also in part relies upon this language in the Collective Agreement to support his claim for the continuance of the rental subsidy throughout his period of physical disability. The language clearly states that "Rental charged to this occupation will be 50% of the established rent for the occupied unit in the project where they live and work." As Mr. Dunne is employed in the occupation referred to in this language and continues to be so while in receipt of disability benefits, it follows that he remains eligible for the rental subsidy. As stated in our letter to Ms. Crossley, not only have Mr. Dunne's rights to benefit coverage under the terms of the Collective Agreement been violated, but the GVHC is violating other statutory rights that protect him from discrimination due to his physical disability.

The matter was not resolved through early 2002 although the Employer agreed to continue the 50% reduction on a "without prejudice" basis. Mr. Dunne's marital situation changed in January of that year, and he became a single parent with substantial debt. He was having trouble paying the rent on the Lynden Court unit even with the 50% reduction. Mr. Dunne eventually gave notice "under duress" that he would vacate the unit by July 31, 2002 in order to avoid the threat of eviction. He moved to live with his sister in Pitt Meadows and the Employer ended the rental reduction. The value of the 50% reduction at that point was $392.50 per month.

III. RELEVANT COLLECTIVE AGREEMENT PROVISIONS

Article 9.08 of the collective agreement contains provisions regarding the short term illness and injury plan (STIIP) and the long term disability (LTD) plan. The language was negotiated during the 1987 - 1988 round of collective bargaining. Section 3 deals with STIIP:

Section Three - Short Term Illness and Injury Plan

All New Regular Full-Time Employees hired on or after the date of ratification of this Memorandum of Agreement shall, upon successful completion of a six (6) month probationary period, be covered by the following STII Plan:

(a) All eligible employees shall receive one hundred percent (100%) of regular gross salary for the first three (3) occurrences of illness in a calendar year, an occurrence is a continuous absence without a break (except for weekends).

(b) Thereafter from the 4th occurrence onwards, eligible employees shall receive 75% of regular gross salary until such time as they become eligible for coverage under the LTD Plan.

* * *

(h) A detailed outline describing employee L.T.D. benefit coverage will be drawn up and mutually agreed to by the parties recognizing the following principles:

(i) That employee benefit coverage will be continued on the described cost sharing basis for a period of six months L.T.D. coverage. Annual vacation and statutory holidays will be compensated by the employer during this period.

(ii) That employee benefit coverage will be available to an employee for a further eighteen (18) month period , at the full expense of the employee. ...

The "detailed outline" contemplated by Section 3(h) was never drawn up by the parties. Section 4 goes on to provide for LTD coverage:

Section Four - Long Term Disability Plan

At the expiry of 26 weeks of continuous coverage under the STII Plan, Regular Full-Time Employees who have been continuously employed for a minimum of one (1) calendar year shall be eligible for coverage under the LTD Plan, which shall provide for the following:

(a) Regular Full-Time Employees who continue to be disabled from fulfilling the requirements of their own occupation beyond 26 weeks of coverage under the STII Plan, shall receive 66% of the

first $2,000 per month of pre-disability salary and 50% of any amount thereafter, for so long as they remain disabled from fulfilling the requirements of their own occupation to a maximum of two (2) years.

(b) In the event that an employee in receipt of LTD Plan benefits is deemed by the insurer, at the expiry of the two (2) year period referenced under Section 4(a) above, to be totally disabled from fulfilling the requirements of any occupation, then the employee shall continue to receive a benefit of 66% of the first $2,000 per month of pre-disability salary and 50% of any amount thereafter, until the date of recovery, death, or retirement of the employee, whichever first occurs. ...

The focus of this dispute concerns language found in Schedule "A" to the collective agreement. The schedule lists the bi-weekly salaries for an extensive number of bargaining unit positions. We will only reproduce the highest and lowest positions, as well as others referred to in argument. The most critical part of Schedule "A" is the language at the end dealing with Housing Resident Caretakers:

BI-WEEKLY SALARIES

(descending order by rate of pay)

Position	Jan. 01/97	Jan. 01/98	Jan. 01/99
Electrical Foreman	2032.32	2052.64	2073.17
. . .			
Trucked Liquid Waster/ First Aid Attendant*	1442.56	1477.56	1492.34
Yard Person I (LCOC)/ First Aid Attendant*	1442.56	1477.56	1492.34
. . .			
Resident Caretaker	1125.54	1136.80	1148.17
Resident Caretaker I	1084.33	1095.17	1106.12

NOTES:

* Includes bi-weekly first aid premium. ...

Housing Resident Caretakers:

Rental charged to his occupation will be 50% of the established rent for the occupied unit in the project where they live and work. In return for this rental reduction, Housing Resident Caretakers are excluded from overtime payment for 'nuisance and disturbance' disruptions which do not constitute scheduled overtime or legitimate emergencies.

Nuisance and disturbance disruptions shall not include:

- Letting tenants who are locked out their units, back in
- Clearing blocked drains, toilets, sinks or bathtubs
- Showing suites without an appointment made at least 12 hours in advance
- Showing suites after 8 p.m.

Further, it is clarified that:

- Resident Caretakers have no obligation to remain 'on site' or to respond to (unless voluntarily) the Corporation's business during their scheduled days off. Resident Caretakers have no responsibilities to fulfill overtime or 'emergency' conditions beyond that of any other GVRDEU members.
- Resident Caretakers will have no obligation to respond in person to a situation in a Corporation facility that, in their opinion, represents a threat to their physical safety.

Johnstone Hardie is the Employer's Human Resources Services Division Manager. He testified that the figure used to calculate LTD benefits is the monthly value of the bi-weekly salary found in Schedule "A". Except for positions such as Trucked Liquid Waster and Yard Person where a first aid premium is included in the bi-weekly salary, other forms of employee remuneration are not part of the benefit calculation. The latter category includes overtime, deferred compensation and first aid premiums for other positions. This practice has been followed since the LTD plan was introduced in 1988 and no one has ever suggested using a different figure.

According to Mr. Hardie, the rental reduction was introduced during the 1997-1998 round of collective bargaining. He was an Employer member of a sub-committee that negotiated the clause. The sub-committee addressed a number of issues particular to housing. One was the interruptions that Resident Caretakers are subject to at housing projects. Mr. Hardie described the rental reduction as an "exchange" for eliminating overtime payments associated with some of those interruptions. More specifically, he said there are a number of instances where people make requests of Resident Caretakers outside of normal working hours. The parties identified them as "nuisance and disturbance" disruptions having financial merit. Mr. Hardie said the Union was definitely aware of this exchange as it was the basis for the language in the collective agreement. However, he did not recall any discussion over why the rental reduction was placed in Schedule "A" as opposed to elsewhere in the agreement. There is no dispute on either side that payment of the rental reduction when a Resident Caretaker is not actively employed was not considered during bargaining.

Bill Eastwood is the Union's President. He was also part of the sub-committee that negotiated the rental reduction language in 1997-1998. Mr. Eastwood testified that he argued during bargaining for the language to be a footnote to Schedule "A" because he viewed the reduction as part of wages applicable to all Resident Caretakers. He said the Employer "did not turn [its] mind" to placement of the provision, and this was not a "sticking point". Mr. Eastwood confirmed that the rental reduction was negotiated as an exchange for what he characterized as "ill-defined parts of the job of being a Resident Caretaker".

We understood from the evidence of both Mr. Hardie and Mr. Eastwood that the rental reduction was a new concept in 1998. We suggested near the end of the hearing that the previous Schedule "A" might potentially be relevant given some of the parties' submissions. Counsel were invited to consider the point and advise the board if they wished to make further submissions. We later received an excerpt from the prior agreement. The lowest positions on Schedule "A" in ascending order were Resident

Caretaker I and Downtown Eastside Caretaker. The Schedule also included language on Resident Caretakers:

> Housing Resident Caretakers
>
> Rental charged to these occupations will have applied a standard reduction of $140.00 per month from the market rent as established by C.M.H.C. from time to time. The rent reduction for staff at Habitat Villa at 2nd Avenue and Wallace Street will be $165.00 per month, which amount shall remain unchanged until the other rent reductions reach or exceed $165.00 per month.
>
> Includes Gastown employees known as "Downtown Eastside Caretakers".

Thus, there was already a provision in Schedule "A" dealing with Resident Caretakers when the percentage rental reduction was negotiated in 1997-1998. The parties jointly submit that the former provision is of "neutral" effect on their respective positions.

IV. SUMMARY OF SUBMISSIONS

The Union submits the rental reduction is part of a Resident Caretaker's salary and is not merely a benefit. It says the clearest indication of this status comes from the provision being placed in Schedule "A". Thus, the rental reduction is similar to the first aid premium for the Trucked Liquid Waste and Yard Person positions which is also part of salary. The Union characterizes the reduction as a mandatory payment which must be made under the collective agreement, unlike other premiums such as overtime which require actual work to be performed. The reason the reduction cannot be included on the salary scale is because the exact amount depends on the rent of the unit occupied by a Resident Caretaker. Thus, their salary must be read as the Schedule "A" line item plus the rental reduction. The Union says it must be inferred that the parties intended the reduction to be part of their salary as Resident Caretakers are the lowest paid position on the scale.

The Union concedes Mr. Dunne is not performing "nuisance and disturbance" calls while not actively employed. However, this is no different than other employees who cannot perform their regular duties because of disability. Nor is the fact Mr. Dunne has moved from Lynden Court of significance, and he should not be penalized for living elsewhere while not actively employed.

The Union's primary submission is that the rental reduction must continue in full so long as Mr. Dunne remains a Resident Caretaker. On this interpretation, the appropriate remedy is the cash value of the rental reduction since Mr. Dunne left Lynden Court at the end of July 2002. Alternatively, the Union argues the value of the reduction must be incorporated into pre-disability salary for the purpose of calculating LTD benefits. The appropriate remedy in that case would be to re-calculate Mr. Dunne's LTD benefits for the period August 1, 2002 until they were discontinued, and to re-instate them at the same level should his appeal succeed.

The Employer disputes any notion that the rental reduction can form part of salary. It points to the Trucked Liquid Waste and Yard Person positions to show the parties know how to achieve that result. The fact that the rental reduction varies between specific units is irrelevant -- the parties used express language to include the first aid premium for some positions and could have easily indicated a similar intent here.

The Employer submits the rental reduction is a benefit enjoyed by certain classifications under specific circumstances. In exchange for excluding nuisance and disruption calls from overtime compensation, the parties agreed to a form of on-call remuneration that is payable in respect of the unit where Resident Caretakers "live and work". A strict interpretation of this language suggests there is no entitlement to the rental reduction when a Resident Caretaker is not living in the unit or actively employed. However, the Employer says it is "open to a finding" that indemnity principles concerning LTD entitlement govern, and the rental reduction should be treated like other benefits. Under the terms of Section 3(h)(i) and (ii), benefit coverage continues for the

first six months of LTD entitlement on a cost sharing basis; coverage is thereafter available at the expense of the employee.

The Employer additionally asserts the Union has a significant onus to establish that the rental reduction should be incorporated into LTD benefits and potentially paid in perpetuity. It submits the Union's primary position that the parties intended the benefit to be converted to cash and paid indefinitely is illogical and inherently unreasonable. In the result, the Employer says there should not be a monetary remedy because it continued the rental reduction for Mr. Dunne well beyond the six month period in the collective agreement.

V. ANALYSIS

The interpretative solution to this grievance is not readily ascertained. Nor does the collective bargaining evidence shed a direct light on the problem: the parties never discussed how the rental reduction would be treated if a Resident Caretaker was not actively employed. As explained by the Labour Relations Board in *Andres Wines (B.C.) Ltd.*, [1977] 1 Can LRBR 251, this is not an unusual occurrence:

> There is nothing that unusual about the presence of such an apparent gap in the terms of a collective agreement. As a practical matter, it is impossible for the parties to a collective agreement to anticipate, to canvass, and then to reach agreement about every contingency which might arise during its term. The fact of life stems from the very nature of a collective agreement. ...
>
> But the fact of the matter is that such events [gaps] do occur during the term of the agreement. The parties may not then reach an accommodation during the grievance procedure. When they take the issue to arbitration, their arbitrator does not have the luxury of deciding not to decide. He must make up his mind about the implications of their general contract language for this peripheral problem. In the absence of any clear indication of the mutual intent of the parties -- gathered from either their language or their behaviour -- the arbitrator must, in effect, reconstruct some kind of hypothetical intent. What is it reasonable to assume that typical labour negotiators, having analyzed the nature and purpose of the

> contract benefit in question, would agree to as a sensible judgment about who should enjoy the benefit in this unusual situation? (p. 253)

That approach is applicable here (see also *Sears Canada Inc. -and- IBEW, Local 213*, [2003] B.C.C.A.A.A. No. 276 (Kelleher), cited by the Employer). We must consider the implications of the collective agreement language generally and, unless there is a clear indication of mutual intent, reconstruct a "hypothetical intent". The touchstone for that determination is our assessment of what sensible negotiators would have done if faced with the circumstances now before this arbitration board.

This approach leads us to reject the initial position of each party. Neither position reflects a reasonable interpretation of the collective agreement; moreover, it is highly unlikely that either would prevail in collective bargaining.

To elaborate, the Union's primary position is that the Employer must continue the rental reduction in full although a Resident Caretaker is not actively employed due to disability. We accept that, by definition, totally disabled employees are unable to work but may nonetheless be entitled to a variety of benefits. Once this is recognized, the fact that the rental reduction applies in the ordinary course to units where Resident Caretakers "live and work" in the ordinary course cannot be a determinative factor. At the same time, those words suggest the compensation was intended to be a feature of active employment. Further, the Union's primary position is inconsistent with how the first aid premium applies to the Trucked Liquid Waste and Yard Person positions. That premium is not paid in full when there is a LTD claim. Rather, it is included in the employee's Schedule "A" bi-weekly salary and becomes part of the percentage benefit calculation.

Nor is the Union able to point to any other aspect of an employee's compensation under the collective agreement which continues in full -- and indefinitely -- when employees are not at work. We are obliged to reject the suggestion that this would have been intended for the rental reduction. And it is even less probable that the parties would have intended the reduction to convert to a cash equivalent where a Resident Caretaker stops living in a GVRC unit and is no longer receiving LTD benefits.

have intended the reduction to convert to a cash equivalent where a Resident Caretaker stops living in a GVRC unit and is no longer receiving LTD benefits.

The Employer's initial position is equally untenable (in fairness, the argument was not advanced with particular vigour). The Employer suggests a "strict" reading of the collective agreement means Resident Caretakers are not entitled to the rental reduction when they cease active employment. This is because employees on LTD do not perform the "nuisance and disturbance" overtime which was the other side of the bargain. Any support for this interpretation gives way to broader considerations.

First, as we have said, it is not a complete answer to say that the rental reduction is tied to the units where Resident Caretakers live and work. More significantly, the Employer's initial position would necessarily apply as well where Resident Caretakers access STIIP benefits. It is highly unlikely that sensible negotiators would agree to discontinue the rental reduction because of a short term illness, especially if the Resident Caretaker is expected to return to active employment in the near future. That would be an especially harsh result, and is inconsistent with the continuation of other benefits during the STIIP period.

We are accordingly driven to consider the parties' alternate positions. Their respective arguments effectively merge into opposite sides of the same question: How is the rental reduction continued where a Resident Caretaker is entitled to LTD coverage? More particularly, is it included in pre-disability salary (as contended by the Union), so that it becomes part of the LTD percentage calculation; or is the reduction a benefit (as asserted by the Employer), and governed by the terms of Section 3(h)(i) and (ii)?

There is again no immediate answer to this question, and counsel agreed none of the authorities cited in argument is directly on point. The Union refers first to *Re Newfoundland Hosp. Assn. and N.A.P.E.* (1986), 32 L.A.C. (3d) 55 (Thistle). The issue in that case was whether the words "regular salary" should be interpreted to mean regular *net* salary or regular *gross* salary when employees were receiving workers compensation

benefits. The parties differed over whether the figure in the salary scale should be reduced by various deductions; however, there was no dispute over what constituted "salary". In *Re Vancouver Hospital and Health Sciences Centre and B.C.N.U.* (1998), 70 L.A.C. (4th) 1, Arbitrator Munroe held the "normal entitlement" for part-time employees absent on workers compensation claims was what they would have earned but for their injury. In that regard, the amount could exceed their partial FTE status if they typically worked additional hours. But once again, there was no dispute over the type of compensation included in the calculation, and the collective agreement referred explicitly to "*wages and benefits* equaling the employees normal entitlement" (emphasis added). Somewhat similarly, Arbitrator Larson found in *Health Employers' Assn. of British Columbia -and- Nurses' Bargaining Assn.*, [2001] B.C.C.A.A.A. No. 57, that overtime should be taken into account when calculating the regular net take-home wages of employees on workers compensation leave.

The Employer acknowledges that *Re British Columbia Cancer Agency and H.S.A.B.C.* (1997), 68 L.A.C. (4th) 338 (Munroe), was primarily concerned with the concept of discrimination under the *Human Rights Act*, but it says the discussion regarding LTD benefits applies by analogy. On that account, the case recognizes limits to an employer's responsibilities regardless of the potentially harsh consequences for the employee. Without commenting on that analysis, it is yet again apparent that *B.C. Cancer Agency* did not involve a comparable interpretative dispute. Arbitrator Munroe found "on the face of the collective agreement" (p. 344) that the employer's obligation to pay service-driven economic benefits was suspended after a specified period of time.

Some guidance can be found in the authorities cited by counsel regarding collective agreement interpretation where a monetary benefit is in dispute. For present purposes, we accept Arbitrator Hope's view that a party bears the legal burden of proving any interpretation it advances to succeed in the dispute. Further, in considering the likelihood that the parties intended a particular result, an arbitrator should look at the industrial relations implications of the interpretation asserted and the circumstances surrounding its introduction. See *Re British Columbia Forest Products Ltd. and Pulp,*

Paper & Woodworkers of Canada, Loc. 18 (1988), 1 L.A.C. (4th) 94, at p. 106. As the same arbitrator remarked in another award, this does not mean that the bargain must be expressly stated in the collective agreement itself; a union is entitled to all benefits that flow naturally from a consideration of the language used by the parties. See *Re Green Valley Fertilizer Ltd. and U.F.C.W., Loc 1518* (1991), 22 L.A.C. (4th) 417, at p. 422.

We begin by noting the pivotal words of the LTD entitlement: employees eligible for coverage are paid a percentage of "pre-disability salary" according to Section 4(a) and (b). Although the bi-weekly salary scales are contained in Schedule "A", neither Section 4(a) nor (b) refers expressly to the Schedule. The Union's point that the rental reduction is found in Schedule "A" would have greater force if the language referred specifically to the entire Schedule. Further, while deferred compensation is not found in Schedule "A", it is placed under the heading "Salary Schedules". The parties agree deferred compensation is *not* part of pre-disability salary.

There is next the Employer's observation that the parties used a different and express means of including the first aid premium in salaries for the Trucked Liquid Waste and Yard Person positions. We accept the Union's re-joinder that the same type of shorthand cannot be used for Resident Caretakers because the amount of the rental reduction varies between housing units. Nonetheless, the lack of any wording in Schedule "A" to suggest the parties intended the rental reduction to form part of salary stands in marked contrast to the Note regarding the first aid premium for the other positions.

There is some initial appeal to the Union's suggestion that the rental reduction should be treated as salary because the position of Resident Caretaker is found at the bottom of the salary scale. Even if the full amount of the rental reduction were added to the bi-weekly salary, the position would still be in the lower half of the scale. However, we are unable to draw the inference invited by the Union. There is no evidentiary basis to compare the duties and responsibilities of Resident Caretakers to other positions.

Further, Resident Caretakers were at the bottom of the scale even before the rental reduction was increased substantially during the 1997-1998 negotiations.

Another relevant consideration is the fact that the current rental reduction was negotiated some 10 years after the LTD plan was introduced. We find this makes it more difficult to conclude that the reduction should be included in the LTD calculation, particularly as neither side contemplated that consequence at the time.

Finally, and perhaps most significantly, we must consider the very nature of the rental reduction. There is no controversy over the primary intent of the current provision: it was negotiated because of "nuisance and disturbance" disruptions outside of normal working hours. Both sides recognized this exchange or trade-off, and their bargain was expressed in the following language:

> ... In return for this rental reduction, Housing Resident Caretakers are excluded from overtime payment for 'nuisance and disturbance' disruptions which do not constitute scheduled overtime or legitimate emergencies.

The wording goes on to describe certain duties which will not constitute "nuisance and disturbance" disruptions. As such, the rental reduction more closely resembles compensation for overtime than it does salary. Indeed, the language implicitly confirms that work associated with these types of after-hours disruptions would otherwise qualify as overtime.

At the same time, there are intangible elements to the rental reduction which differentiate it from regular overtime and other premiums that are not included in the LTD benefit calculation. An obvious concern is that discontinuing the rental reduction could have a significant impact on a Resident Caretaker's living arrangements. These unique features of the provision support our view that it must be recognized in some form where a Resident Caretaker suffers from illness, injury or disability.

We appreciate the Union's argument that the rental reduction is mandatory and is received regardless of whether a Resident Caretaker is called outside normal hours while actively employed. Further, there is no requirement to record nuisance and disturbance disruptions. But these points are answered by at least two considerations. First, it would be difficult to quantify the appropriate remuneration for those disruptions; the monetary value would seemingly exceed the time worked by the Resident Caretakers, given the likely inconvenience to their personal lives. Second, the unmistakable impression left by the evidence is that nuisance and disturbance calls are a fact of life for Resident Caretakers who live and work in GVHC housing projects. The same intrusion will not occur when Resident Caretakers are not actively employed.

We have accordingly concluded that the rental reduction is not part of a Resident Caretaker's "pre-disability salary" and should not be part of the LTD benefit calculation. The more sensible judgment is to treat the compensation as a benefit addressed by Section 3(h)(i) and (ii). This will allow the domestic arrangements of Resident Caretakers to continue unaffected during periods of short term illness and injury. It will also continue the benefit at the Employer's expense for six months where a Resident Caretaker is entitled to LTD coverage.

We find it reasonable to assume that labour negotiators would have reached this compromise had they turned their minds to the issue. The Employer is not required to compensate a Resident Caretaker indefinitely where the additional duties for which the provision was intended are no longer being performed. On the other hand, an employee in Mr. Dunne's position has several months to consider whether it may be necessary to make alternative living arrangements. We believe our conclusion is reinforced by the rental reduction provision in the prior agreement. However, given the parties' joint submission that the old language is of "neutral" effect on their positions, we will not belabour the point.

The rental reduction applicable to Resident Caretakers under Schedule "A" of the collective agreement cannot be characterized as "pre-disability salary". Rather, it constitutes a benefit which continues where employees access short term illness and injury benefits; further, it continues for the first six months of LTD coverage.

We have considerable sympathy for Mr. Dunne's personal circumstances. However, in light of our conclusions, we must find he is not entitled to a monetary remedy. The Employer reduced the rent on the housing unit Mr. Dunne occupied for two years after he began receiving LTD benefits, and that exceeded the period specified by the collective agreement.

Dated at Vancouver, British Columbia this 13th day of February, 2004.

JOHN B. HALL, Chair

"DISSENTS"

RAY HAYNES, Union Nominee

"MICHAEL A. WAGNER"

MICHAEL A. WAGNER, Employer Nominee