



## Hotel & Restaurant

**Workers Union Local 779** AFL-CIO, CLC

P.O. Box 6142, St. John's, NL A1C 5X8 Tel: (709) 726-7180 Fax: (709) 726-3978

December 11, 2019

**To: Members of Hotel and Restaurant Workers, Local 779 employed by Sodexo Canada Limited at the Tata Steel Minerals Canada Limited Camp (The "Timmins Camp") outside Schefferville, Quebec between December 2013 and November 2015.**

We write to provide an update on the group grievance filed on your behalf on February 20, 2014. Recently, on October 29, 2019, a judgment from the Supreme Court of Newfoundland and Labrador ordered that a portion of the wages and benefits owed to members of Hotel Employees and Restaurant Employees International Union, Local 779 (HRW 779) be immediately and directly paid to the workers affected. **This amounts to approximately \$4,490,000.** Additional wages and benefits owed but still in dispute by Sodexo are to be held in a trust account until a decision by a judge in a judicial review to be heard in February, 2020.

### Background on Grievance

After the grievance was filed in February of 2014 arbitration hearings were held in St. John's in April 2014. The issue was whether Sodexo was bound to the collective agreement between HRW 779 and Construction Labour Relations Association of Newfoundland and Labrador Inc. (CLRA). Arbitrator David Alcock decided that the CLRA agreement did apply and that Sodexo and HRW Local 779 were bound to its terms as of December 18, 2013.

Sodexo applied for a judicial review of that decision. The reviewing judge quashed the arbitrator's award and the union appealed that decision to the Court of Appeal of Newfoundland and Labrador. The Court of Appeal overturned the trial judge's decision and restored Arbitrator Alcock's original decision. Sodexo then sought leave to appeal to the Supreme Court of Canada in March 2017, but leave was denied.

Following the Supreme Court of Canada's refusal to hear the Sodexo appeal, hearings were held in St. John's in the fall of 2017 to determine the amount of damages owed to workers as a result of the initial arbitration decision. At issue was how long after December 2013 did the collective agreement continue to apply as the work on site shifted gradually from construction to processing. Sodexo argued that as soon as any production commenced, the site was no longer "construction" and the agreement no longer applied,



## Hotel & Restaurant

**Workers Union Local 779** AFL-CIO, CLC

P.O. Box 6142, St. John's, NL A1C 5X8 Tel: (709) 726-7180 Fax: (709) 726-3978

whereas the union maintained the position that as long as construction was occurring, it was a construction site and the CLRA agreement applied.

After lengthy in-person hearings, with testimony and evidence from members of the union and management, and written submissions from legal counsel for the union and for Sodexo, the arbitrator issued a decision on how long the CLRA collective agreement applied as well as gave instructions on payment of benefits and overtime. Following this, Sodexo continued to dispute the payment of overtime on Fridays, and the arbitrator heard further arguments on the matter before issuing another portion of the decision on November 9, 2018. A final award combining all rulings and submissions and responding to written submissions of the parties after the decision on Friday overtime was issued on February 25, 2019. The amount awarded was approximately **\$7,440,000**. However, interest continues to accrue and the total amount now exceeds **\$7,600,000**.

The original decision of Arbitrator Alcock in 2014 and the subsequent findings of Mr. Alcock, including the final decision of February 25, 2019, may be viewed by going to the following link on our law firm's website: <https://www.mwhslaw.com/award-of-david-alcock/>. Each decision in the award can be viewed by clicking the corresponding tab as noted in the index provided at the link. The amounts owed to each affected worker are detailed in Addendum 3, at Schedules "A" and "B", at the end of the February 25, 2019 decision (tab 8).

Following the February decision, Sodexo advised it would not pay the damages but instead would seek a judicial review of this decision of Arbitrator Alcock. However, having fought for the workers to be paid what they are owed since February 2014, the union decided to begin enforcement proceedings for the amounts ordered by Arbitrator Alcock regardless of any application for a review of the decision. The Alcock decision was registered as a judgment in the Supreme Court of Newfoundland and Labrador and filed with the Office of the High Sheriff of Newfoundland and Labrador. A garnishment order was issued to Tata Steel Minerals Canada Limited. The union then began the process of registering the judgment in Ontario to take enforcement proceedings there, since Sodexo's Head Office is situated in Burlington. With this broad and aggressive approach, Sodexo was forced to commence an application for a "stay of enforcement" in the Supreme Court of Newfoundland and Labrador, asking the Court to halt the union's enforcement proceedings until after the judicial review could be heard.



## Hotel & Restaurant

**Workers Union Local 779** AFL-CIO, CLC

P.O. Box 6142, St. John's, NL A1C 5X8 Tel: (709) 726-7180 Fax: (709) 726-3978

It is this decision that was rendered on October 29, 2019. Justice McGrath ordered Sodexo to immediately pay the portion of damages not in dispute, approximately **\$4,490,000**, and further ordered the balance to be paid into an interest-bearing trust account pending the outcome of the judicial review. The decision of Justice McGrath can be viewed at our law firm's website at the above link, or directly at <https://www.mwhslaw.com/wp-content/uploads/2019/12/Judgment-of-Rosalie-McGrath.pdf>

### Payment Directly to Workers Affected

Arbitrator Alcock's decision held that Sodexo is to pay workers directly the wages they are owed and to pay fund administrators and the union certain other amounts required under the collective agreement. The final decision of February 25, 2019 affected 190 workers as listed in the Addenda to that decision, each of whom worked at the camp sometime between December 18, 2013 and November 30, 2015. However, the decision of Justice McGrath permits only the payment, at this time, of amounts due to the workers between December 2013 and March 31, 2015. This will mean 150 workers will receive money at this time. The amounts owed to each of the 150 can be viewed on our law firm's website at the above link, or accessed directly at <https://www.mwhslaw.com/wp-content/uploads/2019/12/Amounts-owing-to-employees-and-funds-with-interest.pdf>. At this link, there are two lists, one showing the amounts to be paid to each of the 150 workers, and the other one showing the amounts of the respective benefits to be paid. Interest to date is included in all amounts.

The first list has the gross hourly wages, vacation pay, and holiday pay, owed to the workers. Union dues will be deducted from this sum. Of course, as well, Sodexo will make the usual statutory deductions. The balance will be paid directly to the worker.

The second list has the amounts to be paid to six different funds in accordance with the CLRA collective agreement. The payments are as follows:

1. Pension Plan – There is no pension plan per se. The money will be sent to Benefit Plan Administrators (Atlantic) Limited in Halifax, Nova Scotia. You will be given an election as to how you want the amount forwarded on your behalf to be paid, namely:
  - (a) To have the money forwarded by Benefit Plan Administrators to the company who handles RRSP's for other HRW 779 members;



## Hotel & Restaurant

**Workers Union Local 779** AFL-CIO, CLC

P.O. Box 6142, St. John's, NL A1C 5X8 Tel: (709) 726-7180 Fax: (709) 726-3978

- (b) To have the money directed to a financial institution of your choice for your purchase of an RRSP; or,
  - (c) To have the money paid directly to you.
2. Health and Welfare Plan – Because none of you had the opportunity to participate in the HRW 779 Health and Welfare Plan during your employment, these payments will be held in trust by Benefit Plan Administrators until further direction of the trustees of the Health and Welfare Plan. It is anticipated the trustees will resolve to forward these amounts, in total, to the workers, in the amounts as they appear in the list.
  3. The Promotion Fund and the Recovery Fund amounts will be remitted directly to the union for the goals established by those funds.
  4. The NLBTC Industry Fund will be remitted to Trades NL, the new name for the previously named Newfoundland and Labrador Building and Construction Trades Council, a provincial council of building trades unions of which HRW 779 is a member.
  5. The CLRA Industry Fund will be remitted to Construction Labour Relations Association of Newfoundland and Labrador Inc., the employer organization accredited as the sole and exclusive bargaining agent for unionized employers within the industrial/commercial sector of the construction industry of Newfoundland and Labrador.

After the payment of approximately **\$4,490,000**, there will be a balance owed of approximately **\$3,100,000**. It is to be held in trust by Sodexo's law firm pending the outcome of the judicial review set to be heard by Justice McGrath in early February of 2020.

We do not have accurate and up to date contact information for all 190 workers and are asking at this time that if you worked for Sodexo Canada Limited at the Tata Steel Minerals Camp outside Schefferville, Quebec between December 18, 2013 and November 30, 2015, and your name appears on the list of 190 on Addendum 3, Schedules A and B of the February 25, 2019 decision, you contact **Emilie Rowe** at the



## Hotel & Restaurant

**Workers Union Local 779** AFL-CIO, CLC

P.O. Box 6142, St. John's, NL A1C 5X8 Tel: (709) 726-7180 Fax: (709) 726-3978

contact information below so that she may verify your identity and contact information. This will enable the union to assist Sodexo in making the payments as soon as possible.

The union will retain your contact information until after the conclusion of the judicial review. Pending that outcome, some of the 150 individuals receiving payment now, and 40 others, may be entitled to additional compensation.

We understand this has been a long legal process and many people have moved on from Sodexo and Tata Steel, however the union has continued since February 2014 to argue your entitlement to wages and benefits owed under the collective agreement and is now pleased to have secured a large portion of those wages and benefits.

Yours truly,

---

Patrick McCormick,  
Business Manager & Chief Financial Secretary

---

### **CONTACT INFORMATION TO RECEIVE PAYMENT**

Emilie Rowe

Mailing Address:

Martin Whalen Hennebury Stamp

15 Church Hill

P.O. Box 5910

St. John's, NL A1C 5X4

Phone: 709-754-1400

Email: [erowe@mwhslaw.com](mailto:erowe@mwhslaw.com)

Fax: 709-754-0915