IN THE MATTER OF AN ARBITRATION

BETWEEN:

TORONTO TRANSIT COMMISSION

(the “Employer”)

-and-

AMALGAMATED TRANSIT UNION, LOCAL 113

(the “Union”)

AND IN THE MATTER OF THE CUSTOMER SERVICE AGENT INTEREST ARBITRATION

Louisa M. Davie Sole Arbitrator

Appearances

For the Union: Ian Fellows
Jason Huang

For the Employer: Dolores Barbini
Jessica Toldo

Award

This award arises as a result of a December 16, 2016 Memorandum of Agreement (“MOA”) between the Toronto Transit Commission ("TTC" or “the Employer”) and the Amalgamated Transit Union, Local 113 ("ATU" or “the Union”).

Pursuant to the terms of the MOA I was appointed by the parties as an interest arbitrator to determine the terms and conditions of employment applicable to the Customer Service Agent ("CSA") position. These terms and conditions of employment are to be included in the collective agreement between the TTC and the ATU.

Introduction and Context

In my award dated September 24, 2018, the circumstances giving rise to the MOA are set out. Those circumstances can be briefly summarized.

Prior to the execution of the December 16, 2016 MOA, the TTC announced it was embarking on a Stations Transformation Project ("Stations Transformation") and that it intended to change and modernize the way it would deliver TTC services. The TTC advised the ATU that as part of Stations Transformation, and as part of its implementation of the PRESTO card fare payment system, it intended to eliminate the “Collector” position and create a new position, namely the CSA. The TTC maintained that the new CSA position was not covered by the existing collective agreement, while the ATU maintained that the CSA was a bargaining unit position covered by the existing collective agreement.

The collective agreement between the parties contains a “classification based” recognition clause which specifies that the collective agreement applies to employees and classifications set out in a schedule which forms part of the collective agreement. Article 1 of the collective agreement is a general provisions article which applies to all employees covered by the collective agreement. Thereafter the collective agreement has several other articles which pertain to specific occupational classifications and departments. In this regard Article IV of the collective agreement pertains specifically to the "Collector" classification.

The December 16, 2016 MOA resolved the dispute between the parties about whether the CSA classification was a bargaining unit position covered by the collective agreement. In it the parties agreed the CSA was a position covered by the existing collective agreement and agreed that they would "negotiate terms and conditions specific to the CSA position." Further, the parties agreed that "the job description and basic wage rate of the CSA will be agreed between the parties failing which these matters will be determined pursuant to the existing job evaluation procedure established between the parties."

In their MOA the parties agreed that the new CSA position would be rolled into the existing collective agreement. They also agreed that Article 1 (the general provisions article applicable to all employees covered by the collective agreement) and other parts of the collective agreement which are of general application would apply to the CSAs.

The effect of their agreement is that the terms and conditions of employment for CSAs determined by this award, together with Article 1 and other provisions of the collective agreement of general application, will apply to the current complement of sixty-six (66) newly hired CSAs and the total complement of approximately three hundred and ninety- four (394) CSAs who will be employed once Stations Transformation is complete, the Collector position has been eliminated, and only the PRESTO card is used as fare payment.

The number of CSAs to whom this applies must be put in context of an existing bargaining unit which is currently comprised of more than eleven thousand (11,000) employees. Thus, the group of CSAs is a relatively small segment of the total number of employees in this bargaining unit. (Similarly, the Collector classification which is to be eliminated because of the introduction of the PRESTO card and Stations Transformation is currently comprised of approximately 413 employees which is also a relatively small portion of the total number of employees in this bargaining unit.)

The TTC has four (4) other bargaining units and collective agreements, both with the ATU and other Unions. On the whole however, and with the exception of the TTC's bargaining relationship with the Canadian Union of Public Employees, Local 2 (pertaining to electrical, signal and radio communication employees) both the number of employees in the current Collector classification (413) or who will be in the CSA classification once Stations Transformation is completed (396) is significantly larger than the number of employees in the TTC’s other bargaining units.

It is also noteworthy that the length of time during which the TTC's bargaining relationship with those other bargaining units has existed is less than the length of time the collective agreement into which these CSAs will be included has existed. The collective agreement and bargaining relationship involved in this award is between the TTC and the ATU is nearly 100 years old. The size of this bargaining unit and the longevity of this bargaining relationship are circumstances which I have kept in mind when assessing the factors and criteria applicable to this interest arbitration and the respective positions and submissions of the parties with respect to such matters as the TTC's financial viability and ability to pay, and application of the replication principles, including the appropriate comparator.

These contextual factors--- that the CSAs are a relatively large group rolled into an existing bargaining unit which is itself the largest TTC bargaining unit, and the longevity of the

bargaining relationship and collective agreement--- have affected the weight attributed to the factors and criteria I have considered. Put somewhat differently, when considering such factors as replication, appropriate comparators, financial circumstances etc. I have kept in mind that the CSAs are not a small group of employees, or a newly certified bargaining unit covered by a standalone collective agreement. They are part of a large bargaining unit and covered by a collective agreement which is the result of a long, well-established bargaining relationship.

History Of These Proceedings

Pursuant to their MOA, and with my assistance, the parties sought to negotiate and mediate the terms applicable to the CSAs on January 19 and 20, 2018, February 1, 2018 and March 8, 2018. Those mediation efforts did not resolve many of the disputes between the parties about the terms and conditions of employment which should apply to the CSAs. As a result, an interest arbitration hearing was conducted on November 27 and 28, 2018, and on December 17, 2018.

Prior to the hearing the parties filed extensive written briefs and reply or rebuttal briefs. Following the December 17, 2018 hearing further written submissions were filed on January 23, 2019, February 13, 2019 and February 22, 2019, April 8 and 12, 2019. In rendering this award, I have duly considered all that written material together with the oral submissions made at the hearing.

I note also that at the time of the interest arbitration the parties had not yet agreed upon the job description and basic wage rate of the CSA position. The job description and wage rate for CSAs remain in dispute between the parties and are not addressed in this award.

Application of the Toronto Transit Commission Labour Disputes Resolutions Act, 2011

The parties had opposite views and submissions as to whether the *Toronto Transit Commission Labour Disputes Resolutions Act, 2011* ("the Act") governed these proceedings. They also disagreed about the application of the factors and criteria set out in that Act if it applied. The criteria set out in section 10 (2) of the Act state:

(2) In making an award, the arbitrator shall take into consideration all factors it considers relevant, including the following criteria:

1. The Employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and the City of Toronto.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The Employer's ability to attract and retain qualified employees.
6. The purposes of the *Public Sector Dispute Resolution Act, 1997*.

I find it convenient to address application of the Act and the criteria enumerated therein at the outset.

The Employer maintained that although the source of my jurisdiction was the December 16, 2016 MOA, this interest arbitration was governed by the Act. The Act applies to the Employer, its employees and the Union as bargaining agent. It prohibits these parties from engaging in strike or lockout. Interest arbitration was therefore the only alternative and the Act's provisions with respect to that type of interest arbitration would necessarily have to apply.

It was the Employer's further submission that the criteria set out in the Act, and in the *Public Sector Disputes Resolution Act, 1997*, referenced in section (10), must be considered. In its

oral and written submissions the Employer therefore relied on extensive data and evidence in support of its position that its current fiscal circumstances limited its ability to pay, that ridership had stagnated, that the present economic conditions in Toronto and Ontario are poor, and that the Union's proposals would likely result in either reduced services or a fare increase (which would also impact the Employer's operations and financial circumstances given increased competition from digital ride hailing/ridesharing, bike sharing and other transit options now available to TTC customers.)

It was the Union's position that I was appointed pursuant to the December 16, 2016 MOA and not the Act. The Union submitted that because certain statutory preconditions or triggering events such as the appointment of a conciliation officer or notification by the Minister of Labour did not take place prior to my appointment as interest arbitrator the Act could not be said to apply. As a result, I need not consider the factors set out in the Act.

It was the Union's further position that in the event I found the Act to apply and considered the criteria set out in the Act, application of those criteria did not indicate a basis for awarding non-– normative collective agreement terms. In this regard the Union in its oral submissions and its written briefs made detailed submissions about each of the enunciated criteria. The Union argued that the evidence showed that little weight should be given to the Employer's assertions regarding its ability to pay, its fiscal situation and the economic situation in Toronto and Ontario, its ridership numbers, and the impact of the Union's proposal on the TTC's ability to deliver services affordable to its riders. It was submitted for example that the Employer has not tendered any credible evidence to support its inability to pay arguments. Similarly, the Union provided different evidence and data with respect to the economic conditions in Toronto and Ontario, the TTC's operating subsidy and ridership data.

In my view the Act applies to these proceedings.

The Act clearly states it applies to these parties and the employees in this bargaining unit. The Employer's voluntary recognition that the CSAs are covered by the existing collective agreement, with the corresponding effect that the Union is the bargaining agent for the CSAs, brings the establishment of the terms and conditions of employment for CSAs within the scope of the Act. The Act prohibits the employees from engaging in a strike and prohibits the Employer from locking out the employees. Therefore, when these parties are unable to agree to the terms or conditions of employment of employees in the bargaining unit their only recourse is interest arbitration in accordance with the Act. It makes little sense to conclude that the Act applies to all the other employees in this bargaining unit covered by the collective agreement yet does not apply to this particular group of employees although they are in the same bargaining unit and covered by the same collective agreement.

I am not persuaded that the failure to follow certain procedural steps ousts application of the Act, particularly where the December 16, 2016 MOA executed by the parties specifically references the fact that the arbitrator "shall have the power of an arbitrator determining a grievance and/or interest arbitration."

I am also not convinced that these parties can agree that an Act specifically enacted in furtherance of interest arbitration as the means of resolving labour disputes between them does not apply in the circumstances of this case. Even if I were to assume, without deciding the matter, that the parties could, in effect, contract out of the application of the Act for a group of employees in the bargaining unit, it is my view that clear and explicit language would be required to achieve that result. Such clear and explicit language is not evident in the December 16, 2016 MOA. In the result I have concluded that the Act applies, and I have considered the criteria and factors set out in section 10 (2) of the Act.

I do not intend to examine in detail the oral and written submissions of the parties regarding these criteria and factors. I note only that there is conflict in the evidence presented by the

parties as each sought to rely on different data and resources to measure, for example, ridership figures and the Employer's ability to pay. Ultimately, my conclusion from the oral and written submissions made is that although the statutory criteria and factors have been considered, they do not warrant non-normative terms and conditions of employment for these CSAs.

It is important also to note that section 10 (2) of the Act directs the arbitrator to consider all factors the arbitrator considers relevant. An arbitrator is not limited to simply considering the statutory factors. In this arbitration I have therefore also considered the other factors and principles typically considered by interest arbitrators.

Other Principles of Interest Arbitration to Consider-Comparators and Replication

For the most part the parties agreed upon the principles which should apply to this interest arbitration. However, they had distinctly different submissions about the application of these principles to the circumstances of this case. Thus, although they agreed on such prevailing principles as "replication", "a conservative approach", "no breakthroughs" "total compensation", they were far apart on how these principles were to be properly applied in this case. This arose in large part from their very different views about the CSA position. Nowhere was their dispute about the application of these principles more apparent than in their very different views of the appropriate comparator.

The parties agreed that an interest arbitrator should, as far as possible, and recognizing that it is not an exact science, seek to replicate the results that the parties would have achieved if their collective bargaining had resulted in a negotiated collective agreement. Interest arbitrators often do that through concepts of comparability – by looking at internal and external comparators.

In this case the Union relies principally on internal comparators, or intra-bargaining unit comparators, and maintains the most appropriate comparators are the Collector and Operator classifications in the bargaining unit. The ATU asserts that the Collector and CSA positions are "substantially similar". The ATU submits the three classifications – CSA, Collector and Operator – are all customer "front facing" or "frontline" employees. Internal harmony dictates that the terms and conditions of these three classifications in the bargaining unit "should be roughly similar."

The ATU relies also on the collective bargaining history between these two parties and notes that in the early 2000's, when other new classifications were added to the existing bargaining unit, the parties freely negotiated terms and conditions of employment which were consistent with the terms and conditions applicable to the other existing classifications which are in this bargaining unit and which form part of the collective agreement. At that time the parties did not bargain employment terms and conditions for the new classifications which were a marked departure from, or inferior to, those enjoyed by other members of the bargaining unit. The starting point for those negotiations was the existing terms and conditions enjoyed by other bargaining unit employees. The ATU argued that pattern of bargaining should be followed in this instance. The TTC has not advanced any clear and compelling reasons to deviate from this earlier bargaining pattern and award employment terms and conditions for CSAs which are inferior or inconsistent with those enjoyed by other bargaining unit members. The ATU argued that in light of this past pattern of bargaining it would not replicate bargaining if I were to award terms for the CSAs which were inferior to, or inconsistent with, those enjoyed by other bargaining unit members.

The TTC submitted that to replicate bargaining the interest arbitrator should not focus on the Collector or Operator positions as comparators. The TTC rejected the ATU's attempt to create a "front facing" or "frontline" employee group consisting of these three classifications. The TTC argued instead that the focus should be on the functions and duties of the CSA classification. In this manner it was argued that there were significant and substantial differences between

the role and duties of the CSA classification when compared to the Collector classification. Most notable of these differences is that the CSA does not perform the core duty of the Collector, namely the handling of fare media (cash, tokens, passes etc.). Similarly, when one compares the functions and duties of employees in the Operator classification (those who operate the bus, streetcar, subway, SRT or Wheel Trans vehicles) and the structure and scheduling of their work with the functions and duties or structure of work performed by those in the CSA classification there is little, if any, similarity between these 2 classifications.

It was the TTC's position that the appropriate comparator for the CSAs, one which would replicate bargaining, was to compare the CSA classification to other TTC employees who generally work at a stationary location(s) and who are assigned or scheduled to work fixed shifts. Within this bargaining unit therefore the appropriate comparators were Clerks, Maintenance Employees and Operational Clerks in Wheel Trans.

The TTC also referenced the terms and conditions of employment of its other unionized employees, including a more recently certified bargaining unit of fifty-five customer (55) Service Center employees also represented by the ATU, Local 113. The collective agreement for those employees was also settled by interest arbitration. The TTC maintained that in Arbitrator Gedaloff’s award dealing with these employees it was recognized that rules from the TTC's existing ATU Local 113 collective agreement should not be blindly imported but that a purposeful review based on the TTC's business needs was most appropriate.

In this case the TTC also urged me to reject any comparison to the classifications added to the bargaining unit in the 2000’s because none of those positions worked in a stationary location and none were customer facing or primarily involved in customer service. More significantly the TTC submitted that the classifications and history relied upon by the ATU were "add-ons to an existing bargaining structure. In contrast, the CSA position is part of a transformational change in the way the TTC is going to do business." As a result, the TTC urged me to adopt arbitrator

Gedaloff's approach in the interest arbitration involving the first collective agreement for the customer service representatives noting that

> "The CSAs are a new employee groups with distinct job responsibilities. No other position at the TTC currently holds the same core duties. Their terms and conditions of employment are also being set for the first time. The parties should therefore start at square one to determine what the most appropriate entitlements are for this specific group with an eye to the unique nature of the CSA role."

I have merely highlighted, in abbreviated fashion, the able submissions of both parties about the appropriate comparators and their respective positions about the results which application of the replication principle would yield.

In essence, stripped down to its bare bones, when it comes to the issue of the appropriate comparator, the substance of the ATU's language proposals indicate its view that the CSA is essentially a Collector who has moved out of the booth so that all the terms in the collective agreement presently applicable to Collectors should simply be adapted and applied to CSAs. From the ATU’s perspective replication of bargaining results leads to the conclusion that the ATU would not have negotiated for less.

In contrast, the substance of the TTC's language proposals indicate that it views the CSA classification as an entirely new classification with distinct job duties and responsibilities so that in setting their collective agreement terms and conditions of employment the parties are starting with a blank page and therefore, much like the role of an interest arbitrator establishing the terms of a first collective agreement, this award should fashion new language appropriate to the new classification. From the TTC’s perspective replication of bargaining leads to the conclusion that at the bargaining table the TTC would not have conceded that the Collector and CSA positions are the same but would have persisted with its approach that the parties start afresh when negotiating terms for the new classification.

As noted at the outset neither the job description nor the basic wage rate for the CSA have been agreed upon or finalized. According to the MOA these matters are to be determined pursuant to the existing job evaluation procedure. In the circumstances, when addressing the issue of the appropriate comparator, I will not wade too deeply into the debate between the parties as to whether the role, function and duties of employees in the CSA and the Collector classifications are "substantially similar."

In the context of these proceedings however I have reviewed a job description for the CSA which, although not yet finalized, was substantial. Speaking generally there are number of duties which, interpreted broadly, are similar to the duties of the Collector. However, the Employer is correct when it states that the core function of the Collector classification – that is the core function of "collecting", handling and selling TTC fare in the form of cash, tokens or passes – is noticeably absent from the CSA job duties. In addition, I accept that speaking generally and in broad terms, the CSA has duties and responsibilities which were/are either not performed by Collectors, or which are/were only a minor part of the Collector's duties or are peripheral to the Collector role. Having regard to the material before me the thrust of the core duties and responsibilities of the CSA position, the "raison d'etre" for the CSA, appears to differ from the Collector position.

Nonetheless, it is my view that of all the comparators to which I was referred, the Collector is the most appropriate comparator. Some of the duties of the CSA and Collector classifications are the same or similar. As is the case of the Collector, the CSA is located at each station. Both are indeed "customer facing" and "frontline" employees. For a time, during the currency of this collective agreement (and its predecessor), the Collector and CSA positions both exist, are part of the same bargaining unit and collective agreement and may even be working side-by-side.

The fact that the Collector may be the most appropriate of several comparators does not necessarily mean that I should blindly adhere to the terms and conditions of employment applicable to Collectors and simply award that those apply to the CSAs. That would fail to recognize that the CSA classification is a new classification and has duties and responsibilities which differ from those of the Collector. It would fail to recognize that in their December 16, 2016 MOA the parties agreed to negotiate terms and conditions "specific to the CSA position." Although they could have done so, the parties did not agree that the collective agreement provisions applicable to Collectors would simply apply to CSAs. In addition, simply adapting the Collector provisions and applying them to the CSA would fail to recognize the TTC's bargaining interests as it strives to modernize its business and change the way it operates its service. One method by which it seeks to do so is the way in which it schedules employees to work (some of the language proposals dealt with in this award deal with that scheduling priority.) For example, the TTC maintains that a historical link between Collectors and Operators has affected the way the collective agreement treats and schedules Collectors. A similar link between Operators and CSAs does not exist, is not appropriate, and should not be established. "Replication" of bargaining results means I must also consider that the TTC is focused on changing the way it operates its business. It is clear from the material and submissions before me that this legitimate goal was a TTC bargaining priority as it sought to bargain collective agreement provisions applicable specifically to the new CSA classification.

Although it is my view that the Collector classification is the most appropriate of the comparators to which I was referred I am also of the view that, as a standalone classification, the Operators are the least appropriate comparator of those to which I was referred. Although Operators are "frontline" and "customer facing" their duties and responsibilities differ significantly from those of the CSA (or Collector). Operators operate modes of transport. They are not stationary in their work but operate along routes. Their schedules are affected by such factors as the routes on which they operate the bus, streetcar or subway, the busy/less busy ridership times associated with those routes etc. Thus, both their core duties, and the way they fit into and are scheduled within the TTC's operations, are markedly different from the CSAs.

I do not view the more recently certified Customer Service Representatives bargaining unit as an appropriate comparator. As noted at the outset the CSA classification is a relatively large group of employees, within a much larger bargaining unit. The CSAs are being rolled into a long and established bargaining relationship and an existing collective agreement. I find it inappropriate to compare those circumstances to the recently certified group of fifty plus (50+) employees working under the terms of a first collective agreement established by interest arbitration.

This leads me then to address the respective positions of the parties with respect to replication and the results which each maintains would have ensued if the parties had been successful in their negotiations. Again, I have concluded that I am unable to adopt the position of either party. In my view each is subject to a significant deficiency.

The TTC's approach fails to adequately recognize that the terms and conditions of employment for CSAs are to be contained in an existing collective agreement negotiated between two bargaining parties who have a long-standing bargaining history. It is neither realistic nor proper application of the replication principle to suggest that in the circumstances the ATU would agree that the starting point is a blank page, or that the ATU would negotiate terms and conditions which are markedly different than those applicable to others in the bargaining unit covered by the same collective agreement. This is particularly so given that some of the ATU's current members in the bargaining unit may be transitioned from their former Collector position to the newly created CSA position.

On the other hand, the ATU's approach is also erroneous as it simply fails to recognize that the CSA is a new position and job classification, created as a result of the TTC's decision to commence with the PRESTO card, undertake the Stations Transformation Project and henceforth conduct its business in a different manner. To simply adapt the terms and conditions currently applicable to the soon to be eliminated Collector position and essentially

propose that those terms apply equally, or with only minor modification, to the newly created CSA position is not realistic and would not amount to replication. The ATU's approach fails to recognize that the TTC's desire to change the way it operates its business not only led to the creation of the CSA position, but was also a significant bargaining priority which it would forcefully advance and not easily abandon at the bargaining table.

In conclusion I cannot accept without reservation either party's position with respect to the appropriate comparators or what the results of the principles of replication should yield. I have however considered and weighed their respective submissions with respect to those matters in drafting the language and in addressing their proposals.

With these statements of general principles in mind I turn to the language pertaining to the terms and conditions of employment for the CSAs proposed by each party. I note at the outset that there were almost thirty (30) language proposals in dispute between the parties. In addition, there were disputes about the content of seniority regulations to apply to the Customer Service Agents' group and several "housekeeping" proposals dealing with changes to be made to Article 1 of the collective agreement which were significant and substantive.

As indicated herein some matters have been remitted to a Joint Committee. With respect to the matters remitted to the Joint Committee it is my view that the parties themselves are more familiar with the TTC's operations and current practices within this bargaining unit and they are therefore in the best position to discuss and perhaps agree upon these matters. The Joint Committee should consist of 6 members with both the TTC and ATU selecting 3 representatives. The Joint Committee should meet monthly for the six-month period following the release of this award. I will remain seized with respect to matters remitted to the Joint Committee upon which agreement is not reached.

In addition to Article I of the collective agreement, as amended by this award, the following provisions shall be incorporated into the current collective agreement to form the terms and conditions applicable to the employment of Customer Service Agents employed by the TTC.

Article IX Provisions Applicable to Customer Service Agents

1. Definition

1.01 The following provisions apply to those hourly rated employees in the Stations Department classified as Customer Service Agents.

2. Hours of work

2.01 The TTC guarantees a minimum 40-hour week, comprised of a minimum guaranteed eight (8) or ten (10) daily hours, for Customer Service Agents.

2.02 Work shall be scheduled according to TTC requirements, but normally there shall be an eight (8) hour day and a five (5) day week (8X5) and/or a ten (10) hour day and a four (4) day week (10 X 4).

Off days shall be scheduled and will normally be consecutive.

Normally hours scheduled to be worked shall be continuous. As far as practicable 66 2/3% of all Customer Service Agents' scheduled shifts shall consist of continuous hours.

2.03 The TTC may cancel the compressed four-day work week at any time by giving the Union and the affected employee(s) notice of the change a minimum of one (1) month before the end of the current sign-up period referred to in section 3 herein.

3. Work Assignment and Sign-up for Customer Service Agents

3.01 The TTC shall establish work assignment shifts to be selected by Customer Service Agents and Cover Customer Service Agents during sign up.

There shall be four sign ups annually for Customer Service Agents as follows:

(1) January – April
(2) May – September
(3) September – December 24

(4) Christmas – New Year

Assignments available for sign up will be posted one week in advance of the sign up.

Selection during sign-ups will be by seniority.

Customer Service Agents will sign up for a specific assignment within a zone.

The posting for assignments available for sign-up by Customer Service Agents who are not Cover Customer Service Agents will include the work location within the zone, the hours of work and off days. Normally the work location of the Customer Service Agent will not be changed during the sign-up period unless there are compelling operational reasons for the change.

4. Work Assignment and Sign-up for Cover Customer Service Agent

4.01 The TTC may designate Cover Customer Service Agents. Cover Customer Service Agents are assigned to cover for known and unforeseen absences of other Customer Service Agents, to provide additional coverage during peak periods or emergencies and to cover for meal breaks. Subject to such operational needs as may be necessary from time to time the number of Customer Service Agents designated as Cover Customer Service Agents will not exceed thirty-five percent (35%) of the total number of Customer Service Agents.

4.02 The posting for assignments available for sign up by Cover Customer Service Agents will include the zone but will not include location because Cover Customer Service Agents may be assigned to alternate locations within the zone as required by the TTC. Cover Customer Service Agents may have a fluctuating schedule with various start/finish times. At sign-up Customer Service Agents in cover positions will be able to select the zone and the off days. Cover Customer Service Agent positions will normally be designated as either primarily morning or primarily evening cover positions.

4.03 If a Cover Customer Service Agent is not provided a specific work assignment the Cover Customer Service Agent will report to their zone hub at their designated start time.

4.04 Cover Customer Service Agents will be assigned within their zone first before being assigned to any alternate zone as required by the TTC.

I remit to the Joint Committee the procedural and logistical aspects of the conduct of the sign-ups.

I also remit to the Joint Committee to develop Regulations regarding how Cover Customer Agents are to be assigned. (The Union characterizes this as "Detailing Work Regulations"). Regulations detailing work or regulations regarding the work assignments of Cover Customer Service Agents are to include details of the TTC staff to contact for the assignment, when that contact is to be made, etc. All Regulations for Cover Customer Service Agents to be based on seniority principles with the most senior Cover Customer Service Agent to receive the most favourable assignment in the zone. Cover Customer Service Agents should only be assigned outside their zone as a last alternative and if there are not enough Customer Service Agents in the zone where the work to be assigned occurs.

Finally, I remit to the Joint Committee the process to be followed where vacancies occur during a sign-up period and the work or shift must be assigned until the next sign-up period. Filling of such mid sign-up period vacancies must have regard to seniority principles and should generally be done first by the Customer Service Agents who have already selected the zone in which the vacancy occurs.

<u>Temporary Changes to Selected Schedules</u>

5.01 The sign-up for a specific assignment will be the Customer Service Agent's regular work schedule for the remainder of the sign-up period for which the selection was made.

On occasion the TTC may require temporary changes to the schedule for operational reasons.

For purposes of this section a temporary change is a change encompassing no more than 1 shift.

Changes to a Customer Service Agent’s scheduled off days will not be made without the consent of the Customer Service Agent.

Unless agreed upon Seniority Regulations provide otherwise, temporary changes to a Customer Service Agent's selected schedule will not be made during the Christmas-New Year sign up period.

During the other three (3) sign-up periods, temporary changes to a Customer Service Agent's selected schedule will not be made by the TTC on more than one (1) occasion per sign up period. In case of such temporary change a minimum 72 hours notice shall be given when a Customer Service Agent's regular work schedule as established by his/her selection is to be temporarily changed by the TTC. Failure to give the required notice shall require the payment of one and one-half (1 ½) times the basic hourly rate for all hours worked by the Customer Service Agent which differ from the schedule established by his/her selection.

5.02 Shift Change Requests By Customer Service Agents

Customer Service Agents may request to exchange one or more shifts or off- days with another Customer Service Agent. The request must be submitted to the appropriate Manager for approval as far in advance as possible. The exchange of shifts or off-days request must list the name and employee number of the other Customer Service Agent who has agreed to exchange their shift or off-day. Shifts being exchanged must be within four (4) weeks of one another. The shift or off-day exchange must be of the same duration and must not result in additional costs to the TTC. Approval of exchanges which meet these criteria shall not be unreasonably withheld by the TTC.

Travel Time

6.01 Any Customer Service Agent who performs work at a location other than where they started shall be given adequate time during their shift to travel to the new location and to return to their starting location by the end time of their shift. Customer Service Agents travel shall be based upon taking available TTC service.

7. Over-time, Allowances and Premiums

7.01 Daily Overtime

Overtime shall be paid at one and one-half (1 ½) times the basic hourly rate for all hours worked in excess of an employee's scheduled daily shift.

7.02 Overtime On Off Days

Customer Service Agents who are requested by the TTC to work on their scheduled off day or days, including Saturday and Sunday, shall be paid at one and one-half (1 ½) times the basic hourly rate for all hours worked on such off day or off days.

Time off shall not be given in lieu of an off-day worked.

7.03 Volunteer Work

Customer Service Agents who volunteer for special service or additional assignment, including assignments before or after their scheduled shift, shall be paid at one and one-half (1 ½) times the basic hourly rate for all hours worked during such special service or additional assignment.

` 7.04 Report Allowances

Customer Service Agents who are responsible to open a station at the commencement of the day's subway operation and who are required to report by telephone prior to their scheduled time to commence work will be paid 10 minutes at one and one-half (1 ½) times the basic rate.

7.05 Spread Allowances and Limits

Time worked in excess of a ten and one-half (10 1/2) hour spread -an allowance of half time for a total of one and one half (1 1/2) time will be paid.

Time worked in excess of a twelve (12) hour spread - an allowance of full time for a total of double (2x) time will be paid.

7.06 Sunday Premium

Customer Service Agents who are regularly assigned to Sunday work shall be paid one and one-quarter (1 ¼) times the basic rate for all regularly scheduled Sunday work. Work beyond eight (8) or ten (10) hours respectively shall be paid at the rate of one and one-half (1 ½) times the basic rate.

I remit to the Joint Committee to develop the Regulations pertaining to the distribution of overtime. Those regulations to be based on seniority principles and on the principle that overtime is voluntary.

8. Accommodation

Customer Service Agents who are found by the TTC's Medical Director to be unfit to perform their regular duties by reason of disability shall have their accommodation issues addressed in accordance with the Ontario Human Rights Code.

Known scheduled crash gate work may be provided to Customer Service Agents with medical restrictions which prevent them from performing their regular Customer Service Agent duties.

I remit to the Joint Committee the maximum number of crash gate positions to be reserved for Customer Service Agents and other TTC employees who need to be accommodated in accordance with the parties' mutual obligations under the Human Rights Code. The Joint Committee also to discuss how such work is to be distributed amongst, or selected by, employees who require accommodation under the Human Rights Code.

9. Statutory Holidays

Customer Service Agents who are not required to work on statutory or designated holiday shall receive holiday pay at the basic rate for the normal number of hours they would have worked on the day in question had it not been observed as a holiday.

Customer Service Agents on a compressed work week will receive 8 hours statutory holiday pay when the holiday falls on their off day.

Customer Service Agents who are required to work on the day the statutory or designated holiday is observed shall be eligible for holiday pay in addition to payment for each hour actually worked at one and one-half (1 ½) times the basic rate applicable provided they work the major portion of their shift or as required on the day the holiday is observed.

Holiday work is any work done between the hours of 12:01 AM and midnight on the day the holiday is observed.

Customer Service Agents required to work on one of their normal off days which is also a statutory or designated holiday observed by the TTC shall be paid holiday pay and in addition shall be paid for each hour actually worked at one and one-half (1 ½) times the basic rate applicable.

I have not awarded a separate Statutory Holiday sign up. In this award I have awarded language which permits Customer Service agents to exchange shifts. I remit to the Joint Committee the question of whether a more specific and detailed process similar to the one proposed in the TTC's rebuttal brief at paragraph 127 is appropriate for the exchange of Designated Statutory Holiday shifts (i.e. a process to enable those who do not wish to work the designated holiday to request to be released and those wishing to work the statutory holiday to request to work. In that case whether a CSA works or is released should be based on seniority so that the most senior employee requesting release will be released and the most senior employee requesting to work will be permitted to work the Designated Statutory Holiday.)

10. Banking Statutory Holidays

The TTC shall adopt the same language as set out in Article III, section 4 of the master collective agreement for Customer Service Agents.

I remit to the Joint Committee to agree upon the maximum number of Customer Service Agents who will be permitted to select this banking option. That number shall not exceed ten.

11. Health and Safety

Customer Service Agents will be provided with a temperature-controlled location for use during breaks and in extenuating circumstances where a place of refuge is required. ergonomic sit–stand stools shall be available for use by Customer Service Agents while performing their duties.

I remit to the Joint Committee for further discussion whether the specific type of ergonomic sit-stand stool to be used.

12. Meal breaks

Customer Service Agents who work a shift of 8 or 10 consecutive hours will receive a paid meal break of up to thirty (30) minutes break during such shift.

13. Uniforms

In addition to the Transportation Uniform provisions found in Article 1, Section 28, which shall apply to the Customer Service Agent classification, Customer Service Agents shall receive the following uniform allotment per calendar year.

Two (2) pairs of thermal pants

¾ Length Coat

Safety Footwear

The Customer Service Agent is in a work group where the wearing of Safety

Footwear is mandatory for purposes of Article 1, Section 29-Footwear

I remit to the Joint Committee the number of points the Customer Service Agent will receive every 2 years given these additional uniform items, and the point value of the items referenced above.

14. Discipline and Non-Discipline Interviews

All discipline and non-discipline interviews shall take place at the Customer Service Agent's assigned zone hub, management offices or another location mutually agreed upon by the parties.

15. Return to Work

Customer Service Agents are to advise the designated contact at the zone hub by 3:00 p.m. on the day prior to their return. A Customer Service Agent who advises the designated contact at the zone hub by 3:00 p.m. on the day prior to their return shall be entitled to resume their regularly scheduled work the following day.

Amendments to Article 1

Some of the proposals made by the parties relate to, or impact upon, the application of Article 1 of the collective agreement to the Customer Service Agents. In their December 16, 2016 MOA the parties agreed that "the creation of the CSA position will require them to negotiate terms and conditions specific to the CSA position and in addition to those found in Article 1 and other parts of the Collective Agreement which are of general application." This language indicates that, in terms of General Provisions, it was the mutual intent of the parties that Customer Service Agents be treated in the same manner as other employees in the bargaining unit. A difficulty arises because although Article 1 is entitled "General Provisions" thereby suggesting that it apply to all TTC employees, there are various specific sections of Article 1 which do not apply to all "employees" and apply only to certain classifications such as "Operators", "Collectors", "Subway Suppliers" "Maintenance and Other Employees." Other sections refer to employees in the "Transportation Group" or "Non-Uniform Transportation Group." In addition, Section 42 of Article 1 entitled "System Seniority Transfers" divides employees into sub-groups and a determination into which sub-group the Customer Service Agent classification should be placed has a significant impact on the seniority rights of employees seeking to fill vacancies or to transfer from one classification to another. It is therefore not a matter of simple housekeeping or stating all of Article 1 applies to Customer Service Agents. Each section of Article 1 must be read to determine whether it does or should apply to the new Customer Service Agent classification.

There is no dispute that the following sections of Article 1 apply to all "employees" and that therefore these sections apply equally to Customer Service Agents.

> Sections 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43 and 44.

With respect to the other sections of Article 1 not referenced above I award the following amendments:

> Article I. Section 8 - Management and Discipline (page 24)
>
> No Operator, Collector or Customer Service Agent shall be relieved from duty for the purpose of discipline without first being interviewed by the Manager or Assistant Managers or designate, except in those cases with respect to which the TTC may impose the specific penalty of discharge. (page 24)

> Article I. Section 12 - Shift Premium (page 35)
>
> Each hourly-rated non-uniformed employee (including Station Collectors Subway Suppliers and Customer Service Agents) covered by this Agreement whose normal work, exclusive of overtime, is continuously conducted on regular eight-hour or ten-hour shifts commencing between 1:00 p.m. and 1:00 a.m. the following day, shall be paid a shift premium of $.75 per hour worked over and above the normal basic rate.

> Article I. Section 13 – Vacation Selection (page 38)
>
> Subway Suppliers, Collectors and Customer Service Agents shall have separate vacation sign-ups.

The parties disagree about whether vacation selection should be system-wide or by zones. I remit that matter to the Joint Committee. Section 13 of Article 1 specifies that "vacations as set out herein may be taken at such times, in such numbers and under such conditions as set out within the various Regulations which may be amended from time to time by the parties hereto." Given the parties' agreement in the December 16, 2016 MOA that Article 1 applies to Customer Service Agents I am of the view that this

provision in Section 13 requires that I first remit the issue of whether vacation selection is to be system wide or by zones to the Joint Committee. It does not appear that there is a dispute between the parties that whatever Regulations are developed should honour the seniority of employees so that the Joint Committee can focus on such matters as how many employees in total, or in a zone, can take vacation on a given day or in a particular period (for example March Break, summer months or the Christmas-New Year Holiday period). The Joint Committee can also develop Regulations regarding single day vacation selections

Article I, Section 14 - Statutory and Designated Holidays (pages 45-46)

I have awarded language in the new Article IX which reflects that Customer Service Agents should be included in the section entitled "Maintenance and Other Employees" and I direct that page 46 be amended to reflect that by including "Covered by Articles IV, V and IX" in the heading of the section

Article I, Section 22 – Probationary Period (page 61)

Transfers by maintenance employees to the Collectors or Customer Service Agents Division are subject to Maintenance Seniority Regulations in Appendix H.

Article I, Section 25 - Report Allowances (Accident, Incident, Pay Shortage) (page 66)

Operators, Station Collectors, Subway Suppliers and Customer Service Agents who prove that there is a shortage in their pay through no fault of their own, shall be paid an allowance of $2.25 for making out the prescribed Pay Shortage Form.

Article I. Section 28 - Issue Clothing (pg. 72)

This issue of Uniform Clothing has been dealt with above, in the portion of this award dealing with the contents of Article IX.

Article 28 shall be amended on page 72 to include Customer Service Agents in the provision relating to Dry Cleaning so that it will now state:

Operators, Collectors, Suppliers and Customer Service Agents shall be issued 60 coupons and Ticket & Information Clerks will be provided 50 coupons every 12 months to provide dry cleaning of uniform clothing as follows:

Article I. Section 29 - Safety Footwear

As indicated in the portion of this award dealing with the contents of Article IX Customer Service Agents are in a work group where the wearing of safety footwear is mandatory for purposes of Article I, Section 29 - Safety Footwear.

Article I. Section 30 - Employee Parking (page 83)

If in the future any space becomes available similar to Victoria Park and Warden one parking space will be made available for the Subway Collector or Customer Service Agent at these locations.

Article I, Section 41 - Public Relations Complaints (page 92)

For the purpose of identifying Station Collectors and Customer Service Agents involved in complaints from the public, the following factors will be considered: name, badge number, subway station, booth location, as well as date or time of occurrence.

Article 1, Section 42- System Seniority Transfers (pages 93-95)

The parties disagree about whether the Customer Service Agents should be added to Operating Sub-Group (Group 1) or whether the Customer Service Agents should form a new Sub-Group consisting solely of Customer Service Agents. I have considered their respective submissions and award the following:

Customer Service Agents are to be added to Operating Sub-Group – (Group 1) on pg. 93

Page 94 to be amended as follows:

Non-Uniform Transportation Group employees and Customer Service Agents bidding to Operator/Collector positions will be required to complete a criminal reference check, licence check and medical clearance prior to being considered eligible for transfer.

1. At least 70 employees per year requiring full training will be scheduled for inter-model training for purpose of expediting Operator/Collector/ Customer Service Agent SST requests (e.g. bus to subway). Of these 70 employees no more than 3 can be Customer Service Agents.

Page 95 to be amended as follows:

5. Prior to a SST bid to subway being processed, employees who have not previously qualified for subway operation, Collector or Customer Service Agent will take and pass the Subway Operator, Collector or Customer Service Agent pre-test offered by the Training Department to be scheduled on the employee's off time. Employees will be paid four hours at their basic rate when attending orientation, inclusive of pre-test.

Amendments to Certain Appendices

The parties have also made submissions about amendments to certain of the Appendices. With respect to those submissions, and in most cases having regard to the agreement of the parties, I award the following. In so doing I wish to emphasize that I have only dealt with the five (5) Appendices below. I make no comment on whether any other Appendix of the collective agreement which is not referred to below applies or does not apply to those in the Customer Service Agent classification. My silence with respect to other Appendices should not be taken as a sign that I have determined that any other Appendix does not apply.

Appendix E-8 (page 288)

Appendix to be amended by adding the words “Customer Service Agent” after the words “Station Collectors” in the sixth (6th) line of paragraph 1.

Appendix E-27 (page 300)

This Appendix applies to Customer Service Agents. I have determined that the term “subway service” includes those in the Customer Service Agent classification.

Appendix E-37 (pages 311-315)

This Appendix which deals with the Dress Code applies to Customer Service Agents. For purposes of this Appendix Customer Service Agents are included in the term “Operating Personnel”.

Appendix E-38 (page 316)

The parties agree that if Customer Service Agents are required to sign-up then this Appendix will apply. As I have awarded sign-up this Appendix will apply to Customer Service Agents.

Appendix E-40 (page 323)

Paragraph 3 of this Appendix to be amended by adding the words “and Customer Service Agent” after the word “Collectors.”

Appendix H

In correspondence dated February 13, 2019 the TTC agreed to the ATU’s proposed amendments to Appendix H in respect of Contents, Job Posting Procedures, Definitions (section 1.6 (f), 2.0, 2.1, 2.2 and Appendix MSR-A) and I so award.

Amendments to Schedule “A” (pg. 214, 215 and 261)

This schedule deals with student wage rates. The wage rate for the Customer Service Agent classification has not yet been determined. It is therefore inappropriate to set the wage rate for students as a set wage rate. I therefore award that if the TTC hires students for vacation relief and summer help in the Customer Service Agent classification the student wage rate for those students shall be not less than seventy-five (75%) of the starting wage for the Customer Service Agent.

Amendments to Schedule “B”

As indicated herein the collective agreement between the parties has a “classification” based recognition clause. Schedule “B” of the collective agreement identifies the Occupational Classifications and Wage Groups for the positions covered by the collective agreement. I therefore award that “Customer Service Agent” be added to the list of Occupational Classifications in Schedule B.

As indicated at the outset, in the December 16, 2016 MOA the parties agreed that "the job description and basic wage rate of the CSA will be agreed between the parties failing which these matters will be determined pursuant to the existing job evaluation procedure established between the parties." That process has not yet concluded. I do not make an award with respect to the Wage Group to be set out for the classification in Schedule “B” and direct that it be left blank pending completion of the job evaluation process.

Retroactivity

The ATU as requested that the monetary items of my award be made retroactive. The TTC opposes retroactivity.

I have jurisdiction to award retroactivity pursuant to section 14 of the Act which states:

14. Despite section 16, in making his or her award, the arbitrator may provide,

(a) where notice was given under section 16 of the *Labour Relations Act, 1995*, that one or more terms of the collective agreement shall be retroactive to a day or days after the day on which the notice was given; or

(b) where notice was given under section 59 of the *Labour Relations Act, 1995*, that one or more terms of the collective agreement shall be retroactive to a day or days after the day on which the previous agreement expired.

The unusual circumstances of this case have caused me to view the issue of retroactivity in a somewhat different manner. In the more typical interest arbitration, the issue of retroactivity is generally tied to the duration or term clause of the collective agreement. It is generally presumed that a backdated duration clause renders the monetary items of an interest award retroactive thereby filling in the gap in time between the expiration of the predecessor collective agreement and the execution of the new collective agreement. However, in the interest arbitration of a first collective agreement, where there is no gap between the expiration of a predecessor collective agreement and the interest award establishing the first collective agreement, arbitrators are less likely to award retroactivity on monetary items (and may award lump sum payments instead where there has been a lengthy delay in establishing the first collective agreement) .

Although this is the first time the terms and conditions for the CSAs have been established by arbitration, this is not a first collective agreement. In the present circumstances the terms and conditions of employment that I have awarded are being rolled into an existing collective agreement with a term and duration clause already established. The predecessor collective agreement under which some of the CSAs were first employed was effective from April 1, 2014 to March 31, 2018. The duration of the current collective agreement (April 1, 2018 to March 31, 2021) was established by arbitrator Kaplan in the award dated October 23, 2018 which provided that the wage increases were retroactive. I am also mindful of the fact that here the wage rate for the CSAs has not yet been agreed upon or established. The job evaluation

procedure agreed upon by the parties in their December 16, 2016 MOA has not yet been completed.

In all circumstances of this case I have determined to award that all monetary items found in Article 1 of the collective agreement, including any monetary items amended by this award, are retroactive to the date a CSA was first employed in the classification. The provisions of Article IX awarded herein are effective as of the date of this award.

Elimination of Article IV and Elimination of References To The Collector Position

The TTC has proposed that upon the elimination of the Collector position any reference to this position should be removed from the collective agreement. At the hearing the TTC maintained that it intends to eliminate completely the Collector position effective January 1, 2020. The Metro passes have been eliminated effective December 31, 2018 and other fare media will completely cease by August 3, 2019. Although there will be a transitional period from August 3, 2019 when existing TTC fare still in circulation may be used, after December 31, 2019 the only fare payment method which can be used will be the PRESTO card. Collectors will therefore not be required after December 31, 2019. More recent public comments from the TTC has cast some doubt on the timeline for the elimination of the Collector position than the one provided at the hearing.

I have determined to dismiss this TTC proposal. First, I have some concerns about my jurisdiction to award such a proposal. Elimination of the Collector provisions of the collective agreement does not readily fit into my jurisdiction pursuant to the December 16, 2016 MOA to determine "specific terms and conditions specific to the CSA provision". Equally important, the current collective agreement is in effect from April 1, 2018 to March 31, 2021. The predecessor collective agreement expired March 31, 2019. During the timeframe of both these two collective agreements Collectors continue to be employed. The evidence and submissions before me indicate also that with Stations Transformation and the introduction of the PRESTO card there have been various delays and postponements with the introduction of the PRESTO

card, the elimination of various forms of fare media, the introduction of the Customer Service Agent position, etc. In these circumstances I do not consider it appropriate to order the elimination of any collective agreement provision applicable to Collectors even if I had the jurisdiction to do so. The parties will be able to determine in their future negotiations whether Article IV which pertains specifically to Collectors, or any other reference to Collectors in the collective agreement, should be eliminated from the collective agreement.

Any proposal of either party not dealt with in this award is dismissed.

Dated at Mississauga, this 2nd day of May, 2019.

Louisa Davie

Louisa Davie

=