

LABOR RELATIONS CONNECTION

In the Matter of the Arbitration between

RITZ CARLTON BOSTON COMMON

LRC # 465-21 (Steward Understaffing)

AND

UNITE HERE, LOCAL 26

**AWARD**

The Employer violated 37 of the Collective Bargaining Agreement by its staffing of the stewarding department since June 15, 2021. The Employer did not violate Article 5 of the Collective Bargaining agreement or the Reopening Memorandum of Understanding.

The Employer must cease and desist from the violation described in the Opinion accompanying this Award.

The most senior steward or stewards who were not assigned to the overnight shift as a result of the Hotel's violation are awarded back pay for each such shift, from the day on which the Hotel from June 15, 2021, to the date of compliance with this Award.

The Arbitrator retains jurisdiction for ninety (90) days from the date of this Award for the sole purpose of resolving any dispute between the parties concerning the remedy ordered herein.

A handwritten signature in black ink, appearing to read "Sarah Kerr Garry", enclosed in a thin black rectangular border.

Sarah Kerr Garry, Arbitrator

March 2, 2022

LABOR RELATIONS CONNECTION

In the Matter of the Arbitration between

RITZ CARLTON BOSTON COMMON

LRC # 465-22 (Steward Understaffing)

AND

UNITE HERE, LOCAL 26

---

Before: Sarah Kerr Garraty, Esq. Arbitrator

Hearing Date: December 10, 2021

Appearances:

For the Employer: Jonathan Fritts, Esq.

For the Union: James Hykel, Esq.

Briefs Received: January 28, 2022

THE ISSUES

The proposed issues were as follows:

**Union Proposal:**

Did the Employer violate Articles 5 or 37 of the Collective Bargaining Agreement or the Reopening MOU, or any other provision of the parties' Collective Bargaining Agreement by its staffing of the stewarding department since June 15, 2021?

If so, what shall be the remedy?

**Company Proposal:**

The Company agreed to the Union's proposal with one exception; it would exclude the words "or any other provision of the parties' Collective Bargaining Agreement."

## **RELEVANT CONTRACT PROVISIONS**

### **Article 1-Recognition**

... Supervisors shall not normally perform bargaining unit work, except under the restrictions which are contained in Article 43 (Lateral Service). Each hotel may have no more than one (1) chef who may be a working chef and two (2) additional kitchen supervisors, who may be working supervisors, plus additional kitchen supervisors who may be working supervisors in particular hotels ...

Working chefs, and/or working kitchen supervisors shall not be scheduled in place of bargaining unit employees, nor shall they perform bargaining unit work when bargaining unit employees are not scheduled to work. There shall be no restriction on culinary classifications assisting other culinary classifications (e.g., cold prep assisting with plating hot food) for brief periods of time to satisfy guests' and hotel's needs. This shall not result in permanent job combinations.

### **Article 5 - Lateral Service/Cooperation**

Lateral Service - It is the job duty of every employee to satisfy even the unexpressed wishes of our guest, and to fully participate in the continuous improvement of our service quality. Management may, using reasonable discretion, utilize a policy of lateral service for brief periods of time to satisfy employees and guests alike. Lateral service is designed to allow employees to help, where needed, until guest needs are satisfied. It is not designed to be, or will it become, a job combination program nor a permanent cross-utilization initiative.

### **Article 20 - Control of Employees**

The management of the hotel and the direction of the working force are vested solely and exclusively in the Ritz Carlton and shall not in any way be abridged except as set forth in this Agreement.

The Union recognizes that subject only to the express conditions of the agreement the Hotel has the right to hire, promote, transfer, layoff, discharge, or discipline employees for just cause, assign work, schedule hours, classify employees, curtail any activity or cease any operation, make and enforce the observance of reasonable Company rules and regulations after notice to the Union and to maintain the efficiency employees.

The determination of the type of service or products it will provide, the number of meals it will serve in its food outlets, the assignment of overtime, quality standards, hours of work, starting and quitting times and methods and procedures of operations to be used are the exclusive rights of the Ritz-Carlton subject to the express conditions of the Agreement.

## **Article 37 – General Conditions**

No employee shall suffer a reduction in his or her hourly rate as a result of this Agreement, and this Agreement shall not interfere with the employees receiving higher wages or compensation for superior knowledge and ability, nor shall this Agreement serve to deprive these employees of any privileges enjoyed before the Agreement was made.

The Union may grieve and arbitrate unreasonable workloads.

### Appendix A

#### Kitchen Classifications

Sous Chef & Banquet Chef (Cook I)  
First Cook (Cook II)  
Saucier & Second Cook (Cook II)  
Short Order Cook (Cook III)  
Pastry Cook I  
Pastry Cook II  
Pastry Cook III  
Storeroom attendant  
Kitchen Utility Steward  
Employee Dining Room Attendant

#### Banquet Classifications

Banquet Server  
Banquet Houseperson  
Banquet Bartender

### **Memorandum of Understanding on impact of the Coronavirus to the Hospitality Industry**

This agreement is made and entered into between UNITE HERE Local 26 (“Union”) and the Ritz-Carlton Boston Common (“Employer”) for the purposes of addressing the public health impact of the COVID-19/Novel Coronavirus pandemic as it regards the specific operations of the Ritz-Carlton Boston Common Hotel. This agreement serves as an addendum to the existing agreement (hereinafter referred to as the “Citywide Agreement”) between the parties regarding health and safety of the industry at large.

\*\*\*

## Working Conditions and Staffing

The Union is agreeing to certain job combinations and contract waivers. Unless otherwise specified, these exceptions end when the Employer returns to pre-pandemic staffing when the declared state of emergency by the Governor of Massachusetts is lifted or June 30, 2021, whichever is earlier. The parties may mutually agree to extend these contract waivers.

\*\*\*

Stewarding: The hotel will schedule a minimum of 1 AM steward, 1 PM steward and 1 overnight steward except on Thursday, Friday, and Saturday there will be a minimum of 2 PM stewards and Sunday there will be a minimum of 2 AM stewards. The parties will meet one week after opening to review staffing levels and as necessary thereafter.

This agreement shall terminate on the earlier of the following: when the declared state of emergency by the Governor is lifted or June 30, 2021.

### **BACKGROUND**

#### **1. The pandemic's impact on the Hotel's business**

The Covid-19 pandemic resulted in the complete closure of the Ritz Carlton Boston Common Hotel (Hotel) from mid-March of 2020 until June of 2021. Before its closure the Hotel's main restaurant, The Artisan Bistro, was open daily, serving breakfast, lunch, and dinner, from 7 AM until midnight. When the Hotel reopened in June 2021 the Artisan Bistro opened for breakfast from 7:00 am to 11:00 am Monday through Friday and until 2:00 pm on the weekend (weekend brunch service resumed in October 2021.) There was no lunch service on weekdays; this business had been driven by what is referred to as "foot traffic," meaning lunch service for people frequenting the Hotel for that purpose but not staying at the Hotel. Dinner service was from 4:00 pm to 10:00 pm.

The Hotel has two bars: one at the Artisan Bistro and one, called the Avery Bar, in the lobby area. The Avery Bar reopened on a four-days per week basis in October of 2021. Before the pandemic closure, the Hotel offered in-room dining 24 hours per day. When the

Hotel reopened, this was restricted to 7:00 am to 10:00 pm. Before the pandemic closure, the Hotel operated a Club Lounge that offered all three meals, snacks and bar service for customers who paid extra for this added amenity. As of the hearing date the Club Lounge had not re-opened. The Hotel also had a busy banquet business before the pandemic. In 2019 there were some 21,000 banquet attendees, whereas in 2021, there were about 7,000 banquet guests.

These decreases in customer volume occurred for obvious reasons; customers were hesitant to risk Covid infection through indoor dining. The Hotel is near Boston's theater district and plays and concerts were cancelled. Likewise, the Hotel frequently provides full service to sports teams, but this business was also curtailed. Witnesses testified that Hotel occupancy has been as low as 20% whereas previously 40% or 50% was considered unusually low occupancy.

## **2. Changes in Staffing and Working Conditions for Stewards**

As noted above, the steward position is referred to in the CBA as Kitchen Utility Steward. Prior to the pandemic there were at least three stewards assigned to the morning and afternoon shifts and there were always two stewards assigned to the overnight shift. Particularly on days on which there was a banquet scheduled, the total number of stewards assigned across all three shifts rose to significantly.

Although all stewards had the same job classification, there were defined stations. At least two stewards to loaded and unload the industrial dishwasher in the main kitchen and at least one was assigned wash large objects such as pots and pans in a sink area. Stewards performed other functions as needed, such as requisitions (bringing silverware, plates and glasses to the banquet rooms and returning them to the kitchen for washing), cleaning the

event area, taking out trash at times, and participating in scheduled “deep cleanings” of the kitchen areas. The Stewards worked as a team, chipping in as needed. They received positive comments on performance evaluations for competence working at various stations.

Company records reveal that when the Hotel reopened in June 2021 and the MOA therefore expired by its terms, the steward staffing remained at levels that approximately mirrored those agreed to in the MOA; it was common to schedule only one steward on each of the three shifts.<sup>1</sup> There was some variation, again mirroring the expired MOA levels; on weekends two stewards were scheduled on some AM or PM shifts, but the overnight shift was almost always staffed by just one steward and on a few shifts even zero stewards. When there was a banquet scheduled combined shifts rose to as high as 7. In November of 2021, scheduling of the AM and PM shifts was often back up to 3, and even 4 stewards, although only one steward ever worked the overnight shift.<sup>2</sup>

Steward [REDACTED] testified that staffing levels, particularly in the first few months after the MOU expired, were insufficient for the assigned stewards to get their work done. The overnight stewards complained that they have been unable to lift heavy trash receptacles and therefore had to leave them full until the morning shift arrived. ([REDACTED] testified that the trash cans can weigh up to 70-80 pounds.) When the trash is not taken to the dumpster during the overnight shift, stewards arriving for the AM shift were greeted by dirty dishes and pots and pans and the need to assist in removing garbage not disposed of during the overnight shift.

---

<sup>1</sup> The Union identified a few days on which the shift count even fell below that required by the MOA.

<sup>2</sup> The arbitration hearing took place on December 10, 2021. It appears that these shift number were going back down by then, presumably in reaction to the Omicron Covid variant surge.

██████ worked the overnight shift for many years. He described the tasks that the stewards were expected to accomplish on that shift. This included moving all the trash from the main kitchen, dining area, hallway and the smaller “garde manger” kitchen to dumpsters.<sup>3</sup> The overnight stewards also clean the pastry area, the in-room dining area, break down boxes, wash kitchen mats, wash all tables and floors.

██████ testified that after the Hotel reopened, he worked some overnight shifts. He said that “it’s not a job for one person. It’s a two-person job. I try my best, but there’s no way I can get everything done.” He also stated that when he came in for the AM shift and no other steward was on duty, he would just wash pots and pans because it takes two people to operate the commercial dishwasher. Managers have complained that he was not getting the work done and he has repeatedly replied that he cannot get it all done alone. In fact, he testified that he noticed the sous chef doing steward work and told him he was not supposed to do that

Assistant Director of Food and Beverage ████████ described the management side of the reopening process. She detailed the food service kitchen status before the pandemic and after the June 2021 hotel reopening.

---

<sup>3</sup> This is a kitchen, used to prepare cold food such as salads, fruits, and cheese/charcuterie plates, remained closed at the time of this arbitration hearing.



2019

June 2021

Artisan Bistro 7 am – midnight / 3 meals	No lunch service. Closes at 10 pm
Avery Bar 5 evenings/week	4 evenings/week (opened Oct '21
In-room dining 24 hour/day	7 am – 9-pm (now 10 pm)
Honor Bar 24 hours/day	Closed
Club Lounge 24 hours/day	Closed
Banquet 2019 21,000 +/- guests	2021 7,000 +/- guests
Pastry kitchen 7 days/week	3 days/week
Garde Manger 7 days/week	Closed

██████ testified that at no time has she witnessed occupancy levels as low as those that occurred in the period when the Hotel first opened. Many of the activities that draw patrons into the hotel: theater and Opera House performances, seasonal performances of the Nutcracker, business lunches, for example, were inactive or minimally attended.

Hotel Chef [REDACTED] testified about the other personnel changes that persisted after the Hotel reopened. There were no sous chefs or banquet chefs. Only one of the three pastry cooks was back at work, and there were no kitchen supervisors other than himself. There was a stewarding supervisor.

[REDACTED] testified that though the remaining supervisors do lend a hand as needed pursuant to the “lateral service” provisions of the CBA, he has never seen this exceed about thirty minutes at a time. He has repeatedly told the stewards that if they were unable to carry the garbage they should just ask for help.

[REDACTED] testified that there is a correlation between “covers” (food orders) and shifts (stewards scheduled for shifts). When he sees an increase in covers, he increases the shifts, based on the assumption that more customers use more dishes, generate more garbage, and the like. He created a document that tracked the covers per shift in late 2019, 2020 and 2021.<sup>4</sup> He concluded that annual covers per shift in from January of 2020 to June of 2021 averaged approximately 60. In contrast, in August of 2021 there were 6,914 covers and a total of 89 shifts (a maximum of 2 per shift and in most cases only 1), whereas in November of 2021, when there were 10,309 covers, staffing was 174 shifts and staffing per shift ranged from 2 to 4 (with 3 as the most common compliment). In contrast, in July and August of 2021 the covers were at 5,502 and 6,914 respectively, and the shift composition was 1 and 2 stewards. This was clearly lower than in pre-pandemic times, but the Hotel was at least adding staff on busier AM and PM shifts, while the night shift stayed at one

---

<sup>4</sup> The overnight shift was not included in the calculations because meals are not served at night and dishes are not washed; the night shift is more consumed with cleaning and garbage disposal.

██████████ testified that he was aware that the MOA permitted either one or two stewards on the AM and PM shifts and one on the overnight shift. He did acknowledge that he was not aware that the MOA had expired in June 2021 and did not learn that this was the case until this grievance was filed. And although he testified that there were incidents in 2019 in which he scheduled only 5 stewards for the combined AM and PM shift, he acknowledged on cross-examinations his analysis was not wholly accurate.

Director of Human Resources ██████████ testified that upon reopening in June 2021 he met with Union representative ██████████ and various shop stewards to discuss which outlets within the Hotel would be open and what days were likely to be busier than others and might require more than one steward per shift. He insisted that in negotiating the MOA, management did not negotiate minimum staffing on reopening. Rather, they agreed when the MOA expired, they would go back to “go back to the Collective Bargaining Agreement language regarding staffing.”

When the parties met to discuss staffing soon after reopening, ██████████ tried to keep an open dialogue, but he emphasized that the Company would always look at the business levels and continuously add staff when necessary. At a meeting on June 24, 2021, the Union business agent indicated that the Union anticipated that staffing levels would be set at pre-pandemic levels. The Company reiterated that management rights provision retained decisions about the level of services needed to the Hotel. This grievance was filed four days later.

██████████ Labor Relations Director for Marriott’s the Eastern Region, testified about the Lateral Service provision of the CBA. He insisted that this term refers to

temporary/emergency work out of job classification to help out; it does not apply to job fluidity within a classification.

## **POSITIONS OF THE PARTIES**

### **THE UNION**

The Union negotiated with the Hotel to address the unique circumstances presented by the pandemic. It waived contract claims concerning staffing and job combinations. The Agreement expired when the Massachusetts governor ended the state of emergency. The Union insists that pre-pandemic staffing was a minimum of 8 shifts per day: 3 stewards for the AM shift, 3 stewards for the PM shift and two stewards for the overnight shift. Instead of returning to this pre-pandemic schedule, the Hotel asserted that there was no obligation to increase staffing at all, because the management rights provision of the CBA reserves discretion regarding staffing to the employer.

The Hotel asks this arbitrator to adopt an interpretation of the MOU that would render its terms meaningless. If, as the Hotel insists, pre-pandemic status quo was total discretion to change staffing at any time, then essence of the MOU would be meaningless, because the Hotel could have just imposed the new staffing pattern without negotiating an MOU at all. Clearly, the discretion permitted is to determine when additional staffing is needed due to banquets, high occupancy, and the like. The two overnight steward staffing has never varied in reaction to these fluctuations; since cleaning is needed and garbage removed during high and low occupancy.

The Union next argues that the Hotel also violated the Article 5 (Lateral Service) when it combined stewarding jobs. There is no contractual definition of lateral service of job combinations that limits this to different job titles. The evidence firmly established that for

at least fifteen years there have been three separate and distinct jobs on the AM and PM shifts (Loader, Catcher, and Pot Washer) These were combined when only one steward was scheduled to work all three jobs. The Hotel here attempts to circumvent the intent of the bargain; it renders the concessions the Union made when it negotiated the MOA meaningless.

Finally, the Union asserts that the Hotel has created unreasonable workloads. It asks one or two AM stewards and one Overnight steward to perform the work of twice as many workers. They have been advised to make choices about which essential tasks not to perform. The Hotel necessarily overextended the latitude contemplated by the lateral service provision when it instructed the stewards to “ask for help,” (presumably from managers) because the Hotel has understaffed the Steward Department. As a remedy the Union asks the arbitrator to order the Hotel to restore pre-pandemic staffing and to award back pay to the most senior steward(s) not assigned to each shift as a result of its contraction breach.

### **THE HOTEL**

At the outset the Hotel notes that the Union carries a heavy burden of proof in establishing that the Hotel ever ceded its management right, “subject to the express conditions of the agreement ... to assign work, schedule hours, classify employees, curtail any activity, or cease any operation,” and to “maintain the efficiency of employees...”

To prevail, the Union must therefore identify an “express condition of the agreement” that was violated. It has suggested three such express provisions of the Agreement (or MOA), yet none were violated.

The Union relies on Article 5, referred to as the Lateral Service Provision. This applies an employee whose job title does not match the classification of the work needed, is

permitted to help out on a short-term basis in service of customer satisfaction. This includes managers. It prohibits combining different classification and long-term interchange between job classifications.

As [REDACTED] explained, the Union has never previously argued that variations in job duties within the same classification is lateral service. All the stewards has a unique job; they are all Kitchen Utility Stewards. Although there are three stations that the stewards work, they each work all stations and are left to agree among themselves how the allocate the work. This is not lateral service. Lateral service also occurs with managers or workers with other job classifications chip in for short periods of time. This has always occurred and continues to occur when the MOU expired. There was no abuse of this contractual leeway.

The Hotel next insists that Article 37 of the CBA was not violated because the stewards were not burdened with an “unreasonable workload.” For example, Chef [REDACTED] told the overnight steward that if garbage cans were too heavy, he should wait till the morning when the shifts overlap and get the AM steward(s) to help. Similarly, reduced services and low “covers” justified the stewards assigned to each shift; there were two during certain weekend shifts when covers increase and one on other shifts. When business improved in the late summer and fall of 2021, more stewards were assigned. This has always been the case. Evidence that the staffing employed met the “unreasonable workload” standard was insufficient.

Finally, the Hotel argues that it did not breach the MOU. The CBA contains no minimum staffing provision. Staffing before the pandemic rested on business conditions. As it happens, those conditions consistently supported at least three stewards on the AM and PM shift and two stewards on the overnight shift. They often supported numerous additional

stewards. The pandemic created unprecedented conditions in which whole areas of food service were curtailed or closed. The Hotel's occupancy plummeted. The MOU did not require the Hotel staff shifts at pre-pandemic levels until such time as the volume of business warranted those levels. For all these reasons the Hotel asks the arbitrator to deny the grievance.

### DISCUSSION

The Hotel is correct in asserting that pursuant to the management rights provision of the CBA, "(T)he Union recognizes that **subject only to the express conditions of the agreement** the Hotel has the right to... assign work, schedule hours, ... curtail any activity or cease any operation ..." (Emphasis supplied). There is no express condition of the CBA that requires the Hotel to maintain staffing levels among the Kitchen Utility Stewards at a minimum of three on the AM and PM shift and a minimum of 2 on the overnight shift. Therefore, it is the Union's burden to identify a provision that does constrain this reserved management prerogative. In addition to the MOU, the Union has identified two such provisions: Article 5, Article 37. I address the MOU first.

The staffing for stewards set forth in the MOU was "pre-pandemic staffing. The timeline was "when the declared state of emergency by the Governor of Massachusetts is lifted or June 30,2021, whichever is earlier..."

Not surprisingly the Union assumed that since "pre-pandemic staffing" had long amounted to at least 8 shifts a day (3 AM, 3 PM, 2 ON), then "pre-pandemic staffing" meant staffing no less than 8 shifts per day. The Hotel did not share that assumption. It viewed pre-pandemic staffing as the amount of staffing warranted by the business on a particular day, since it is not possible to revert to a guaranteed level of service that had never existed.

In response to that analysis, the Union has pointed out that if the Hotel's view were to be accepted, that would render the MOU meaningless. In asserts that the Hotel's interpretation would free it from even the MOU's minimal constraints upon its expiration. That interpretation would permit the Hotel to determine that 2 stewards were not needed on a Saturday PM shift or a Sunday AM shift; it would be free to determine that business conditions did not warrant any steward staffing during the overnight shift. Indeed, that very thing occurred on several dates during the period between the expiration of the MOU and the December 10, 2021 arbitration hearing.

The parties' disparate interpretations warrant scrutiny of extrinsic evidence, including bargaining history and past practice. HR Director [REDACTED] testified about the negotiations for the MOU. He emphasized the fact that it covered a very short time frame, and he recalled telling Union participants that,

(t)he Hotel was not negotiating permanent staffing... I referred to the current language, that we have the right to schedule... We believed ... that when the MOA expired, we would go back to the Collective Bargaining Agreement language regarding staffing ... And what the Collective Bargaining provided for was "staffing based on business need.

The Union relied on past practice. Over a period of many years, the Hotel has never staffed stewards below the 3/3/2 level referenced above. Thus, from the Union's point of view, pre-pandemic levels" meant at least 3/3/2.<sup>5</sup> . Of course, the Hotel insisted that before the pandemic, "staffing based on business need," never warranted staffing below 3/3/2 but that when the Hotel first opened, the Hotel's business need was nowhere near pre-pandemic levels.

---

<sup>5</sup> It is not disputed for many years the Hotel had only scheduled above this level when business conditions warranted augmented staffing, based on business conditions including when covers have been high and/or when banquets were scheduled. It never relied on a business need to schedule below that level.



I am neither surprised that this disagreement emerged nor satisfied that the Union has met its burden of proof in establishing that a commitment to “pre-pandemic staffing” required a particular minimum. There is simply no such “express condition” mentioned in the CBA or the MOU. To override the explicit authority to “assign work, schedule hours, classify employees, curtail any activity or cease any operation” a specific staffing configuration would have to be expressly mentioned, rather than imposed during a continuing pandemic because consistently adhered to during dramatically more predictable pre-pandemic business conditions.<sup>6</sup>

Granted, the language would have been more meaningful to this job classification had “pre-pandemic staffing meant 3/3/2 staffing,” as the Union insists it did, but this language, applied here to the Kitchen Utility Steward classification, mirrored the language used throughout the MOU. Applied to other classifications and even other hotels “pre-pandemic staffing” “job combinations” and other “waivers” would have had varied import and results.

Analysis of the Union’s Article 5 claim must also fail. That provision provides management with the reasonable discretion to allow both employees and managers to step in ‘for brief periods of time’ to satisfy customer needs. Lateral service is designed to “allow employees to help, where needed, until guest needs are satisfied. It is not designed to be, or will it become, a job combination program nor a permanent cross-utilization initiative.” The Union alleges that there are three discrete jobs within the job classification “Kitchen Utility Steward,” so that, when less than all three of the AM or PM stewards are working, the others

---

<sup>6</sup> I take arbitrable notice of the confoundingly unpredictable trajectory of the Covid-19 virus. At the time the MOA was executed, the United States was experiencing decreasing infection and increasing vaccination rates. Within weeks after that, the Delta and then the Omicron variant surged. These parties could not have anticipated the effect that would have on their hopes of a return to normal occupancy and service patterns.

are, by definition, engaged in long-term incursion, not temporary assistance to please a customer.

These three functions have long existed, and when business was robust, it took all three functions to get the work done. But the stewards all hold the same job title. The performance appraisals produced by the Union do show that the Hotel referred to the three functions by name, but they also establish that the stewards received positive comments for their ability to perform all the positions as needed. Thus, what occurred was not a job combination, but a reduction in staffing of the same job. The Union bears the burden of proof in establishing that the interchanging roles within any job classification have been viewed as lateral service. It has not produced any evidence in support of that claim.

The Union is on firmer ground in asserting a violation of Article 37 of the CBA, which permits it to grieve and arbitrate “unreasonable workloads.” There are two sources of support for that claim. The first is witness testimony. Steward [REDACTED] described arriving for an AM shift during which he was working alone and being greeted by unfinished work that the one overnight steward has been unable to finish. This included dirty dishes all over the place and trash that had been left out, some of which was too heavy for one person to lift. He was expected to finish the overnight work and the AM work (that had previously been performed by three stewards) at the same time.

[REDACTED] had worked the overnight shift for about ten years before transitioning to the AM shift. He testified that he always worked with a second steward. This was essentially a cleaning job; the trash from the kitchen, the in-room dining area and the hallways had to be collected and transferred to dumpsters. All kitchen areas had to be washed as did the banquet areas. All the empty boxes had to be broken down and taken out. All floors, tables,

and kitchen mats had to be washed. [REDACTED] explained that the two PM stewards split the job. For example, one might clean the hot area in the kitchen while the other was busy washing the floors. At the end of the shift, they would remove and dispose of the trash in the restaurant area. He estimated that the trash receptacles often could not be moved by one person.

[REDACTED] testified that he had worked the overnight shift after the Hotel reopened. He said that he could not complete the duties; "it's a two-people job." He testified that managers had criticized his inability to complete the work and that he had repeatedly complained that it was a job for two people.

The Hotel argues that relying on just one instead of three AM and PM stewards, except on certain weekend shifts, was justified by a lack of business. There was no lunch service, few banquets scheduled, and reduced room service and pastry making. At times, the Hotel's occupancy fell to unprecedented lows. As noted above, the Hotel had the managerial prerogative to determine that these conditions justified less staffing. But the Union has established that the conditions during the overnight shifts did not vary during the pandemic sufficiently to warrant a 50% staffing reduction.

While the Hotel has always recognized that increased covers should require increased staffing, the overnight shift has been staffed by two stewards regardless of even large variations in covers. That is not surprising. Fewer customers use fewer dishes and banquets require more staffing. But as long as the Hotel was open for business, the same surfaces needed to be cleaned and the same floors needed to be mopped. Heavy garbage still had to be transported to dumpsters. Certainly, the decreased volume of business would lessen this work incrementally. When the garde manger is not open it does not need to be

cleaned as frequently, nor does a pastry kitchen open fewer days. There would presumably be less garbage during times of lower occupancy. But the testimony reinforces what logic suggests; asking one steward to clean essentially the same space traditionally cleaned by two amounts to an unreasonable workload.<sup>7</sup>

In contrast to the overnight shift, on the AM and PM shifts the Hotel was not staffing these shifts with a minimum of three stewards as the Union has argued it should, but it was at least increasing the staffing when covers increased. In August of 2021 there were 6,914 covers and a total of 89 shifts (a maximum of 2 per shift and in most cases only 1), whereas in November of 2021, when there were 10,309 covers, staffing was 174 shifts and staffing per shift ranged from 2 to 4 (with 3 as the most common compliment.)

The Union has established that the overnight steward suffered an excessive workload from the date upon which the Hotel reopened and for as long thereafter as the shift complement remained at only one steward.

Regarding the AM and PM stewards I note that the lower staffing was certainly stressful to a workforce accustomed to splitting the duties three ways, but the lower staffing did correspond to fewer covers, and staffing did increase when covers increased.

2019 Covers/Staffing

2021Covers/Staffing

June: 12,750/ 222	June: 3,824/76
July: 10,917/ 225	July: 5,837 /85
August: 9,524 /193	August: 6,914/89
September: 10,377/213	September 6,842/103
October: 16,714/229	October: 9,368/125
November: 16,818/223	November: 10,309

In contrast to the overnight staffing, the AM and PM staffing increased rationally as covers increased. The workload would have been somewhat higher in 2021 than it was in 2019, but this is not unexpected leeway for a Company still coping with an unprecedented loss of business.

**THE REMEDY**

The Union has requested that “the Hotel should be ordered to pay back pay to the most senior steward(s) not assigned for each shift lost as a result of the Hotel’s violation.” That appears reasonable.

## AWARD

The Employer violated 37 of the Collective Bargaining Agreement by its staffing of the stewarding department since June 15, 2021. The Employer did not violate Article 5 of the Collective Bargaining agreement or the Reopening Memorandum of Understanding.

The Employer must cease and desist from the violation described in the Opinion accompanying this Award.

The most senior steward or stewards who were not assigned to the overnight shift as a result of the Hotel's violation are awarded back pay for each such shift, from the day on which the Hotel from June 15, 2021, to the date of compliance with this Award.

The Arbitrator retains jurisdiction for ninety (90) days from the date of this Award for the sole purpose of resolving any dispute between the parties concerning the remedy ordered herein.

A rectangular box containing a handwritten signature in cursive script that reads "Sarah Kerr Garraty".

Sarah Kerr Garraty, Arbitrator  
March 2, 2022