

IN THE MATTER OF AN ARBITRATION

BETWEEN:

COMMUNITY SOCIAL SERVICES EMPLOYERS' ASSOCIATION

(the "Employer")

AND:

BRITISH COLUMBIA GOVERNMENT AND SERVICE EMPLOYEES' UNION

(the "Union")

(Irma Gonzales Grievance – CSSBA Policy Grievance – Article 19 – Sick Leave)

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Jessica Gregory
for the Employer

Tina-Marie Bradford
for the Union

HEARING:

November 22, 2011
Vancouver, BC

WRITTEN SUBMISSIONS:

November 22, 2011
and January 12, 2012

DECISION:

February 3, 2012

The parties have agreed that I am properly constituted with full jurisdiction to determine the issue in dispute. This matter involves the grievance of Irma Gonzales, the “grievor” which challenges the Employer’s denial of her request to access her sick leave credits.

The parties are governed by a sectoral Collective Agreement. This grievance was filed during the term spanning from April 1, 2006 to March 31, 2010. The governing provisions of the Collective Agreement are Sections 2 and 19.1 which read:

2.1 Employees

(a) A regular full-time employee is an employee who is appointed to a full-time position and is regularly scheduled to work full-time shifts as identified in Article 14.2(a) (Hours of Work). These employees are entitled to all benefits outlined in this Collective Agreement.

(b) A regular part-time employee is an employee who is appointed to a part-time position with a part-time schedule and works less than the number of hours constituting full-time employment as outlined in Article 14 (Hours of Work). A regular part-time employee is entitled to all benefits of this Agreement on a prorated basis except as provided for in Article 27 (Health and Welfare Benefits).

(c) Casual employees are employed on an “on call” basis pursuant to the provisions of Article 30 (Casual Employees).

ARTICLE 19 – SICK LEAVE

19.1 Sick Leave Credits

(a) Premium Reduction

The following sick leave provision may be varied by mutual agreement between the Association of Unions and the Employer in the event further Employment Insurance premium reductions for eligible sick leave plans are attainable under the *Employment Insurance Act*.

(b) Sick Leave Credits

Regular employees who have completed their probationary period shall accrue sick leave credits at the rate of one (1) day per month to a maximum of one hundred and fifty-six (156) days. Upon completion of their probationary period, an employee shall be credited with sick leave back to the employee's starting date. Upon request, an employee shall be advised in writing of the balance of her sick leave credits.

(c) Each sick leave day shall be compensated at eighty percent (80%) of the employee's regular rate of pay.

(d) All sick leave credits are cancelled when an employee's employment is terminated.

The parties have provided the following Statement of Agreed Facts:

1. At the time of the grievance, Irma Gonzales was a regular part-time Residential Support Worker;
2. She was offered and accepted to work additional shifts (6 hours each) scheduled for May 21 and 23, 2006;
3. On May 18, 2006, Ms. Gonzales went to the doctor as she was ill. She was told by her doctor to remain off work until May 25, 2006. Ms. Gonzales provided the employer with a doctor's note confirming her illness;
4. The Employer refused to allow Ms. Gonzales to access her accumulated sick leave credits to cover the additional shifts missed on May 21 and 23, 2006 due to illness;
5. On June 8, 2006, Ms. Gonzales filed a grievance for the shifts lost.

POSITION OF THE PARTIES

The Union claims that the grievor is entitled to access her sick leave benefits for the shifts she had accepted in May 2006 regardless of the fact that they were additional shifts.

The Union relies on the plain language of the Collective Agreement; specifically the definition of a regular employee in Article 2.1 and the statement affirming that regular employees are entitled to all benefits of the Collective Agreement.

The Union further relies on Article 19 to ground the right of regular employees to access their sick bank even for the additional shifts as long as they are genuinely ill. The Union also points to Article 14.2 which permits part-time employees to use all hours worked for other purposes such as annual vacation, statutory holiday pay and other entitlements except eligibility for Health and Welfare Benefits.

The Union also relies on the decision of Arbitrator Munroe in *Health Employers Assn. of British Columbia v. Health Sciences Assn.*, [2006] B.C.C.A.A. No.3 dealing with a similar set of circumstances and argues that the current Collective Agreement language and facts are completely on all fours with the language and facts in *HEABC, supra*, by regular employees working extra shifts.

According to the Union, if the regular employee meets three conditions they must be entitled to access their sick leave: there must be offer and acceptance of the additional hours; the employee must have a *bona fide* illness, and must clearly have enough sick leave credits. Once these three criteria are met, the Union maintains that the access is automatic.

The Union seeks a declaration and make-whole remedy for employees affected by the grievance.

The Employer maintains that the parties only intended to allow employees to access the sick leave benefits for regularly scheduled hours of work and not for additional hours. The Union's claim represents an

unsubstantiated expansion of the plain language of the Collective Agreement which would force Employers to incur costs in a sector characterized by limited financial resources.

The Employer argues that such a very important promise is likely to be clearly and unequivocally expressed and the Union has failed to demonstrate, by pointing to clear and unequivocal language, an employee's right to access their sick leave on additional days. The Employer strongly maintains that, as sophisticated negotiators, the Community Social Services Bargaining Association (CSSBA) knew or ought to have known that clear and unequivocal language would be required to demonstrate that an Employer has agreed to incur the cost associated with a monetary benefit such as an expansion of access to sick leave. The Employer points to the language of Article 16.10 (Overtime for Part Time Employees) as an example of a clearly defined benefit and argues that the current situation must be equally precise in describing the right.

The Employer further contends that the plain language of the Collective Agreement does not support the Union's claim and therefore the grievance must fail. The Employer argues that the language of Article 14.2 pertains to only to the accumulation of the sick leave but not to its use. Therefore, the Union failed to meet its onus to demonstrate a clear right to the use of sick leave beyond the regularly scheduled hours. The Employer cautions that such an expansion would encourage employees to accept shifts when they know they are not able to work.

The Employer further cautions against the rote application of the *HEABC, supra*, decision of Arbitrator Munroe, citing differences in the two sectors, particularly the close attention to cost containment.

The Employer relies on: *Government of the Northwest Territories and Union of Northern Workers* (1997), 65 L.A.C. (4th) 211 (Hope); *Bouchard v. Sawchuk Estate*, [2006] A.J. No. 543; *Crestbrook Forest Industries Ltd. and Pulp, Paper and Woodworkers of Canada, Local 15* (1995), 52 L.A.C. (4th) 380 (Chertkow); *Four Seasons Hotel and Hotel, Restaurant & Culinary Employees & Bartenders Union, Local 40*, [1994] B.C.C.A.A.A. No. 474; *Telus Communications Inc. v. Telecommunications Workers Union*, [2010] C.L.A.D. No. 368; *Health Employers Association of B.C. and Hospital Employees' Union Local 80* [1996] B.C.C.A.A.A. No 646; *Sealy (Western) Ltd. and Canadian Bedding and Furniture Ltd. and Teamsters' Union, Local 351*, [1982], B.C.C.A.A.A. No. 324; *Wire Rope Industries Ltd. and United Steelworkeres, Local 3910*, [1982] B.C.C.A.A.A. No. 317; *Noranda Mines Limited and United Steelworkers of America, Local 898*, unreported, May 19, 1981 (Hope); *Richmond Plymouth Chrysler Ltd. and International Association of Machinists & Aerospace Workers, Automotive Lodge No. 1857*, [1991] B.C.L.R.B.D. No. 186; *B.C.P.S.E.A. and B.C.T.F.*, [2008] B.C.A.A.A.A. No. 113; *Pacific Press and Graphic Communications International Union, Local 25-C*, [1995] B.C.C.A.A.A. No. 637; *Cariboo Northstar Division, A Division of West Fraser Mills v. United Steelworkers Union, Local 1-424 (Permanent Plant Closure Grievance)*, [2011] B.C.C.A.A.A. No. 23 (Brown); *Vancouver General Hospital and British Columbia Nurses' Union (Hook Grievance)*, [1983] B.C.C.A.A.A. No. 26; and *Electrical Industry Training Institute and Canadian Office & Professional Employees Union, Local 378 (Delmaestro Grievance)*, [2011] B.C.C.A.A.A. No. 31.

In reply, the Union continues to rely on its primary assertion that the language of the Collective Agreement supports the access to the sick leave benefit on extra shifts.

DECISION

I have carefully read and considered the submissions of the parties. This matter involves the application of the Collective Agreement language to a claim advanced by the Union. Arbitrators examine the plain language of the Collective Agreement as it is normally the language which best expresses their mutually intended bargain and quite properly remain reluctant to interpret language in a manner that imposes costs on employers unless the cost is supported by clear and unequivocal language.

In the current case, the Collective Agreement language is clear in that it broadly outlines the entitlement of part-time regular employees to sick leave credits. If there was any ambiguity, and I find there is not, the decision of Arbitrator Munroe in *HEABC, supra*, provides a complete answer to this issue with which I concur. In sum, I conclude that the parties intended regular part-time employees with a *bona fide* illness to have the right to access their sick leave benefits to cover extra shifts that have been accepted beyond their regularly scheduled hours.

Having come to this conclusion, I conclude that further declaration is not required or appropriate and order the Employer to make Ms. Gonzales whole for the shifts she claimed in 2006.

Further, I order the Union to provide a list to the Employer of any additional claims. The Employer and the Union may contact me for further assistance if necessary. I retain jurisdiction to resolve any issues arising from implementation of this decision.

The grievance is upheld.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this
3rd day of February, 2012.

A handwritten signature in blue ink, consisting of several fluid, connected strokes.

Vincent L. Ready