Arbitration Award Summary

05-503 - Casual Employees - Statutory Holiday Pay

Case outline:

The grievance falls under the Collective Agreement expiring March 31, 2009.

The Employer issued a document intended to outline Casual Employee's entitlement to Designated Paid Holidays.

The document indicated the employer would only pay a stat to a casual if they had over 15 days of continuous employment, and worked the day immediately before a holiday. Then they would only get a prorated amount based on the previous month worked.

Employer's argument:

The Employer based their action on "fairness" They stated that an indeterminate employee who works 7.5 hours per day Monday to Friday would receive 7.5 hours pay for a designated paid holiday, while a part-time employee who might be working for fewer hours in his or her schedule would receive designated paid holiday pay based on a prorated portion of the standard yearly hours of work. The Employer indicated that casuals were "unique" in that they work sporadically and varying from month to month. The Employer indicated that they were attempting to be fair and equitable.

The Employer argued that employees did not have to be "pigeon holed" into one category to the exclusion of all other categories. Casual employees can also be full-time or part-time employees, depending on the nature of their contract. Appendix A5 and article 16 are effectively silent on how the benefits should be applied to casual employees who are eligible by having worked for 15 days. The Employer argues that there is a lack of clarity in the language and this allows for the comparison to part-time employees.

Union's argument:

The Union argued that under Appendix A5 casuals are entitled to the designated paid holiday after 15 days of continuous employment. The relevant provisions as applicable to casual employees are based solely on their employment status, and not on the basis of the work being performed by them or its scheduling. The Employer's policy imposes criteria which lie outside the collective agreement. The Union pointed out that nowhere in the collective agreement is there any reference to pay, or rate of pay, that expressly requires a pro-rata discount for casual employees; thus, a casual who is eligible for designated paid holiday pay would be entitled to a whole day. The Union also argued that a casual employee is defined separate from any other type of employee including part-time employees, therefore the Employer could not rely Article 4.02 for proration of benefits, as this clause deals with part-time employees.

The Union argued against the Employer's "fairness" argument. Casual employees already have employment rates lower under the collective agreement, which as a whole should be seen to balance the respective rights and benefits of all employees, not impute contractually binding language which

would further reduce their rights when they otherwise would have qualified for a day's holiday pay.

Arbitrator's decision:

The Arbitrator ruled that the grievance succeeds on the basis that the prorating calculation advanced by the Employer as policy, is contrary to the collective agreement.

The Arbitrator found that Article 2.01 (n) defines the categories of employees for purposes of their treatment under the collective agreement including it providing separate definitions for casual employees and part-time employees. The Arbitrator that he could not see that casual employment for purposes of this collective agreement can be equated with part-time employment unless he was shown a negotiated provision which directly combines or correlates the two categories, and more particularly here, for purposes of the designated paid holiday benefit. There is no such contractual connection, whether or not it can be observed that neither category necessarily works standard hours when compared with full-time indeterminate employees. He could not conclude that Article 4.02 speaks to the issue of casual employment and prorating benefits for that category of employee, just as it does not address payment of benefits to any other separately defined category of employees. Without Article 4.02, the Employer is left with Appendix A5, and article 16.

Two fundamental issues remain;

1. What does it mean for casual employees to be "absent without pay" on the two working days surrounding the designated paid holiday. Without any indications to the contrary, the arbitrator found that it is usual enough to equate "absent without pay" to having been scheduled or in some other way required in usual fashion to report to work and then having neglected or refused to do so. Such an absence would require the approval of the Employer, or leave having been granted under article 12, in order for the benefit to remain applicable.

2. If payable by operation of Article 16.02, the question is how to calculate the worth of the monetary payment known as holiday pay. There is no indication that prorating should apply on the collectively bargaining language, despite the Employer's view that it would be the fairest way to proceed. In the Arbitrator's view, for casual employees, whether their workday was a full one or not, or the hours associated with it the same or varied, there should be some realization that their paid holiday would reflect what they would have reasonably expected their working day to be, had they worked, just as the designated paid holiday when worked, reflects the length of the work day in the monies paid. Why should that person expect that the monetary benefits paid out for a designated paid holiday would be any more or less.