ARBITRATION AWARD SUMMARY

05-576: MATERNITY/PARENTAL LEAVE ALLOWANCE

CASE OUTLINE

This grievance falls under the Collective Agreement expired March 31, 2005.

The member was employed as a Casual Employee working as a Registered Nurse for the Stanton Territorial Hospital Authority. On May 25, 2003 the employee signed both a Maternity Leave & Parental Leave Agreement. In signing the Agreements she agreed to return to work on May 25, 2004 for a total of 12 consecutive months (6 months per each agreement).

The employee returned to work on May 25, 2004 and later resigned in June 2005. While she did satisfy the 6 months of employment per each Leave Agreement she did not work the combined equivalent hours of 12 months of full-time employment (1950 hours).When the employee resigned the Employer withheld lieu pay and sought a garnishment of wages on the grounds that the employee hadn't fulfilled her duty to work a combined 12 months of full-time employment.

Two main Issues emerged from this case:

1. What are the obligations of a Casual Employee respecting her return to service and repayment of the Maternity and Parental SUB Plan Benefits.

2. Can the Employer require Casual Employees to execute maternity & parental return to service agreements?

EMPLOYER'S ARGUEMENT

In the Employer's argument they presented the three requirements for SUB plan eligibility: six months continuous employment, proof of application for Unemployment Insurance Maternity Leave Benefits & the employee's signature on a Maternity Leave Agreement. The employer argued that the "return to work" reference in paragraph 2 of the Maternity Leave Agreement could only mean that the employee must have to work a specified number of hours upon her returning to work.

As stated, the employee was a Casual Employee whose name was on an on-call list and had to report to work only when Employer called on her. The Employer argued that in order to fulfill her return to work requirement of the Maternity Leave Agreement she had to do more than

just place her name on an on-call list on her first day back. They argued that this did not constitute "being at work". The Employer also argued that as she satisfied the length of time (12 months) but, not the hours they should be able to seek repayment of overpaid benefits via a pro-rated approach. They cited Article 21.03 (c)(i)(ii) which outlines the payment formula for both full & part time employees. As the employee in question had worked (on average) less than the 37.5 hours per week, she was deemed by the Employer to be "part-time".

UNION'S ARGUEMENT

The Union noted that article 21.03 (b) states only that the employee satisfy the 6 months of continuous employment commencing from their agreed return to work date it does not state that an employee must work for a continuous amount of full-time hours.

The Union also points out that Article 21.03(c) deals only with payment percentage amounts under the SUB plan for "full-time" and "part-time" employees. It does not have a formula for "Casual Employees" nor does it identify that casual employees fall in the category of a "part-time" employee. As a casual employee, under definition, works on a temporary basis for a period no longer than four months, they cannot be considered a "part-time" employee for any reason.

The Union argued that there was no language in Article 21.03 (b) to support a change from a six month continuous employment requirement to a requirement to work 975 hours. If this were the case the employee would actually be working as a Term Employee as there is a precise number of hours required to work. This would mean that for all intents and purposes, the Employer changed the employment relationship from Casual to Term. This is a violation of Article 21.03 (b)(iv) which disallows such a change without the approval of both the Employer and the employee.

DECISION

The grievance was allowed.

Note that there is no disputing the fact that the employee/grievor is a casual employee, differing from other employees in that she is guaranteed employment for a period no longer than four months.

In Answer to the Two Main Issues:

1. The requirements of a Casual Employee is to provide 12 months of continuous full-time employment from the specified return to work date or repay the Maternity/Parental

Leave Allowance, there is no reference to any specific number of hours to be worked in a 6 month period. A casual employee meets the return to work criteria by placing their name on the on-call list by the specified date. If, by their own choice the employee does not stay in their position for the full 12 months then, they would be indebted to the Employer & said indebtedness would be reduced on a pro-rated basis.

2. In bargaining clause A5.03 (b) in Appendix 5, the Union & Employer outlined which provisions were not to apply to casual employees. This list did not include either article 21.03 (Maternity Leave) or 21.05 (Parental Leave) therefore, Casual Employees are entitled to all the benefits of both. Due to the fact that Casual Employees are not specifically excluded from the requirements of the Agreements they are required to sign them.