

Arbitration Award Summary

05-627 - Special Leave - Article 19.02

Case outline:

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

In this case, the member who was living in Inuvik decided to take a road trip to Whitehorse, over a long weekend. She was traveling with a co-worker. The Co-worker is an excluded employee. On the way back they ran into bad weather and the road was closed for a period of time. This meant they were two days late in getting back. The co-worker called the employer on both of their behaves. The Employer denied this member's application for special leave.

Employer's argument:

The Employer made two arguments. One being that in their view point the trip was foolhardy, ill advised and not reasonable. In other words, the member left too little a time margin to cover any difficulties which might arise on such a significant journey needing to be completed over a long weekend. With the onus resting on the member to show entitlement, she should have to demonstrate that adequate plans were made to cover a reasonably unforeseen event, which, given the time of year should not have excluded the possibility of a weather related, possibly lengthy, road closure. Circumstances suggested that such a trip should not be undertaken without planning that several days travel time might be needed for the full round trip of almost 2500kms. The employer, was well within its rights to have withheld the payment which should not be considered a violation of the Collective Agreement.

The second argument was that Article 19.02 could be read in conjunction with, or "together with" section 31 (b) (ii) of the Regulations under the Public Service Act which allows the Employer not to grant paid special leave where a transportation delay prevents one's reporting for duty from other than her usual residence, as being attributable to the employee. The Employer argued that the regulations apply to all GNWT employees including teachers and excluded personnel and everyone needs to be treated equally.

Union's argument:

The Union argued that the member had taken all necessary steps and preparations. They took two spare tires as flats are common on the Dempster. They checked the ferry schedules and made sure they would be running, they checked with CBC North for the weather forecast and had no concerns that they would not make it back on time. On mid Sunday they checked the likely weather for the return trip and discovered that a bulletin had been issued earlier that day regarding a road closure. On becoming aware of this, she reasoned that the road could open at any time. They decided against flying back to Inuvik at that point due the expense and the fact that there was no expectation on their part that the winds and blowing snow might last for days.

The Union argued that the language in the Collective Agreement supercedes the Regulations and the Regulations set the minimum standards. The Collective Agreement cannot be below the standard, but can be greater than the standard as it is in this case. The UNW does not represent the

Teachers or the excluded personnel and cannot interpret how the employer applies the Regulations to these individuals.

Arbitrator's decision:

The arbitrator found that the Employer violated the Collective Agreement and upheld the grievance.

There is nothing about the language of the special leave provision on its face, which suggests that it is somehow inapplicable to bargaining unit employees who are storm bound and prevented from attending work from other than their residences. The contract language does not exclude bargaining unit employees who are away from their community on a driving trip at any particular time of the year, whether during a seasonably difficult time period or not. Certainly one can be expected to properly plan for reasonably foreseeable contingencies, obvious possible delays on a reasonableness basis, but not on any absolute foreseeability test. One might observe that road trips, on being planned, are invariably time measured to a real degree, it being unlikely that any road traveler sets aside a bundle of days on either side of the expected usual travel time to accommodate a possible multi-day closure, or some other time crippling event, once having checked and confirmed fair weather and good road conditions on a personal safety basis.

Under the circumstances here, given the distance involved and the time of the year, the grievor might well have been expected to have allowed at least some extra time for her return, another day perhaps, somewhat more is at least debatable. But even had the grievor been able to leave Inuvik on Wednesday or Thursday, not Friday, and had they left for home early on Sunday morning, not Monday, to give themselves a full two days to have made the sixteen hour return drive, not just one, they still would have been caught by the road closure. That event could not have been expected and was not foretold, given the uneventful nature of their drive to Whitehorse from Friday afternoon through to Saturday mid-morning. The weather service report was favourable at the time they left Whitehorse.

The Employer did not make any mention of the Regulation in their denial of the grievance. They only referenced the contract language and their assertion that the grievor should have fully understood the risks associated with traveling the Dempster Highway during the winter where severe winter conditions and highway closures might have been expected. The Regulation in any event would have only doubtful application in a situation such as here, where the parties have chosen to negotiate express language covering special leave with pay for bargaining unit employees, and where its application might be seen as conflicting with it, especially having regard to the way such a contract provision has been interpreted in the past by the federal sector adjudicators dealing with very similar language. Policies meant to limit the effect of Article 19.02 type language have been found to be inapplicable when placed alongside the contract language.