

Arbitration Award Summary

08-P—00628 – Policy Grievance - Step Increments 08-G—00630 – Group Grievance (PWS) – Step Increments 06-104 – Article 24

Case Outline:

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

There was a dispute over the interpretation of Article 24.01 (2) of the collective agreement. The employer believed that employees with six or more years of experience could be placed no higher than the 3rd step of the pay grid unless approval was given by the Deputy Head. The Union argued that a new employee with six years of experience should be placed on the 4th step.

This language was new to the current agreement however existed in the previous agreement under Appendix 10.

Employer's Argument:

The Employer raised an estoppel argument based on evidence of past practice as well as the negotiating history of the article.

In the previous round of bargaining, the employer proposed the new language for article 24. The goal was to have provision (A.10.E) apply across the public service. The Employer's past practice of applying the provision was that Step 1 was the pay level for 0 – 4 years experience, Step 2 for 4 – 6 years and Step 3 for 6 years and greater. Newly appointed employees were not hired at a higher step unless approved by the Deputy Head. There was little discussion at the bargaining table and the proposed language was accepted without any objections.

The Employer acknowledged that there was a requirement of 2 years directly related experience for health care workers hired under Appendix 10. Step 1 was applied to the new employees with the minimum 2 years, Step 2 for 2 to 4 years of experience and Step 3 was paid to employees with 6 years of experience and higher.

The same practice was applied to the new article in the collective agreement. In July 2006, a revision to Article 15 of the Human Resource Manual outlined the employer's interpretation being that the "three (3) steps" indicated that Step 3 was the highest a new hire could start at.

The Employer further argued that the wording of the article is ambiguous ("maximum of three (3) steps") and that the provision is unclear as to the starting step; ie. Step 1 or Step 0 (casuals).

The Employer took the position that the pay grid clearly shows the “casuals” category or Step 0 as the starting pay level.

Past practice was asserted in the application of the Appendix and in the understanding the Employer had for the application under Article 24.01 (2).

Union’s Argument:

The Union objected to the estoppel argument on the basis of the clear language of article 24.02 (2). The objection was dismissed. The Union later argued that compelling evidence would need to be provided to show that the Union knew or ought to have known how the Employer applied the collective agreement.

There was no indication at the bargaining table regarding the method used to calculate the pay level steps applicable to new employees or of Step 3 being a maximum step. The Union understood the language as Step 1 being the initial step, 2 years of experience would place the new hire at Step 2, 4 years at Step 3 and 6 years of experience and greater would place the new hire at Step 4.

The Union argued that Article 24.01 (2) was applicable to employees that are “appointed”. Casual employees are not appointed under the definition in the collective agreement in Article 2.01 (m).

In regards to the Human Resource Manual, the Union provided a letter that had been sent to the employer December 11, 1996 which outlined the Union’s maintained position of raising policy issues as they became aware of them. This position was reinforced in a Joint Consultation meeting held on March 6, 2007 where the Union asserted that it did not have the capacity to review all amendments and that it reserved the right to file a grievance within 30 days of becoming aware of the issue.

The Union maintained that the language in the collective agreement was not ambiguous. Also, that that the Employer had misinterpreted the collective agreement by including casuals as appointed employees. Since casuals are not appointed, pay level “0” should be excluded from pay step calculations.

Arbitrator’s Decision:

The arbitrator agreed with the Union interpretation of the language in Article 24.01 (2).

Article 24.01 (2) states “newly appointed employees will be credited with one step of the applicable pay range for the position” and the reference to “appointed” excludes casuals, therefore the language must be read to include Steps 1 through 6 and not Step 0.

An employee is entitled to a credit of one step for each two years of directly related experience beginning at Step 1. Therefore, an employee with two years of experience would be placed at Step 2, an employee with four year experience would be placed at Step 3 and an employee with six years of experience would be placed at Step 4.

The arbitrator also decided that the Employer was entitled to believe that Article 24.01 (2) would be applied in a similar fashion in the collective agreement to Appendix 10.E. The Union did not challenge the application of the Appendix and therefore the Employer proceeded on the understanding that they would keep with past practice.

The Union is estopped from claiming the application of Article 24.01 (2) according to its plain and ordinary meaning. The estoppel will continue to operate until the parties return to the bargaining table at which point the estoppel will end.

NOTE: The essence of this award is that, even though the grievances were dismissed, the union is correct in its interpretation of the agreement. The estoppel means that there will be no retroactivity awarded to any employees who may have been affected by the employer's incorrect interpretation. On a go forward basis, if the language does not change during bargaining, the Union's interpretation will stand and from that point forward future employees of the GNWT will be credited with the correct pay step as per the Union's position.