

## **Arbitration Award Summary**

### **08-E—00815 – Special Leave Grievance**

#### **Case Outline:**

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

The grievor applied for 29 days of Special Leave, the total which she had accumulated at the time that she learned that a family member was ill and would require 24 hour ongoing care. The requested time off was not questioned, however, the Employer granted only a maximum of 10 days special leave and requested that she apply for a combination of Vacation and Leave without pay for the remaining time.

#### **Employer's Argument:**

Counsel argued that the amount of Special Leave which was requested could only be granted in exceptional circumstances and that management had exercised its discretion in granting the 10 days. The question being debated was whether or not this had been done reasonably. The CEO explained and defended the decision and provided the facts on which the assessment of the request was based. This decision was seen as reasonable by the Employer.

The Human Resource Manual was used as a guide (Section 811, (9) and (10)) wherein the Deputy Minister may approve additional days up to a maximum of 10 days except in catastrophic circumstances where an employee may be allowed up to 30 days.

#### **Union's Argument:**

The Union asserted that the time requested should have been approved in full. The Collective Agreement does not have a 10 day limitation; therefore the Employer's decision was limited by the Human Resource Manual alone. Staffing could not be argued as a factor in not granting the leave as the grievor was provided with the option of using other types of leave for the remaining time.

Counsel argued that each case requires individual assessment and that the leave request was unreasonably denied.

#### **Arbitrator's Decision:**

The Arbitrator upheld the grievance and found that the decision to not approve the full 29 days was unreasonable in this instance. He further concluded that limiting special leave to 10 days except in catastrophic circumstances (as in the Human Resources Manual) is not consistent with

the Collective Agreement. This does not imply that the Employer must approve all requests for additional leave time. The Employer has the right to deny leave; however, there should be an individualized assessment of applications.

In this case, the Employer did not request further medical documentation supporting the requirement of the grievor to care for the family member. There was some assumption on the availability of home care and other family resources within the community. The grievor maintained contact with her managers during her absence, and the Arbitrator suggested that the Employer may have granted an initial period of time with an invitation to the grievor to apply for further time after assessing the situation in person.