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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

LOUIS MARIN

Grievor

and

TREASURY BOARD  
(Human Resources Development Canada)

Employer

**Before:** Jean-Pierre Tessier, Board Member

**For the Grievor:** Isabelle Pétrin, Public Service Alliance of Canada

**For the Employer:** Karl Chemsy, Lawyer



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Heard at Montréal, Quebec,  
October 25, 2002.



## DECISION

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[1] Louis Marin is currently employed at the Jean Talon Employment Centre as an investigator. He has more than 32 years of experience in the Public Service.

[2] On March 2, 2000, Mr. Marin filed a grievance contesting the employer's decision forcing him to liquidate ten days of leave before March 31. Mr. Marin requested that the employer pay him for these ten days. He contested the requirement that he take these ten days of "mandatory leave" and requested payment for the ten days.

[3] At the October 25, 2002 hearing on this matter, the parties agreed that the procedure had been followed and that the case fell within the arbitrator's jurisdiction.

### Facts

[4] Mr. Marin pointed out that the claim concerned the interpretation of a new provision in the collective agreement concerning the liquidation of annual leave, i.e. sub-paragraph (b) of clause 34.11:

#### *Carry-Over and/or Liquidation of Vacation Leave*

##### *34.11*

- (a) Where in any vacation year, an employee has not been granted all of the vacation leave credited to him or her, the unused portion of his or her vacation leave up to a maximum of thirty-five (35) days credits shall be carried over into the following vacation year. All vacation leave credits in excess of thirty-five (35) days shall be automatically paid in cash at his or her daily rate of pay as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on the last day of the vacation year.*
- (b) Notwithstanding paragraph (a), if on the date of signing of this Agreement or on the date an employee becomes subject to this Agreement, he or she has more than thirty-five (35) days of unused vacation leave credits earned during previous years, a minimum of ten (10) credits per year shall be granted, or paid in cash by March 31<sup>st</sup> of each year, until all vacation leave credits in excess of thirty-five (35) days have been liquidated. Payment shall be in one instalment per year, and shall be at his or her daily rate of pay as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on March 31<sup>st</sup>, of the applicable previous vacation year.*

[5] When he presented his case, Mr. Marin explained that he had never been informed of the manner in which his accumulated vacation leave was to be liquidated. In 1999, the employer paid him ten days of vacation leave. However, in 2000, for the 1999 fiscal year ending on March 31, 2000, the employer asked him to take ten days of leave accumulated in his annual leave bank.

[6] It was not until February 2000 that the issue of leave was discussed. According to Mr. Marin, early in February, he was asked to liquidate his accumulated vacation leave; at that time, he received a statement of his vacation leave credits (Exhibit F-2). On February 4, at a team meeting, his supervisor, Albert Deschamps, informed him that the Director would not force anyone to take vacation leave.

[7] However, on February 14, Mr. Marin received a memo (Exhibit F-3a) asking him to liquidate his ten days of accumulated vacation leave before March 31, 2000. In light of these facts, Mr. Marin formally requested, in writing on February 17, to be paid (Exhibit F-3b). That same day, the employer replied that he had to take ten days of vacation leave (Exhibit F-3c). On February 22, Mr. Marin repeated his request for payment (Exhibit F-3d) and the employer responded on March 1<sup>st</sup>, 2000, that it was standing firm in its position (Exhibit F-3e).

[8] Mr. Marin pointed out that the employer's position conflicted with the rest of the procedure for calculating the leave report (Exhibit F-2), which referred to leave payable to March 31, 2000. He also indicated that the employer cited budget constraints as the reason whereas, according to him, between February and March 2000, several employees, including himself, had done overtime.

[9] When asked about the minutes of the management committee meetings (Exhibit F-4), Mr. Marin agreed that they are generally posted in the employee lounge. The minutes of May 13, 1999, and January 11, 2000, refer to the liquidation of vacation leave. Mr. Marin added that even though Mr. Chevalier's name appears on these minutes, the latter was never an official manager and did not give him any information about the liquidation of vacation leave.

[10] Mr. Marin finished by pointing out that for 2000-2001, management had informed employees that leave would be paid (Exhibit F-6). He agreed that, in terms of his grievance, he was insisting on the fact that he was entitled to be paid for his leave. He did not stress the fact that he was notified late that he had to take these ten days of

leave but nonetheless considered that the employer could not inform him of this obligation at the last minute since this would then not constitute a real vacation, but rather "forced vacation leave".

[11] Marie Germain, former Director of the Montréal-Nord Human Resources Centre and Director of the Montréal-Est Centre in 1999-2000, explained that in early 1999, she had requested an analysis of the leave banks. She noticed that six employees had reached or were about to reach 35 days of accumulated vacation leave.

[12] She asked the unit heads to instruct these employees to take the excess days (maximum of ten days) as vacation leave.

[13] Early in 2000, she asked for a new calculation. On January 11, 2000, during a meeting, Mr. Deschamps informed her that Mr. Marin was reluctant to take vacation leave; this employee claimed that the interpretation of clause 34.11(b) gave him the right to be paid for the ten days he had to liquidate from his leave bank.

[14] Even though the unit had specific budgets for certain activities, these amounts could not, in her opinion, be transferred to pay for vacation leave. Ms. Germain concluded that the employees had been notified of the obligation to liquidate their excess vacation leave and she had instructed the unit heads to ensure the application of the directive.

### Arguments

[15] The grievor claims that the application of 34.11 gave employees the option of liquidating or getting paid for their accumulated vacation leave. The employer is not entitled to invoke budget constraints to refuse to apply a provision in the collective agreement.

[16] Moreover, it is important that the employer inform employees in good time if it wishes them to liquidate their vacation leave credits (maximum of ten days) before March 31. In his case, he only learned at the end of February that he had to take these ten (10) days of leave.

[17] According to the employer, employees had been informed that they had to liquidate their vacation leave. Besides, in his grievance, Mr. Marin never indicated the

fact that he had not been informed and he claimed that the interpretation of 34.11 gave him the choice of being paid for his ten days of vacation leave.

[18] According to the employer, the new provision, paragraph (b) of clause 34.11, is designed to liquidate the accumulated leave banks gradually. The leave in question is vacation leave, which has to be handled according to the general provisions concerning paid annual vacation leave, pursuant to clause 34.05.

[19] The parties referred to arbitration decisions to support their claims.

Reasons for decision

[20] While it appears that Mr. Marin was not formally informed of the employer's position before early 2000, the text of the grievance and statements made at the hearing suggest that Mr. Marin was arguing a point of principle with his supervisor in February 2000.

[21] In his grievance, Mr. Marin contested the employer's interpretation of clause 34.11(b).

[22] In order to understand the meaning of the new provision introduced by the parties, I must review the nature of this provision, its context and the general interpretation rules for contracts.

[23] The former clause 34.11 stipulated that annual vacation leave credits that remained unused in a given year could be carried over into the following year, up to a total of 35 days. The text then stipulated that "All vacation leave credits in excess of thirty-five (35) days shall be automatically paid in cash..."

[24] However, over the years, the employer did not apply this provision regarding the payment of excess days since, as is evident in this case, employees had accumulated credits beyond the 35 days allowed. Therefore, it should be concluded that the parties added a new provision to paragraph (b) in order to put an end to the practice of accumulating vacation leave beyond 35 days.

[25] This having been said, it is important to review the context of this new provision. Clause 34.11 concerned the carry-forward and liquidation of accumulated annual vacation leave during the year. Since clause 34.11 provided for a cash payment

for the excess over 35 days, it is evident that the addition of paragraph (b), which addresses all annual leave in the annual leave bank, retains this payment option.

[26] Also, the text refers to the liquidation of this excess annual vacation leave "...a minimum of ten (10) credits per year shall be granted or paid in cash by March 31<sup>st</sup>...". Since there is an option to liquidate, it remains to be seen how this applies.

[27] The liquidation of vacation leave in paragraph (b) of clause 34.11 is provided in connection with the liquidation of annual vacation leave. Whether in terms of annual leave or accumulated leave, I believe it is a matter of the same kind of leave and they should be treated as such. Since all of this is in connection with the liquidation of leave, the general rules on the liquidation of vacation leave set out in clause 34.05 should be referred to:

***Scheduling of vacation leave with pay***

***34.05***

*(a) Employees are expected to take all their vacation leave during the vacation year in which it is earned.*

*(b) Subject to the following subparagraphs, the Employer reserves the right to schedule an employee's vacation leave but shall make every reasonable effort:*

- (i) to provide an employee's vacation in an amount and at such time as the employee may request;*
- (ii) not to recall an employee to duty after an employee has proceeded on vacation leave;*
- (iii) not to cancel nor alter a period of vacation or furlough leave which has been previously approved in writing.*

[28] Under the rules of interpretation, I must take into account the fact that the interpretation of the clauses is interrelated; the interpretation also takes their context into account. It should also be noted that the parties are not using empty words. If they mentioned the liquidation of annual leave or clauses 34.11(b), it was because they wanted it to apply.

[29] The parties made no provision for terms and conditions respecting the liquidation of annual leave in clause 34.11(b). This suggests that they would rely on the

general provisions concerning the scheduling of leave, i.e. clause 34.05, in applying the clause.

[30] Clause 34.05 provides that the employer has the right to schedule the employee's annual vacation leave but must make every reasonable effort to provide it in the amount and at such time as requested by the employee. On this last point, the evidence shows that the employer has made the necessary efforts to inform and accommodate the employees. Unfortunately, in Mr. Marin's case, it appears that specific discussions on this matter only took place at the beginning of 2000.

[31] Given that I conclude that the use of vacation leave provided in paragraph (b) of clause 34.11 refers to the general terms and conditions for the use of clause 34.05, I believe that if the parties have not been able to agree in this case, it is just as much because Mr. Marin contested the employer's position as because the discussions were held late.

[32] Mr. Marin also refers to Board decisions 166-34-30797 and 30931 to 30935. However, this decision differs from this case because in this instance there was no clause resembling clause 34.11(b) and the employer wanted to impose the liquidation of excess leave.

[33] Subject to the foregoing, Mr. Marin's grievance is dismissed.

**Jean-Pierre Tessier,  
Board Member**

OTTAWA, December 23, 2002

PSSRB translation