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Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

CARL LEBLANC AND IAN SHAW

Grievors

and

TREASURY BOARD
(Department of Public Works and Government Services)

Employer

EXPEDITED ADJUDICATION DECISION

Before: Ian Mackenzie, adjudicator

For the Grievors: Jon Peirce, Professional Institute of the Public Service of Canada

For the Employer: Maryse Bernier, Treasury Board Secretariat

Note: The parties have agreed to deal with the grievances by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

Heard at Ottawa, Ontario
October 30, 2009.

[1] Carl Leblanc and Ian Shaw ("the grievors") are both classified in the Purchasing and Supply occupational group (PG). They have grieved the calculation of their years of service for vacation leave. Their entitlement for vacation leave at the time they filed their grievances was governed by the Audit, Commerce and Purchasing Group collective agreement between the Treasury Board and the Professional Institute of the Public Service of Canada (PIPSC), expiry date June 21, 2007 ("the collective agreement").

[2] The collective agreement provision for vacation leave sets out the rate at which vacation leave credits are earned based on years of service. Clause 15.03, at issue in these grievances, reads as follows:

> *15.03 (a) For the purposes of clause 15.02 above only, all service within the Public Service, whether continuous or discontinuous, shall count toward vacation leave except where a person who, on leaving the Public Service, takes or has taken severance pay. However, the above exception shall not apply to an employee who receives severance pay on lay-off and is reappointed to the Public Service within one (1) year following the date of lay-off.*
>
> *(b) Notwithstanding paragraph (a) above, an employee who was a member of the PG bargaining unit on May 17, 1989 or an employee who became a member of the PG bargaining unit between May 17, 1989 and May 31, 1990 shall retain, for the purpose of "service" and of establishing his or her vacation entitlement pursuant to this Article, those periods of former service which had previously qualified for counting as continuous employment, until such time as his or her employment in the Public Service is terminated.*

[3] The parties submitted the following agreed statement of facts:

. . .

1. *At the time of filing his grievance, Carl Leblanc, the grievor, was employed as a Supply Team Leader (PG-OS) in the Services and Technology Acquisitions Management Sector, of the Acquisitions Branch in Gatineau, Quebec.*

2. *At the time of filing his grievance, Ian Shaw, the grievor, was employed as a Supply Specialist (PG 05) in the Services and Technology Acquisitions Management Sector, of the Acquisitions Branch in Gatineau, Quebec.*

3. *The relevant collective agreement is the Audit, Commerce and Purchasing (AV) collective agreement between the Treasury Board and the Professional Institute of the*

Public Service of Canada, expiring June 21, 2007, which covers the PG Group.

4. *The dispute concerns article 15 — Vacation leave. More specifically, it deals with clause 15.03(b) — Accumulation of vacation leave credits.*

5. *Carl Leblanc was appointed as a PG by PWGSC effective February 18, 1980. For the purposes of severance pay, Mr. Leblanc was considered to be laid-off effective November 30, 1996 in the context of the Early Departure Incentive Program, which was in place from July 1995 to June 1998.*

6. *On July 26, 2000, Mr. Leblanc was re-hired by PWGSC and his vacation leave entitlement was calculated to be three weeks per year pursuant to article 15.02 of the collective agreement.*

7. *After several communications with the employer regarding his leave entitlement, Mr. Leblanc filed his grievance on June 17,2008, which reads as follows:*

   > In 1996, during Program Review, I was laid off from my job as a PG with Public Works and government Services Canada (PVI/GSC), a job I had held since 1978. I was rehired by PWGSC in the year 2000.
   >
   > Despite my repeated protestations and representations to management, I was treated as a new employee with regard to my vacation leave on being rehired in 2000, receiving the minimum annual allowance of three weeks (9.375 hours per month). Only recently was my vacation allotment increased to four weeks (125 [*sic*] hours per month).
   >
   > In my view, this violates Article 15.03(b) of the AV collective agreement, which states that as an employee who was a member of the PG bargaining unit as of May 17, 1989, I should retain, for the purpose of 'service" and of establishing my vacation entitlement under the collective agreement, those periods of former service which had previously qualified for counting as continuous employment.

8. *Mr. Leblanc requested the following corrective action:*

   > To be made whole. Specifically, to receive, either in money or in paid time off, the difference between the vacation entitlements I actually received and that to which I am entitled under Article 15.03(b) of the AV collective agreement, as follows:

. . .

Total additional vacation leave due 23 weeks.

9. *Ian Shaw was appointed as a PG by PWGSC in 1978. For the purposes of severance pay, Mr. Shaw was considered to be laid-off effective October 2, 1996 in the context of the Early Departure Incentive Program, which was in place from July 1995 to June 1998.*

10. *On July 10, 2006, Mr. Shaw was re-hired by PWGSC and his vacation leave entitlement was calculated to be three weeks per year pursuant to article 15.02 of the collective agreement.*

11. *After several communications with the employer regarding his leave entitlement, Mr. Shaw filed his grievance on June 18, 2008, which reads as follows:*

> In October, 1996, during Program Review, I was laid off from my job as a PG with Public Works and Government Services Canada. I was rehired by PWGSC in July, 2006.
>
> Despite my previous service with the department, I was treated as a new employee with regard to my vacation leave on being rehired in 2006, receiving the minimum annual allowance of three weeks (9.375 hours per month).
>
> In my view, this violates Article 15. 03(b) of the AV collective agreement, which states that as an employee who was a member of the PG bargaining unit as of May 17, 1989, I should retain, for the purpose of "service" and of establishing my vacation entitlement under the collective agreement, those periods of former service which had previously qualified for counting as continuous employment.

12. *Mr. Shaw requested the following corrective action:*

> To be made whole. Specifically, to receive, either in money or in paid time off, the difference between the vacation entitlements. I actually received and that to which I am entitled under Article 15.03b of The AC collective agreement. With reinstatement of the previous service, I should be earning 4 weeks of vacation annually, but have received only 3 weeks for the past two years. Therefore, as of the end of June of 2008, I was owed 2 weeks of vacation leave.

. . .

Submissions

[4] The grievors' representative submitted that the general principle of interpretation is that a collective agreement must be interpreted as a whole and that the agreement should have internal coherence. He referred me to selections from the text by Pierre-André Côté, *The Interpretation of Legislation in Canada,* 3rd edition. In the context of these grievances, all the parts of the vacation leave clauses 15.03(a) and (b) need to be read together. Then, absurdity and inconsistency will be avoided. Clause 15.03(a) sets out the definition of service for calculating vacation leave, and clause 15.03(b) sets out requirements "notwithstanding" clause 15.03(a). The plain meaning of clause 15.03(b) trumps the limitations on service set out in clause 15.03(a). The grievors were in the bargaining unit in 1989, as set out in subclause 15.03(b). This clause has been continually renewed by the parties. It is a type of grandfathering clause for those who have left the public service and who then rejoin the public service after one year; otherwise the contract language would be redundant. Clause 15.03(b) must be construed as protection for those rejoining the public service after one year because any other meaning would lead to inconsistency and absurdity.

[5] The Treasury Board ("the employer") representative submitted that the history behind clause 15.03(b) of the collective agreement explains its purpose. She provided the following three documents: an email from a Treasury Board negotiator dated February 23, 2001; a circular prepared by the bargaining agent for the previous PG group bargaining unit, the Public Service Alliance of Canada (PSAC), dated June 18, 2002; and an employer policy document that describes continuous and discontinuous service (undated). The explanation for clause 15.03(b) is that the basis for calculating vacation leave changed from "continuous employment" to "continuous and discontinuous service." In addition, the definition of "public service" was narrowed. As a result of this narrowing of that definition, some employees would have had their vacation entitlements reduced. Therefore, clause 15.03(b) was introduced to protect the "service" that those employees had before 1989 and 1990 with other employers. The PSAC, which negotiated this provision in the previous PG group collective agreement, issued a circular in support of that interpretation.

[6] The employer's representative submitted that the grievors did not meet the requirements of clause 15.03(a) of the collective agreement. In addition, there was no connection between clauses 15.03(a) and (b), since they are separated by a period. Clause 15.03(b) only protects service that an employee was previously qualified to

count. This change did not affect the grievors in 1989. Even if they were entitled to that protection, it ended when their employment was terminated in 1996. This provision has been in the collective agreement since 1990, and there have been several opportunities for this the PIPSC to propose amendments. It would be both absurd and inconsistent for the employer to interpret this provision differently for the PIPSC than it did for the PSAC.

[7] The grievor's representative submitted that it was preferable to rely on the words of the collective agreement and not on external documents. There are reasons why different groups are treated differently, and the PIPSC is not bound by an interpretation held by the PSAC. The parties to the collective agreement must have intended for clause 15.03(b) to continue to apply, or they would have removed it from the agreement. The word "notwithstanding" trumps punctuation.

[8] The employer's representative asked to make further submissions. She submitted that the provision is still in the collective agreement because clause 15.03(b) still applies to employees who were in the bargaining unit in 1989 and 1990 and whose employment has never been terminated.

Reasons

[9] The general principle contained in the vacation leave provision is that "service" for vacation leave purposes is not counted when an employee receives severance pay. One exception that does not apply is when an employee is laid off and reappointed within one year. The provision at issue in these grievances is clause 15.03(b) of the collective agreement, reproduced at paragraph 2 of this decision.

[10] The wording of clause 15.03(b) of the collective agreement is a complicated mix of verb tenses. However, a plain reading of it supports the position of the employer. The clause refers to the "former service" of an employee who "was a member" in 1989 or 1990. This means that the "service" referred to predates 1989 or 1990. In addition, the clause refers to "service" that "had previously qualified" as "continuous employment." The fact that service is referred to as "continuous employment" also indicates that this must be referring to service before 1989 or 1990 because it is different from the "continuous or discontinuous service" referred to in clause 15.03(a). Therefore, the protection under clause 15.03(b) is limited to service before 1989 or

1990, when the period of time used to calculate vacation leave changed from "continuous employment" to "continuous or discontinuous service."

[11] Although I do not need to rely on the background documentation filed by the employer at the hearing to interpret clause 15.03(b) of the collective agreement, I note that the documentation supports that interpretation.

[12] I understand from the documents filed and from the submissions of the parties that the grievors would not have previously required a clause 15.03(b) to maintain their existing vacation entitlements in 1989 and 1990. In any event, any protection that clause may have provided ceased when their employment was terminated in 1996.

[13] The grievors' representative submitted that clause 15.03(b) of the collective agreement would not have been renewed if it had the meaning given to it by the employer. There may well be employees who have remained employed in the public service who had service that met the definition of "continuous employment" before 1989 and 1990. Clause 15.03(b) will still apply to them.

[14] Clause 15.03(b) of the collective agreement does not apply in the circumstances of these grievances, and the grievors do not fall under the exception in clause 15.03(a).

[15] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[16] The grievances are dismissed.

November 5, 2009.

Ian R. Mackenzie,
adjudicator