Date: 20090817

File: 566-34-2786

Citation: **2009 PSLRB 99**

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

DOUG KLOCK

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Klock v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievor: Krista Devine, Public Service Alliance of Canada

For the Employer: Dianne Dioguardi, Canada Revenue Agency

Decided on the basis of written submissions
filed June 22 and July 20 and 28, 2009.

Individual grievance referred to adjudication

[1] On August 22, 2007, Doug Klock ("the grievor"), an employee of the Canada Revenue Agency ("the employer") at the Toronto North Tax Services Office, grieved the employer's decision not to grant him a five-day pre-retirement leave. The employer denied the grievance at the final level of the grievance procedure on January 6, 2009. The Public Service Alliance of Canada ("the bargaining agent") referred the grievance to adjudication on March 17, 2009. The grievor was covered by the collective agreement signed on December 10, 2004 between the employer and the bargaining agent for the Program Delivery and Administrative Services bargaining unit ("the 2004 collective agreement").

[2] Under clause 53.01 of the collective agreement, employees are entitled to pre-retirement leave when they have 30 years of service and they are at least 55 years of age. Clause 53.01 reads as follows:

PRE-RETIREMENT LEAVE

> ***53.01*** *Effective on the date of signing of this collective agreement, the Employer will provide five (5) days of paid leave per year, up to a maximum of twenty-five (25) days, to employees fifty-five (55) years old and over with a minimum of thirty (30) years of service.*

[3] The grievor was 59 years old when he filed his grievance. He started working for the employer in 1966, and he left in 1974. He returned in 1984 and did not leave again. In 1984, the grievor chose not to buy back, for superannuation purposes, his first eight years of service. When he requested pre-retirement leave, the grievor had a total of 32 years of service, but only 23 of those years were continuous employment, and only those 23 years qualified for superannuation.

[4] Several months after the grievance was filed, the parties renewed the collective agreement on December 3, 2007, and revised the wording of clause 53.01 of the collective agreement to read as follows:

PRE-RETIREMENT LEAVE

> ***53.01*** *Effective on the date of signing of this collective agreement, the Employer will provide five (5) days of paid leave per year, up to a maximum of twenty-five (25) days, to employees who have a combination of age and years of*

> *service to qualify for an immediate annuity without penalty under the* Public Service Superannuation Act.

[5] The issue in dispute between the parties is whether the term "years of service" as used in clause 53.01 of the 2004 collective agreement refers to years of pensionable service or to the total number of years of service. Under the first interpretation, the grievor would not be eligible for pre-retirement leave, but under the second, he would be eligible.

Summary of the grievor's submission

[6] The grievor was eligible for pre-retirement leave when he applied for it in August 2007. The following two requirements are set out in clause 53.01 of the 2004 collective agreement: to be at least 55 years of age and to have completed 30 years of service. The grievor met both requirements; he was 59 years old, and he had 32 years of service. For clause 53.01 to apply, all years of service count; it does not matter if some of those years are not counted for superannuation purposes.

[7] The collective agreement does not define "service." In the absence of a definition, it should be interpreted to include all service with the employer. There are no restrictions in the language, and none should be read into it. Even though article 53 of the collective agreement is entitled "Pre-retirement leave," that does not bring it within the purview of the *Public Service Superannuation Act*, R.S.C. 1985, c. P-36 (*PSSA*). The leave is tied to service and not to eligibility requirements related to superannuation.

[8] The employer's interpretation of clause 53.01 of the collective agreement is unreasonably restrictive. The employer is reading restrictions into clause 53.01 that do not appear in it. There is no requirement in clause 53.01 that the service be pensionable or even that it be continuous. The parties to the collective agreement were free to negotiate a definition of "service" or to use the term "pensionable service," but they did not.

[9] The grievor refers me to the following case law: *International Brotherhood of Boilermakers, etc. v. Howden & Parsons (Canada) Ltd.* (1970), 21 L.A.C. 177; *City of Trail v. International Association of Fire Fighters, Local 941* (1983), 10 L.A.C. (3d) 251; *Federated Cooperatives Ltd. v. Miscellaneous Employees Teamsters, Local 987* (2004), 130 L.A.C. (4th) 185; and *Lawrence v. Canada Revenue Agency,* 2007 PSLRB 65.

Summary of the employer's submission

[10] The pre-retirement leave provision was adopted as a retention measure, with the belief that it would encourage employees to continue working after they were eligible to retire with an unreduced pension. Considering that very few employees choose to retire with a penalty to their pensions, it was necessary for the provision to target those employees who are entitled to retire without penalty. Consequently, the term "service" in clause 53.01 of the collective agreement should be interpreted as pensionable service. At the time of his grievance, the grievor did not have 30 years of pensionable service, so he was not eligible for pre-retirement leave.

[11] That intent is supported by the employer's long-standing interpretation of clause 53.01 of the collective agreement including the definition of "service", which has been consistently applied within the context of the *PSSA*. To that effect, the employer submits several Interpretation Bulletins that it issued in 2000, 2001 and 2004. The employer also refers to the new wording of clause 53.01, which the parties agreed to in December 2007.

[12] The employer acknowledges that the language of a collective agreement should be read in its normal and ordinary sense, unless the context reveals that the words were used in another sense. In this case, clause 53.01 of the 2004 collective agreement must be interpreted contextually, as it is tied to the retirement provisions of the *PSSA*.

[13] The employer also submits that it has the residual right, under clause 6.01 of the collective agreement, to adopt an interpretation of clause 53.01 that coincides with its published definition of eligibility for pre-retirement leave.

[14] The employer refers me to the following case law: *Lawrence*, and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Pepsi-Cola Canada Beverages (West) Ltd.,* [1997] S.L.R.B.D. No. 62 (QL). It also refers me to Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (1994), at 131.

Reasons

[15] As mentioned earlier, the issue in dispute is whether the term "years of service" in clause 53.01 of the 2004 collective agreement refers to years of pensionable service or refers to the total number of years of service. The employer argues that "service" should be interpreted as "pensionable service". The grievor argues that all service for

the employer should be counted towards the 30 years of service required by clause 53.01.

[16] I agree with the grievor that there are no restrictions to limit the term "service" to "pensionable service." The collective agreement defines neither "service" nor "retirement." That being the case, those terms must be given their ordinary meaning. *The Concise Oxford Dictionary*, 10th ed. (1995), provides the following definitions:

> ***service:*** *a period of employment with a company or organization.*
>
> ***retirement:*** *the period of one's life after retiring from work.*
>
> ***retire:*** *leave one's job and cease one's job and cease to work, especially because one has reached a particular age.*

[17] The title of clause 53.01 of the collective agreement indicates that the leave is granted when an employee approaches retirement. However, that in itself does not mean that eligibility for the leave is limited only to employees who qualify for an immediate annuity without penalty under the *PSSA*. It simply means that this type of leave is granted to employees who approach retirement.

[18] The grievor worked for the employer for eight years, then he left. He returned in 1984, and at the time of the grievance, he had worked another 23 years for the employer. His first eight years are not counted for pension purposes because the grievor did not buy back those years of service. It is uncontested that the grievor has 23 years of pensionable service and more than 30 years of non-continuous total service for the employer.

[19] In its ordinary meaning, years of service includes one period or several periods of employment for an employer. Continuous employment generally refers to uninterrupted service. In the collective agreement, it is defined as having ". . . the same meaning as specified in the Employer's Terms and Conditions of Employment Policy." Those terms and conditions count as continuous employment periods of service not separated by more than three months. Pensionable service refers to service that counts for pension purposes.

[20] Contrary to other clauses of the 2004 collective agreement, clause 53.01 does not place any restriction on the calculation of years of service. In that respect, it is of interest to examine clauses 34.03(a) and 63.01:

> ***34.03***
>
> *(a) For the purpose of clause 34.02 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 re-appointed to the Public Service within one year following the date of lay-off.*

Clause 63.01 provides for severance-pay benefits on lay off, resignation and retirement among other reasons. It is calculated based on the number of years of continuous employment.

[21] Both clauses 34.03 and 63.01 of the collective agreement restrict the calculation of years of service or years of employment. If the employer wanted to limit the pre-retirement leave of clause 53.01 to pensionable service or to continuous employment, it needed the agreement of the bargaining agent to write it in the collective agreement, as the parties did for restrictions in the calculations used in clauses 34.03 and 63.01.

[22] The employer argued that pre-retirement leave was adopted as a retention measure for employees who were eligible to retire without a penalty. That pretention is reflected in the new wording of clause 53.01 of the collective agreement agreed to in December 2007, but it is not in the wording of clause 53.01 that was in force at the time of the grievance.

[23] The employer also argued that its position is supported by a long standing interpretation reflected in several bulletins issued in 2000, 2001 and 2004. Those bulletins may be useful to the employer's managers by allowing them to provide a uniform interpretation of the collective agreement, but they are of no use in this case because they are not negotiated documents. The interpretation provided by the bulletins is nothing more than the interpretation of one party to the collective agreement, and in that respect, it does not have more weight than the interpretation given by the other party.

[24] The grievor was 59 years old, and he had more than 30 years of service when he filed his grievance. Consequently, he met the conditions specified in clause 53.01 of

the collective agreement. In refusing him the requested leave, the employer violated the collective agreement.

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

(The Order appears on the next page)

Order

[26] The grievance is allowed.

[27] The employer shall grant to the grievor the five-day pre-retirement leave that he requested under article 53.01 of the collective agreement in effect in August 2007.

August 17, 2009

Renaud Paquet,
adjudicator