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Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

LOUISE LADOUCEUR

Grievor

and

TREASURY BOARD
(Environment Canada)

Employer

Before: Joseph W. Potter, Deputy Chairperson

For the Grievor: James Bart, The Professional Institute of the Public Service of Canada

For the Employer: Asha Kurian, Counsel

(Decided by written submissions filed on July 28, August 25 and September 11, 2000.)

[1] This is a grievance concerning the interpretation of the Applied Science and Engineering Groups collective agreement (Codes: 201, 202, 203, 205, 206, 210, 211, 218, 222, 224 and 230) between the Treasury Board ("the employer") and the Professional Institute of the Public Service of Canada ("PIPSC"). Ms. Louise Ladouceur, the grievor, is a Meteorologist, level 5, and has grieved the employer's interpretation of subclauses 17.04(A)(3)(b) and 17.07(A)(3)(b) of the collective agreement. These provisions relate to maternity and parental allowances respectively.

[2] Subclause 17.04(A) states:

> ***Maternity Allowance***
>
> ***17.04***
>
> *(A) An employee who has been granted maternity leave without pay shall be paid a maternity allowance in accordance with the terms of the Supplemental Unemployment Benefit (SUB) Plan described in 17.04(B), provided that she*
>
> *(1) has completed six (6) months of continuous employment before the commencement of her maternity leave without pay,*
>
> *(2) …*
>
> *and*
>
> *(3) has signed an agreement with the Employer stating that*
>
> *(a) she will return to work on the expiry date of her maternity leave without pay unless the return to work date is modified with the Employer's consent.*
>
> *(b) within eighteen (18) months following her return from maternity leave without pay, she will work an amount of hours paid at straight time calculated by multiplying the number of hours in the work week on which her maternity allowance was calculated by twenty six (26).*
>
> *(c) Should she fail to return to work in accordance with the provisions of Clauses 17.04(A)(3)(a) and 17.04(A)(3)(b) for reasons other than death, lay-off, or having become disabled as defined in the* Public Service Superannuation Act, *she will be indebted to the Employer for the amount received as a maternity allowance,*

proportionate to the amount of hours not worked in relation to the hours to be worked as specified in (b) above.

(4) …

[3] Subclause 17.07(A) states:

Parental Allowance

17.07

(A) An employee who has been granted parental leave without pay, shall be paid a parental allowance in accordance with the terms of the Supplemental Unemployment Benefit (SUB) Plan described in 17.07(B) below, providing he or she

(1) has completed six (6) months of continuous employment before the commencement of parental leave without pay;

(2) …

and

(3) has signed an agreement with the Employer stating that he or she:

(a) will return to work on the expiry date of his/her parental leave without pay, unless the return to work date is modified with the Employer's consent.

(b) within ten (10) months of his or her return from parental leave without pay, the employee will work an amount of hours paid at straight time calculated by multiplying the number of hours in the work week on which the parental allowance was calculated by fifteen (15).

(c) Should the employee fail to return to work in accordance with the provisions of Clauses 17.04(A)(3)(a) and 17.04(A)(3)(b) for reasons other than death, lay-off, or having become disabled as defined in the Public Service Superannuation Act, *the employee will be indebted to the Employer for the amount received as a parental allowance, proportionate to the amount of hours not worked in relation to the hours to be worked as specified in (b) above.*

(4) …

[4] The parties agreed to proceed by way of written submissions only. A joint statement of facts was agreed upon, following which the PIPSC submitted its argument on July 28, 2000. The employer replied on August 25, 2000, and the PIPSC submitted its rebuttal on September 11, 2000.

[5] At issue here is whether or not the grievor has fulfilled the collective agreement requirement to return to work and work a specific period of time. If she has fulfilled this obligation, she retains the maternity and parental allowances she received while absent on leave. If she has not fulfilled this obligation, a portion of the allowances she received while absent must be repaid to the employer.

[6] From July 8 to November 3, 1998, the grievor applied for and was granted maternity leave, for which she received a maternity allowance.

[7] From November 4, 1998 to April 19, 1999, the grievor applied for and was granted parental leave, for which she received a parental allowance.

[8] From April 20 to September 29, 1999, the grievor applied for, and received, care and nurturing leave without pay.

[9] The grievor returned to work on September 30, 1999, and worked until April 3, 2000, at which time she commenced another period of approved maternity and parental leave. The period of time worked between these two dates was 26 weeks (975 hours).

Argument for the Grievor

[10] The PIPSC's position is that the grievor met the obligation under the collective agreement for both maternity and parental allowances by working 26 weeks (975 hours) before she again proceeded on another round of maternity and parental leaves.

[11] The PIPSC's argument, found in its July 28, 2000 submission, states that the collective agreement language is clear; subclause 17.04(A)(3)(b) requires the grievor to work a defined number of hours (in this case 975) within a specified period of time (18 months) after returning to work and subclause 17.07(A)(3)(b) requires the grievor to work a defined number of hours (in this case 562.5) within a specified period of time (10 months) after returning to work.

[12] The grievor returned to work and worked 975 hours before proceeding on leave.

[13] There is no linguistic connection between subclauses 17.04(A) and 17.07(A). Each provision stands separate and apart from each other. They apply concurrently.

[14] The grievor has met the requirements of subclause 17.04(A)(3)(b) by returning to work and working 975 hours. At the same time, the grievor has met and, in fact, exceeded the requirements of subclause 17.07(A)(3)(b) by returning to work and working more than the 562.5 hours required.

[15] The PIPSC also states that the employer's interpretation would result in an adverse effect discrimination, in contravention of the *Canadian Human Rights Act* and the collective agreement.

Argument for the Employer

[16] The employer's position is that the minimum return-to-work provisions for both maternity and parental leaves are to be worked consecutively. In this case, due to the length of her absence, the employer states that the grievor would have to return to work for at least 1537.5 hours (975 hours for maternity and an additional 562.5 hours for parental). This requirement would have to be met within 18 months of the grievor's return to work. The two requirements are mutually exclusive, and the 562.5 hours cannot be counted within the 975 hours as the PIPSC has contended.

[17] To accept the PIPSC's position would have the effect of pyramiding the benefits in the collective agreement, which rules of construction prohibit. If the grievor's interpretation were upheld, it would nullify the effect of one of the work requirements. This would result in an absurdity. Clearly, the intention of the parties, when considering both the maternity and parental provisions, is for each allowance's work requirement to be satisfied separately, without overlap.

Determination

[18] In his arguments, the grievor's representative raised an issue of adverse effect discrimination on the basis of gender. The written argument submitted on behalf of Ms. Ladouceur, however, did not focus exclusively on the question of whether the employer's interpretation of the collective agreement infringed on her human rights. That argument was only one amongst many and in no way could be seen as the

essence of the grievance. It is not a case where the substance of the grievance is an allegation of discrimination based on the denial of an employment benefit for reasons related to gender. In other words, the allegation of discrimination does not underlie or form the central issue in the grievance. The essence of the grievance clearly relates to contract interpretation and I intend to deal with it on this basis.

[19] Regardless of the intent of the parties, my function, as an adjudicator, is to interpret the provisions of the collective agreement as they are written.

[20] The facts of this case are not in dispute. Following periods of maternity, parental and care and nurturing leaves, the grievor returned to work. While she was absent, the grievor received a maternity allowance, for which she agreed to come back to work and work for at least 975 hours, and in this case she received the maximum entitlement. Also, while absent, the grievor received a parental allowance in return for which she agreed to come back to work and work for at least 562.5 hours, again receiving the maximum entitlement.

[21] In order to avoid having to repay all, or a portion of the maternity allowance, the employee must return to work for a specific period of time. In this case, the grievor had to return to work for 975 hours in an 18-month period.

[22] In order to avoid having to repay all, or a portion of the parental allowance, the employee must return to work for a specific period of time. In this case, the grievor had to return to work for 562.5 hours in a 10-month period.

[23] The employer says that these periods of time are separate and distinct, and that it was intended that these return-to-work requirements be calculated consecutively to each other.

[24] The PIPSC says the grievor has met the specific contract language for each provision and, in fact, has exceeded the requirement for the parental allowance. In essence, the 562.5 hours are subsumed by the 975 hours.

[25] The first period of absence for the grievor was maternity leave. The second period of absence for the grievor was parental leave. The grievor did return to work and worked 975 hours before she went on another maternity leave.

[26] In order to avoid having to repay the allowances, each allowance requires the employee to agree to a certain undertaking. In this case, the undertaking is similar for each allowance. The grievor must return to work for a specific number of hours in a specific period of time.

[27] Given the very specific language of the collective agreement, I agree with the submission of the PIPSC that the grievor has fulfilled her end of the bargain. I can find nothing in the collective agreement that says that an adjustment has to be made on the time worked, once you come back, to offset something else. If the parties had intended the return-to-work requirements to be consecutive, as the employer contends, it is my view that clearer constructive language would be needed.

[28] The collective agreement specifically provides that some benefits shall not be pyramided. For example, subclause 10.06 imposes such limits on the payment of overtime, reporting pay and standby. However, no such limitations could be found regarding the payment of maternity and parental allowances. That does not necessarily mean that all these benefits can be pyramided, but I find that it would take specific collective agreement language to state that the return-to-work requirements have to be fulfilled one after the other.

[29] The grievor has met the obligations of the collective agreement, as it is written. She was paid a maternity allowance and agreed to return to work for at least 975 hours. This she did. She was also paid a parental allowance and agreed to return to work for at least 562.5 hours. This she did.

[30] In light of the above, the grievance is sustained.

Joseph W. Potter,
Deputy Chairperson

OTTAWA, October 6, 2000.