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*Federal Public Sector Labour
Relations and Employment
Board Act and Federal Public
Sector Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD

Employer

Indexed as

Public Service Alliance of Canada v. Treasury Board

In the matter of a group grievance referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Bargaining Agent: Goretti Fukamusenge, Public Service Alliance of Canada

For the Employer: Jenna-Dawn Shervill, counsel

Heard at Winnipeg, Manitoba,
September 20 and 21, 2016.

(Written submissions filed October 14, November 4 and December 12, 2016.)

I. Group grievance referred to adjudication

[1] The Public Service Alliance of Canada (“the PSAC”) filed a group grievance on April 22, 2009. Between April 7 and 9, 2009, Darlene Bell, Amber Zubriski, Lee Davidson, Nora Buors, Anna Recksiedler, Cathy Jackson, and Moira Burns (“the grievors”) signed Form 19 under s. 77(2) of the *Public Service Labour Relations Board Regulations* (SOR/2005-79; “the *Regulations*”) confirming their participation in the group grievance.

[2] The group grievance grieved the employer’s denial of the grievors’ requests for annual (vacation) leave. As relief, they asked to have their requests approved immediately.

[3] The grievance was denied at each level of the grievance process and was referred to the Public Service Labour Relations Board (PSLRB) under s. 216 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s.2; “the *Act*”) for adjudication.

[4] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former PSLRB as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Act* before November 1, 2014, is to be taken up and continue under and in conformity with the *Act* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[5] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *PSLREBA* and *Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

II. Summary of the evidence

[6] At the time of the grievance, all the grievors were employed by the Treasury Board (“the employer”) and worked for Human Resources and Skills Development Canada (“HRSDC”), at its Winnipeg, Manitoba, call centre (“the call centre”) as citizen service officers (“CSOs”).

[7] CSOs field inquiries from the public with respect to a variety of federally managed national pension and employment insurance programs. They were divided into five teams, each one reporting to a team leader (“TL”), who in turn reported to a service manager.

[8] On January 29, 2009, the PSAC and the employer signed a collective agreement for all employees of the Program and Administrative Services (PA) group (“the bargaining unit”), which expired on June 20, 2011 (“the collective agreement”). All CSOs at the call centre were members of the bargaining unit.

[9] This grievance deals only with those CSOs who handled pension program inquiries and involves the process for requesting and approving (or denying) annual leave for the summer vacation period of June 16 through September 15, 2009.

[10] Article 34 of the collective agreement is entitled “Vacation Leave with Pay”. Clauses 34.05 and 34.06 fall under the subheading “Scheduling of Vacation Leave With Pay” and state as follows:

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 leave in an amount and at such time as the employee may request;

(ii) not to recall an employee to duty after the employee has proceeded on vacation leave;

(iii) not to cancel or alter a period of vacation or furlough leave which has been previously approved in writing.

34.06 *The Employer shall give an employee as much notice as is practicable and reasonable of approval, denial, alteration or cancellation of a request for vacation or furlough leave. In the case of denial, alteration or cancellation of such leave, the Employer shall give the reason therefor in writing, upon written request from the employee.*

[11] At the time relevant to the grievance, Krista Horrox was the acting service manager at the call centre. She was the delegated authority responsible for approving or denying CSOs' leave requests under the collective agreement.

[12] She testified that during the time relevant to the grievance, 5 TLs reported to her, and that each team had between 14 and 20 CSOs. She said that roughly 70 to 90 people reported either directly or indirectly to her. She said that the TLs were responsible for the day-to-day management of their teams, including scheduling work, performance management, coaching, and liaising between training and productivity. She described CSOs as subject matter experts with respect to either pension or employment insurance programs who fielded calls from the public on any variety of issues involving those programs.

[13] Ms. Bell testified that in 2009, she had been a CSO at the call centre for about 10 years and was a part-time indeterminate employee. She did not specify the number of hours she was scheduled to work; nor was I provided with any information on those hours or her schedule, except that she did state that often, she was offered additional hours, and that during that 10-year period, she also accepted assignments to other jobs at the call centre, most notably as a quality assurance advisor. She said that she left the call centre in March of 2011.

[14] Ms. Zubriski testified that she worked at the call centre from February of 2008 until August of 2015. She did not identify if she had worked part-time or full-time; nor did she specify her hours or schedule. She stated that she recalled that about 26 CSOs on two different teams handled pension program inquiries.

[15] Ms. Bell stated that she believed that most CSOs worked part-time; however, with respect to the other named grievors, I was provided with no information as to whether they worked part-time or full-time or as to their work schedules or hours.

[16] The evidence disclosed that CSOs went through a training period of roughly

12 weeks, which included job shadowing. Both Mses. Bell and Zubriski testified that the work was steady, demanding, stressful, and fast-paced, with little down time. Ms. Zubriski stated that CSOs were supposed to deal with calls within a 380 seconds (6 minutes, 20 seconds) window.

[17] Ms. Zubriski was asked how many of her colleagues took vacation leave during the June 16-September 15 period; she could not say. While she did state that she recalled that a lot of the women who worked there at that time took care and nurturing leave over the summer, she did not provide any specifics.

[18] On February 25, 2009, Yolande Kosowan, a TL at the call centre, sent the following email to the CSOs on the pension teams:

Subject: FW: Call for leave period June 16-
Sept 15

Importance: High

...

We are now looking at annual leave requests for the upcoming period of June 16, 2009 to September 15, 2009.

Attached you will find the spreadsheet identifying the number of leave requests that can be allowed per day for this leave period. You will have 10 working days to send in your leave requests which must be submitted to your Team Leader by close of business March 11, 2009. We will be advising the status of leave requests for this period of time on or before March 25, 2009.

...

[19] While that email referred to a spreadsheet, none was presented as part of the evidence at the hearing.

[20] Ms. Zubriski responded to Ms. Kosowan's email by emailing her TL, Dwight McLeod, on March 11, 2009, requesting as vacation days June 12, July 20, August 4, and September 4 and 8, 2009. She stated that she did not receive a written response to her email and that a TL would speak to a CSO who had made a leave request and would advise if it was approved or denied. She further stated that requests are now sent in writing.

[21] Ms. Zubriski identified a copy of the group grievance, signed by Heather Millar on behalf of the PSAC, who she believed was the local union president at the time. She also identified copies of the first- and second-level grievance replies. She said that she had found the first-level reply upsetting. She said that she signed on to the grievance because she had been there for a year-and-a-half and had found it difficult to take vacation.

[22] The second-level reply identified as reasons for denying leave unprecedented work demands and the development of the “National Scheduling Guidelines for Leave” (“the Guidelines”).

[23] The Guidelines were sent via an all-staff communiqué (“the communiqué”) that was identified as having been updated on April 11, 2008; however, it was identified as having been originally created on September 25, 2007. They state in part as follows:

...

Implementation Plan

The National Scheduling Guidelines for Annual Leave will be officially in place effective April 1, 2008. The following dates indicate the different steps that will take place prior to the implementation date:

- ***November 15, 2007:*** Operations Support will send a reminder to the Call Centre Management Team to start the **Pre-Planning** stage.
- ***December 19, 2007:*** Management will send a note to the agents to remind them of the **Call for leave** date (January 8, 2008).
- ***January 08, 2008:*** Management will provide the agents with the number of leave requests that could be allowed per day for the first Leave Period. Agents will have 10 workings days to send the leave requests for the first Leave Period (April 1 to June 15)
- ***February 15, 2008:*** Deadline for approving leave for the first Leave Period.
- ***Subsequent leave periods will be coordinated based on a pre-determined schedule (see reference below)***

...

Annual Leave Guidelines

...

Pre-Planning

The pre-planning stage describes how the Management Team will estimate the number of annual leaves that can be granted for each period based on the operational requirements. The Pre-planning for each period should be completed before the **Call for leave** date based on the following schedule:

Period	Starting period date	Ending period date	Call for leave date
1	April 01	June 15	January 08 (60 working days)
2	June 16	September 15	February 25 (80 working days)
3	September 16	January 15	May 23 (80 working days)
4	January 16	March 31	October 01 (75 working day)

Operations and Operational Support Teams are responsible to provide call centres with preliminary call forecasts to use for planning purposes.

The WFMS is responsible to determine the number of agents required daily based on the operational requirements (staffing level needed to answer calls forecasted and to meet operational targets from the Resource Determination Model). The following factors will be considered when planning the annual leave.

- **Unscheduled leave factor (shrinkage factor):**

Unscheduled leave is an important factor in the planning of the Call Centres' annual leave numbers. In order to get an accurate figure of the shrinkage factor for each Call Centre, different numbers should be used for specific periods and specific days of the year (summer time, after long weekend, Christmas time, Mondays, Fridays, etc...). Unscheduled leave numbers from NCCUP can be used to calculate shrinkage factors for individual Call Centre. The shrinkage factor also includes agents not available (secondment, long term acting, long term sick, maternity, etc...)

- **Staffing fluctuations:**

It is important to predict the impact of the different factors

that can influence the staffing level of each Call Centre in order to maximize the number of leave requests that can be granted

- **Operational Requirements:**

Annual leaves should be planned in order to meet the Call Centre's Operational Requirements at all times (Forecasted calls, Service Level, National AHT, Utilization and Adherence to schedule)

Management of Leave Requests

The Leave Management stage offers a process where requests for leave are collected and approved. This process is based on a rounds system where the first round has to be completed before the second round can start. The process is designed to manage the requests for annual leave over four periods for one fiscal year:

1. April 01 to June 15
2. June 16 to September 15
3. September 16 to January 15
4. January 16 to March 31

Exceptions can be allowed for employees who have to make arrangements ahead of time. Requests for leave received outside these timeframes will be considered on a case by case basis and approval will be based on operational requirements.

Rounds will be organized until all requests for leave have been approved for each period

1. Collecting the leave request:

- A reminder will be sent by the Management Team to the employees 10 working days prior to the Call for leave date of each period in order to advise them of the date they can start sending their leave requests.
- The Call Centre will provide employees with the number of requests which can be granted for each period. This information must be provided on the Call for leave date before agents start submitting their leave requests (as outlined in the Pre-planning section Page 3)
- At the Call for leave date, employees will have **10 working days** to send their leave requests and/or make adjustments (round#1). *There is no limit on the number of consecutive or non consecutive weeks an employee can request (each round). Employees on extended leave or secondment have to submit their requests during the 10

days period (see appendix B).

- For any subsequent rounds within the same leave period, employees will have **5 working days** to send their leave requests and/or make adjustments (round #2 and up).

2. Approving the leave requests

- The local WFMS will identify any gaps after each round (calls forecasted VS agents' hours needed to answer calls including a shrinkage factor).
- After the gap analysis has been completed by the WFMS after a round, annual leave requests should be reviewed by the Team Leaders and WFMS, based on the Guidelines for Approving Leave Request (Appendix B).
- Leave should be approved for the days where there is no conflict, (number of leaves available is equal or less than what is being requested).
- If there is a conflict where more agents request leave than there are spots available, follow the Annual Leave Resolution Policy (Appendix C). Agents returning from an interim assignment prematurely that were already approved for leave will be automatically approved without having to go through this process. Please note that managers should not approve leave requests for employees who are expected to be back in their substantive position for the leave period requested without consulting with the home manager.
- Once the impact has been determined and the collective agreement has been reviewed, this information is to be presented to the Call Centre Manager by the WFMS for approval.
- Once the first round is approved for everyone, then the second round can start for employees to plot the remaining leave entitlement (if needed). Employees who do not have approved leave in one of the previous rounds will be given priority in the following round.
- The Management Team will have **10 working days** to analyse and approve leave at round #1 of each leave period. For any subsequent rounds within the same leave period, Management Team will have **5 working days** to analyse and approve the balance of leave requests.
- The process of approving leave should be completed based on the following schedule:

Period	Starting period date	Ending period date	Call for leave date	Deadline for approval
1	April 01	June 15	January 08	February 15*

2	June 16	September 15	February 25	March 31
3	September 16	January 15	February 25	June 30**
4	January 16	March 31	October 01	November 09

**this is done to accommodate those who are away over Christmas*

***this was done to try and approve all leaves before people leave for their summer holidays*

3. Communicate the decisions:

- *When approved by the Manager, the decision for approval / denial of requests should then be forwarded directly to the agents by their Team Leader. Should leave requests be denied, agents will be advised of the Manager's decision and rationale for denial in writing.*

4. Process for changes:

- *If an employee wishes to switch a day with another person, the situation should be brought to the WFMS attention for review after being approved by the Team Leaders.*
- *If an employee withdraws their leave request and there is only one employee excluded from being allowed that day, consideration should be given to the employee originally excluded from annual leave request for that day (given that all considerations are reviewed). If there were several requests beyond the limit, the Annual Leave Resolution Policy should be used. No subsequent requests should be considered once the limit has been reached.*

Appendix B

Guidelines for approving leave requests:

If an employee is on any type of extended leave or secondment (e.g. maternity, sick etc.), it is their responsibility to contact management prior to the end of the 10 working days of the 1st round for each planning period so they can be considered for leave during the allotted time periods.

Leave Request requiring Priority Status

Priority for leave requests will be as follows:

1. *Care of Immediate Family (Article 41.03): Maternity / Parental Leave / Leave for Care of Immediate Family / Long-Term Sick Leave*
2. *Annual Leave, Voluntary Leave, Personal Leave*
3. *Leave with Income Averaging (LWIA).*

All leave requests are given consideration as per the Collective Agreement under articles 33 to 53 inclusive and, Treasury Board Secretariat Leave Policies (i.e. LWIA). Unpaid leave may be granted in exceptional and/or unforeseen circumstances, as per provisions of Collective Agreement at [both copies submitted into evidence are not legible].

Factors that may be considered when reviewing leave request are:

- *Accumulated entitlement,*
- *Family circumstances*
- *Personal circumstances (e.g. Stressful situations)*
- *Reason for request*
- *Operational requirements*

With reference to paid leave requests for appointments, personal health or family related appointments as outlined in Treasury Board policy, expectation is that every effort will be made to try and schedule such appointment outside normal working hours. Should an employee have ongoing and/or follow-up appointments, they would be required to use sick leave to cover the appointment time.

*If the requests received exceed the number allowed per day, the working group will refer to the **Annual Leave Resolution Policy** (Appendix C).*

Appendix C

Annual Leave Resolution Policy

1. *Advise affected staff of conflict(s) to see if agreement can be reached.*
2. *If unable to resolve the situation, provide additional information to affected employees to determine what the circumstances are surrounding the leave request (e.g., who had the same period last year, who had previously changed their plans to accommodate the schedule,*

employee had no summer vacation but wanted a Christmas vacation).

3. *As a last resort, after all reasonable alternatives have been exhausted a draw could take place between affected employees.*

The Annual Leave guidelines are in accordance with the Collective Agreement (PA) with clarification from National Human Resources. It is not the intention of these guidelines to be able to cover all situations; Call Centre management may deal with exceptional circumstances on a case by case basis.

. . .

[Sic throughout]

[Emphasis in the original]

[24] Ms. Zubriski was shown a copy of the communiqué and Guidelines; however, she said that she did not remember seeing them because they were issued long ago. When she was asked about the last time they had been shown to her, she replied that she did not recall. She did say that the leave process had some deadlines within which she and the other team members were required to submit their requests and that management had a time frame within which to review the requests and respond to them.

[25] Ms. Zubriski said that not receiving her requested leave was difficult and frustrating for her. She stated that her family lives in another town and that they had had some events scheduled, and she missed a number of them. She said that leave was always initially denied and then was made available later on. She said that that made it difficult to make plans. When she was asked why she signed the grievance, she replied that she did so because it seemed as if the employer was not granting vacation at all.

[26] Ms. Zubriski was shown a copy of her leave balances for the fiscal year 2009-2010, which disclosed the following:

- on April 1, 2009, she carried forward 83.26 hours of vacation leave from the previous year;
- on April 1, 2009, she was credited with 101.6 hours of vacation leave for fiscal year 2009-2010;
- on April 1, 2009, she had a total of 184.86 hours of vacation leave; and

- on March 31, 2010, she was left with a balance of 91.53 hours (12.20 days).

[27] In cross-examination, Ms. Zubriski confirmed that two of the days she had originally asked for as vacation, September 4 and 8, were granted. She also confirmed that when she was denied leave for July 20 and August 4, 2009, she was given operational requirements as the reason. When she was asked if she knew the details of those requirements, she said that she assumed that too many people had requested vacation for that time.

[28] Still in cross-examination, she confirmed that she did not know the rules with respect to vacation scheduling and operational requirements. When asked if she met with or discussed that issue with her TL, her response was that she had had 20 TLs during her time in the call centre. When she was asked if she discussed it with Mr. McLeod, her answer was, "I can't tell you. It was a long time ago. I would think possibly, maybe. I am not sure. I can't tell you."

[29] When she was asked if she received June 12, 2009, as leave as requested, Ms. Zubriski replied that she did not know. She had no recollection of the leave taken during the time frame at issue.

[30] The evidence disclosed that sometime before April 16, 2009, Ms. Bell requested leave as follows:

- July 2 to 3, 2009: 15 hours;
- July 17, 2009: 3.5 hours;
- July 27 to August 7, 2009: 67.5 hours; and
- August 28, 2009: 3.5 hours.

[31] Between April 16, 2009, at 2:13 p.m., and April 21, 2009, at 4:02 p.m., Ms. Bell and Ms. Kosowan exchanged emails, the relevant portions of which are as follows:

[Ms. Bell to Ms. Kosowan - April 16, 2009, at 2:13 p.m.:]

I am submitting a further request for annual leave on the days that are left after all of the ISP Call Centre vacation leave has been approved. Again I do not agree that I am only offered last choice as I was only granted 1 full day and two half days leave this summer and I did not have an

opportunity to change my request and I know that I did not have the most summer leave last year. As well last year I was the acting Quality Assurance Advisor until the end of September 2008, therefore my leave last year should have no bearing on my summer leave this year.

I am requesting:

<i>June 26</i>	<i>4.0 hours . . .</i>
<i>July 6-10</i>	<i>37.5 hours . . .</i>
<i>July 20-21</i>	<i>15.00 hours . . .</i>
<i>July 22</i>	<i>7.50 . . .</i>
<i>August 17-26</i>	<i>60.00 hours . . .</i>
<i>August 31-Sept 4</i>	<i>37.50 hours . . .</i>
	<i>. . .</i>

[Ms. Kosowan to Ms. Bell - April 20, 2009, at 2:59 p.m.:]

As we had previously discussed these are the dates that are available, if you are interested please submit your request via paperless office by C.O.B. tomorrow.

June 26 - I can approve the full day - you can amend your request as a personal day

July 6-10 - I can approve the following dates of July 6, 7 and 8th (Mon-Wed) only

July 20 - I cannot approve this request

July 21 & 22 - I can approve these two dates (Tues/Wed)

August 17-21 - I can approve Tues-Thurs the 18-20 only in that week

August 24-28 - I can approve Mon-Tues the 24 & 25 only in that week

August 31-Sept 4 - I can approve the Mon-Thurs / Aug 31-Sept 3

. . .

[Ms. Bell to Ms. Kosowan - April 21, 2009, at 4:02 p.m.:]

. . .

I have tried many times today to go onto Paperless office and my leave balance details are unavailable so I will wait to submit on Paperless Office until it is available. These are the dates that I am requesting as annual leave:

<i>June 25</i>	<i>7.5</i>
<i>June 26</i>	<i>7.5 . . .</i>
<i>July 6</i>	<i>7.5 . . .</i>
<i>July 7 & 8</i>	<i>15.00</i>
<i>July 21 & 22</i>	<i>15.00</i>
<i>August 18-25</i>	<i>45.00</i>

August 31-Sept 3 30.00

I am again asking Management to reconsider allowing August 17 and September 4 as annual leave so that I could at least have two periods of time where I have 5 days in a row with the weekend. I would look at giving up other leave if this could be approved. Both periods of time would mean I would have to drive 4 hours to come home to work one day and then turn around and drive 4 hours again. I have been advised by my coworkers that they had originally been denied a Friday or a Monday but were able to negotiate to have this time approved.

. . .

[32] Ms. Bell stated that when she was denied leave due to operational requirements, she was told the reason was the employer did not have enough people to handle the phones. She said that she understood that 20% of staff could be off at one time, which included anticipated sick leave. She further stated that she did not believe that managers used that 20% threshold correctly.

[33] Ms. Bell testified that her family had a cabin that was four hours' travel time away. She also testified that one of the common denominators was that she and the other grievors did not have children. She said that while she did receive some leave, she did not receive all her requested leave.

[34] Ms. Bell confirmed that from January to April and again from approximately the middle of June to September were the busiest times and that often, the part-time employees were offered full-time hours. She said that management knew of the busy times and did nothing to increase staff to allow them to take their annual leave. She stated that she was not okay with taking her vacation in October or November. She said that she felt that management could have brought in more students to allow the indeterminate (both part-time and full-time) staff to take their vacations.

[35] Ms. Bell testified that she did not feel that she was being respected or valued as an employee. She said that the impact of not receiving her leave was that she had been unable to travel to the cabin or see her family. At one point, in response to a question from her representative, she stated that some students received prime-time leave even though they were supposed to cover for the grievors. Later, when she again responded to a question from her representative, she stated that summer was the busy time and

that the employer should have known to have enough staff to handle the phones; she suggested that it should have hired students.

[36] In cross-examination, Ms. Bell was shown a report setting out her leave balances from fiscal year 2009-2010. When she was asked to confirm that she took all her leave and that she carried over some from earlier fiscal years, her response was that she did not know, but she admitted that she could have taken it all. She also confirmed that she met often with her TL to discuss leave, and when she was asked if they had discussed the factors involved in granting and denying leave, she responded that she was sure that they had.

[37] The leave report for Ms. Bell for the fiscal year 2009-2010 disclosed as follows:

- on April 1, 2009, she carried forward 18.13 hours of vacation leave from the previous year;
- on April 1, 2009, she was credited with 150 hours of vacation leave for 2009-2010;
- on April 1, 2009, she had a total of 168.13 hours of vacation leave; and
- on March 31, 2010, she was left with a balance of 0.20 hours (0.030 days).

[38] Ms. Horrox testified that when she made decisions about leave, she referenced the collective agreement and the Guidelines. She said that because of the type of work and the limited amount of leave that could be granted at any given time, the Guidelines were developed, and timelines were set for requesting leave. She also explained how the Guidelines were applied, stating that each office had a workforce management specialist (“WFMS”) who worked with the call centre and the national office, assessed the operation, and calculated the number of person-hours each one required over a given period. The WFMS would determine the necessities for each operation and let each operation know how much leave could be approved for a particular time frame.

[39] With respect to the twenty percent that was referred to by Ms. Bell, Ms. Horrox said that it is what can be pre-planned and scheduled, such as vacation leave and care and nurturing leave. She said that the WFMS indicated that eight (8) percent of leave is

unscheduled, such as sick leave or leave for medical appointments or other un-predictable types of things. She said that certain types of leave took priority; caring for a family member came first, followed by vacation, personal leave, and leave with income averaging. She said that in an operation like the call centre, when an employee or a number of employees take leave to care for a family member, it can create difficulties with respect to others being granted vacation leave.

[40] Ms. Horrox stated that as part of the process, management let the employees know which time frames were oversubscribed and which were undersubscribed. She said that she and the TLs would review the leave requests for the period in question on a day-by-day basis and assess factors to determine what amount of leave they could approve and who would receive it. She said that sometimes, conflicts arose, which she would review with the TLs to see if they could be resolved.

[41] With respect to the period at issue in the grievance, June 16 to September 15, 2009, she indicated that there were approximately 30 CSOs in two teams, some of whom worked part-time.

[42] Ms. Horrox was brought to the denial of Ms. Bell's leave that would have amounted to leave for a partial day. She said that when approving leave, management tried to prioritize requests for a week or a full day over those for part of a day.

[43] Introduced into evidence was an email Ms. Kosowan sent to Ms. Horrox and dated April 7, 2009, in which she responded to Ms. Horrox's email of earlier that day as Ms. Bell had requested a meeting with Ms. Horrox to discuss leave. The email stated as follows:

...

*-sent out call for leave stating how many could be away on each date for that period of time
-once received, identified dates where we were over subscribed and asked if anyone was willing/able to accommodate
-only a few responded that they were willing/able
-provided e-mail with dates that were available where we could perhaps accommodate leave requests
-we looked at accumulated leave, family/special circumstances identified by staff and took this into consideration*

-we looked at who had leave granted during the previous call for this same period in 2008-2009 and who had given up dates to accommodate others

-based on staff responses to special circumstances, who had been granted leave for the call prior 08/09, who gave up time to accommodate others, this is how we determined who would be granted leave for this call out period; following the CRT guidelines

Also, we used paperless office to ensure our count was accurate. Out of 23 staff; removing the 3 who took COIF last summer, she ranked the 4th highest out of the remaining 20 CSO's for granted annual leave during the same period of June 16-Sept 15 of last year.

She has been granted annual leave in each month from May - Nov 2008 and March 2009 where another employee had cancelled her leave request to accommodate her. She was denied a half-day on Christmas Eve however was away on unscheduled leave for part of Dec 23 & all of Dec 24th. She has never offered/alterd nor given up any leave to accommodate others.

The only days where she has cancelled her leave requests in the summer (half-days) is if the weather was miserable and she would decide once she was at work that she would no longer want the afternoon off to drive out to the cottage.

. . .

[Sic throughout]

[44] Since 2004, and as of the hearing, Peter Cabel was a TL with HRSDC and now Service Canada ("SC") in the processing and payments section. From July of 2009 until August of 2010, he acted for Ms. Horrox while she was away. He responded to inquiries after the grievance was filed. He did not make any decisions with respect to granting or not granting leave.

[45] In cross-examination, he said that he had the authority to approve and deny leave, which he exercised. When he was asked how many leave requests he has approved and denied, he could not answer. When he was asked about the reasons to deny leave, he stated that the one used most was that too many leave requests were made for a particular day or week. He also confirmed that he was not involved in approving or denying leave for the period at issue in this grievance; nor could he speak to the reasons for specific leave denials.

[46] The evidence disclosed that the summer vacation leave period (June 16 - September 15) is very busy in terms of work.

III. Summary of the arguments

A. For the grievors

[47] The primary issue to be determined is whether the employer violated the provisions of clause 34.05 of the collective agreement by failing to make every reasonable effort to grant the grievors' requests for vacation during the summer of 2009.

[48] A second issue to be determined is the employer's objection under *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.), with respect to monetary compensation for the grievors if the grievance is allowed.

[49] A third issue raised during the course of the hearing was with respect to the number of grievors who are part of the group grievance.

[50] Ms. Bell and Zubriski both testified on the work they did. They described it as demanding and stressful. They took calls that largely spanned a five-to-six-minute window.

[51] Ms. Bell testified that management knew it might need additional staff in the summer. She worked every day in the summer and was unable to spend time with her family. She stated that she did not feel valued.

[52] When she was asked if any other instrument was used to schedule vacation leave, Ms. Horrox testified that in 2009, the Guidelines were used, which had been developed at HRSDC headquarters. According to her, management could preschedule approximately 20% of leave for a given period. She said that certain types of leave, such as for the care of immediate family, were approved on a priority basis and were part of the 20% that had to be preplanned.

[53] While the employer has the mandate to manage the public service, it failed to organize it at SC in such a way to allow the collective agreement to be properly applied. The employer cannot claim its rights and authority to organize its business and at the same time structure its operations in a way that prevents applying the

collective agreement. In this respect, I was referred to *Dufour v. Treasury Board (Department of Human Resources Development)*, 2004 PSSRB 123.

[54] The grievors also referred me to *Morhart v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 36, and *Whyte v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-17992 (19891010), [1989] C.P.S.S.R.B. No. 260 (QL), which stand for the proposition that an employer must take on adequate staff not only to produce the goods and services that it desires to supply to its clientele but also sufficient to allow it to meet its commitment to its labour force as to the length of the normal workweek, including covering leave.

[55] The grievors submitted that the evidence disclosed that the greatest majority of leave requests were denied on the basis of leave that had been taken during the same period the previous year. It further submitted that Ms. Horrox could not confirm during cross-examination whether the information that the employer submitted in documents with respect to leave was accurate.

[56] The grievors submitted that it is unreasonable to deny vacation leave based on leave taken in previous years without taking into consideration any other factors or motives.

[57] The grievors submitted that if the summer was busy, it was up to the employer to make every effort to try to fill positions by hiring students, people from hiring pools, or casuals or allowing part-time employees to do the work.

[58] Employees need work-life balance, which vacation is key to maintaining. An employee who has no chance to take vacation misses out on the opportunity to refocus and is likely even subject to burnout.

[59] When the grievors submitted their vacation leave requests for the summer of 2009, they were all denied, for the same reason given for every other denied request — operational requirements, which was unjustified.

[60] Nothing specific was provided with respect to the denials, and no data or facts were used to support the statement of operational requirements as the reason. The employer presented no evidence on the cost of operational requirements either in 2009 or at the time of the hearing. In *Power v. Treasury Board (Transport Canada)*,

PSSRB File No. 166-02-17064 (19880225), [1988] C.P.S.S.R.B No. 56 (QL) at page 8, the adjudicator stated that “‘Operational requirements’ is not a magic wand, which the employer can wave in order to deny employees their due under a collective agreement.”

[61] The jurisprudence has established that approving or denying an employee’s request requires an objective assessment. *Public Service Alliance of Canada v. Regina Airport Authority Inc.*, [2010] S.L.A.A. No. 19 (QL), stated as follows:

...

The decision on a leave request must be made in accordance with the Agreement which requires an objective assessment of operational requirements. Reasonably one would expect that this be assessed and determined prior to making a decision on the leave request. . . .

...

[62] The grievors submitted that the employer failed to make an effort to accommodate them. It also gave conflicting messages to justify denying the leave requests, as shown in the differences in the replies to the grievance at the first, second, and third levels.

[63] The grievors submitted that the employer violated the collective agreement and that the grievance must be interpreted in a manner that provides a full, effective, and meaningful remedy. In that respect, the grievors requested that the Board order the following:

- that the employer was in breach of the collective agreement; and
- monetary compensation for the stress and hardship that the grievors endured as a result of their annual leave requests being denied.

[64] In its reply to the grievance, the employer stated that the leave cannot be restored after the fact. While this is so, meaningful redress will never be feasible for employees who grieve a denial of vacation leave if the Board endorses the employer’s position. The grievors request a symbolic amount of \$1000 for each year that has passed since the collective agreement was violated in April of 2009, for a total of \$7000 (at the time of the submissions) for all the grievors. This \$7000 would represent general damages

for mental distress for the denial of a benefit negotiated under the collective agreement. The grievors believes that this symbolic compensation is reasonable and would represent a meaningful remedy.

[65] With respect to the employer's objection that the remedy requested was not the remedy sought in the grievance process, the grievors rely on *Blouin Drywall Contractors Ltd. v. United Brotherhood of Carpenters and Joiners of America, Local 2486* [1975] O.J. No. 31, and *Leclaire v. Treasury Board (Department of National Defence)*, 2010 PSLRB 82, which state that cases should not be won or lost on the technicality of form but rather on the merits.

B. For the employer

[66] The employer submits that the burden of proof is on the grievors to demonstrate a breach of the collective agreement, and they have not met this burden.

[67] The evidence demonstrates that reasonable efforts, a coordinated process based on the Guidelines allowing for leave requests, resubmissions, and negotiations accommodated the employees' wishes while providing services commensurate with the employer's operations.

[68] Clause 34.05 of the collective agreement gave the employer the right to schedule an employee's vacation leave. It also committed the employer to make every reasonable effort to provide vacation leave in an amount and at such time as the employee requested it. However, it did not create an obligation to approve all requests or to bestow upon the employees unfettered access to a preferred amount and time of vacation leave. In this respect, the employer referred me to *Morhart*.

[69] The evidence disclosed that in the summer of 2009, the number of leave requests resulted in some vacation leave requests being denied. It also disclosed that the employer demonstrated flexibility in applying the Guidelines with respect to granting vacation and that it granted leave outside the Guidelines in exceptional circumstances.

[70] The grievors demonstrated no evidence of exceptional circumstances that warranted granting leave outside the Guidelines. The evidence actually disclosed that the employer anticipated a higher volume of work for the summer, so it offered part-time employees, such as Ms. Bell, full-time positions in the summer months.

[71] In its submissions, the grievors emphasized that the employer's alleged failure to allow the individual grievors to take time off as requested was unacceptable, denied them their hard-earned leave, denied them the opportunity to refocus, and was likely to subject them to burnout. There was no evidence suggesting that employees were unable to take leave in 2009-2010. The evidence was that certain employees were unable to take leave at their preferred times.

[72] The evidence disclosed that Ms. Bell took more leave in 2009-2010 than she accumulated, while Ms. Zubriski took almost all the leave she accumulated that year.

[73] The employer's position is that "reasonable efforts" does not mean approving all leave requests, and given that the grievors were able to take annual leave at other times during the year, what is left to determine is whether the employer's decision not to approve all the grievors' leave requests for the summer of 2009 was done in a reasonable manner.

[74] The employer submitted that to determine whether it met its obligation to provide leave in a reasonable fashion, the Board must look at the procedure the employer used to decide the grievors' vacation leave requests for the summer of 2009. Its procedure flowed from both the collective agreement and the Guidelines. The collective agreement did not contain any specific scheduling requirements with respect to vacation leave; the only restriction was that the employer was to make every reasonable effort to grant vacation leave in the amount and at the times requested by employees.

[75] The employer could not schedule all the requested leave as the CSOs provided a service directly to the public. The evidence disclosed that the number of calls they received increased in the summer and that July was particularly busy because the Old Age Security Guaranteed Income Supplement letters were sent out then, which resulted in an increase in inquiries.

[76] The Guidelines provided a reasonable framework with which to schedule vacation leave. They were jointly developed by the bargaining agent and the call centres directorate and based on feedback received from staff in a national survey.

[77] The employer followed the Guidelines. The evidence of Ms. Horrox was that in

March and April of 2009, management decided each employee's vacation request based on the Guidelines. Explanations of approvals and denials were made to employees via their TLs.

[78] The employer referred me to paragraph 64 of *Morhart*, which states in part as follows:

[64] . . . Operational requirements include systems and policies that generally meet needs and obligations. It is not operationally viable for an employer to devise methods to accommodate each and every request for vacation leave, particularly requests for isolated days or hours. Workable systems and policies will never be foolproof or guarantee every request can be, or even will be, met.

[79] Nothing in the collective agreement prevented using the criteria used and considered by the employer and as set out in the Guidelines being considered in a common sense way.

[80] The grievors took issue with the employer with respect to priority being given to those employees who took leave for the care of immediate family, yet it is the PSAC who participated in the formulation of the Guidelines, which gave the priority of this leave over vacation leave.

[81] The grievors stated in its submissions that it was up to the employer to make every effort to try and fill the positions by bringing in students, people from pools, hiring casuals; yet it provided no basis in law for making this assertion. *Morhart* addresses this by stating that it is not reasonable to expect an employer to do this when it has a flexible and workable leave policy in place.

[82] *Pronovost v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 93, held that an employer by defining a policy is acting reasonably by setting the criteria that enables it to avoid acting arbitrarily in scheduling vacation leave.

[83] *Pronovost* stated that the fact that the vacation leave clause did not subject vacation leave scheduling to operational requirements does not mean that an employer cannot consider them; operational requirements are one of many elements that an employer may consider when choosing a procedure to schedule vacation leave. The

choice and assessment of the elements fall within the employer's right to schedule vacation leave as set out in the collective agreement.

1. Remedy requested

[84] The corrective action requested at the time the grievance was filed was that the requested leave be granted. That has since been abandoned, and the grievors now seek, in addition to a declaration that the collective agreement has been breached, monetary relief in the form of damages. The employer objected to this attempt to alter the remedy requested.

[85] At no point in the grievance process did the grievors ever put the employer on notice that it intended to request monetary compensation for non-pecuniary damages. This is a matter of procedural fairness and is contrary to labour relations practice, by which the employer is entitled to know the case it needs to meet. In addition, it is contrary to the principle established in *Burchill*, as supported in *Scheuneman v. Treasury Board (Natural Resources Canada)*, PSSRB File No. 166-02-27847 (19981020), [1998] C.P.S.S.R.B. No. 93 (QL) (upheld in [2000] 2 F.C. 365 (T.D.)), *Cameron v. Deputy Head (Office of the Director of Public Prosecutions)*, 2015 PSLREB 98, and *Smith v. Treasury Board (Environment Canada)*, PSSRB File No. 166-02-15057 (19861107), [1986] C.P.S.S.R.B. No. 308 (QL).

[86] The employer submitted that the grievors' request that the remedy be altered to provide for a monetary remedy is a fundamental change.

[87] The employer further submitted that the grievors have provided no basis in law for the request for \$7000. There is no basis in the collective agreement for the remedy that the PSAC seeks for the individual grievors. Had the PSAC wished to include a penalty clause for an alleged failure to apply the annual-leave scheduling provisions of the collective agreement, it should have negotiated such a benefit. In this respect, the employer referred me to *Canada (Attorney General) v. McKindsey*, 2008 FC 73.

[88] The employer further submitted that the evidentiary burden with respect to proving the amount of damages rests with the party seeking the damages, which the PSAC failed to establish. There is no nexus or rational connection between the amount requested and the grievance. In addition, the use of the term "symbolic" in referencing the amount of \$7000 confirms that no actual loss has been proven. There is no basis in

law for granting “symbolic damages”.

[89] In addition, the employer submitted that there was no evidence of a continued breach of the collective agreement through successive years.

[90] It was also submitted that the grievors are due monetary compensation for the stress and hardship they endured as a result of the denial of their hard-earned annual leave. Their entitlement under the collective agreement was to receive vacation. There is no evidence that they did not receive vacation leave or that it was not granted in the amounts due them but rather that they did not receive leave at their preferred times.

2. The number of grievors

[91] The employer admitted that originally, seven grievors were involved in the group grievance when it was heard at the first level; however, by the time it was heard at the third level, the Form 19 that accompanied the grievance transmittal form included only five of the original seven grievors. The two original grievors who did not sign that form to transmit the grievance to the third level, Ms. Jackson and Ms. Buors, did not participate in the hearing.

[92] There is no authority in the *Act* to allow the PSAC to bring forward those grievors’ grievances without their express authority. It is well accepted that a grievor who does not transmit his or her grievance to the final level is not entitled to adjudication at the Board.

[93] The employer submitted that the grievance should be dismissed.

C. The grievors’ reply

[94] The grievors submitted that there is no evidence that the Guidelines were jointly developed with the PSAC. Ms. Horrox’s evidence was that the Guidelines were developed by a group at HRSDC headquarters.

[95] The employer stated that it demonstrated flexibility in applying the Guidelines; however, it is regrettable that no flexibility would have enabled the individual grievors to take their summer leave. The employer failed to consider other available alternatives, and some leave requests were denied simply because the individual grievors took summer vacation leave the previous year.

[96] The employer presented no statistics or facts to support its denial of the leave requests, and it made no effort to allow the individual grievors to take their summer vacations.

[97] In terms of making leave-scheduling and leave-request assessments, the employer has an obligation to make a real effort to accommodate an employee's leave request and this obligation includes the effort to carry a normal complement of staff.

[98] The situation at the call centre can be compared to cases of chronic understaffing as described in *Oates v. Treasury Board (Transport Canada)* [1996] C.P.S.S.R.B. No. 3.

[99] The PSAC maintained that in determining the number of staff required, the employer must take into consideration its contractual obligations and its operational demands. While the employer has the discretion to organize its operations, the discretion requires management to exercise its powers in a fair and reasonable manner.

[100] The grievors did not bear the burden of establishing the reasons for the employer's denial of vacation leave.

IV. Reasons

A. The number of grievors

[101] Sections 215(1) and (2) of the *Act* fall under the heading "Group Grievances" and state as follows:

215 (1) The bargaining agent for a bargaining unit may present to the employer a group grievance on behalf of employees in the bargaining unit who feel aggrieved by the interpretation or application, common in respect of those employees, of a provision of a collective agreement or an arbitral award.

Consent required

(2) In order to present the grievance, the bargaining agent must first obtain the consent of each of the employees concerned in the form provided for by the regulations. The consent of an employee is valid only in respect of the particular group grievance for which it is obtained.

[102] Section 216 of the *Act* falls under the heading “Reference to Adjudication” and states as follows:

216 The bargaining agent may refer to adjudication any group grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to its satisfaction.

[103] Sections 77(1) and (2) of the *Regulations* are under respectively “Presentation of grievance” and “Consent of aggrieved employees” and state as follows:

77 (1) A bargaining agent who wishes to present a group grievance shall do so on the form provided by the employer and approved by the Board and shall submit it to any person identified under section 75.

(2) The bargaining agent shall submit, together with the group grievance, Form 19 of the schedule signed by each of the aggrieved employees who consent to the presentation of the grievance.

[104] Sections 82(1) and (2) of the *Regulations* provide for the process for withdrawing from a group grievance.

[105] Sections 89(1) and (2) of the *Regulations* fall under the heading “Adjudication” and under respectively “Notice of reference to adjudication” and “Copy of consent form” and state as follows:

89 (1) A notice of a reference to adjudication shall be filed, together with two copies of the grievance,

(a) in the case of an individual grievance,

...

(b) in the case of a group grievance, in Form 22 of the schedule; and

(c) in the case of a policy grievance, in Form 23 of the schedule.

(2) If the notice of the reference to adjudication concerns a group grievance, the bargaining agent shall also provide, in duplicate, a copy of the consent form submitted in accordance with subsection 77(2).

[106] Section 241(1) of the *Act* states that no proceeding under the *Act* is invalid by

reason only of a defect in form or a technical irregularity.

[107] The *Act* and *Regulations* require only that the individual aggrieved employees sign the consent in Form 19 and that they present that form when the bargaining agent first presents the group grievance. That legislation does not require signing a new or subsequent Form 19 when the group grievance is referred to adjudication. When that referral is made, assuming it is timely, s. 89 of the *Regulations* requires only that a Form 22 be provided to the Board, together with the original consent Form 19 that was presented with the grievance at the initial filing.

[108] A review of the Board's file disclosed that two separate Form 19s appear to have been signed. The initial one, which was signed by the seven grievors on either April 7, 8, or 9, 2009, when the grievance was first filed, and the second one, which was signed by only five of the original seven grievors on either September 30 or October 1, 2009, prior to the reference of the grievance to the third-level. Further, there has been no notice of withdrawal from any of the grievors. As such, all seven of the original grievors remain part of the group grievance.

B. Merits of the grievance

[109] For the reasons that follow, the grievance is dismissed.

[110] Clause 34.05 of the collective agreement does not guarantee that each employee shall be granted the vacation leave that he or she requests. The PSAC had the burden of showing that the employer breached the collective agreement and with respect to the individual grievors that it did not respect the obligation imposed on it by clause 34.05.

[111] The grievance that is subject to this decision stated simply the following: "I grieve the employer's denial of my request for annual leave." As the corrective action requested, it stated the following: "My request for annual leave be approved immediately." There are seven named grievors who signed the Form 19 and therefore consented to the group grievance. As I read the group grievance, each individual grievor who signed on to it believed that vacation leave had been denied and requested that his or her leave be granted immediately.

[112] At paragraph 82 of *Pronovost*, when assessing whether the employer assumed

its obligation to make every reasonable effort, the adjudicator stated the following:

[82] The employer's obligation applies to each individual vacation leave request made by an employee. Evaluating the specific circumstances of each request will show whether the employer assumed its obligation in each case. While some circumstances may be common to several requests, the employer must assume its obligation on a case-by-case basis. . . .

[113] I heard evidence from only two grievors, Ms. Bell and Ms. Zubriski. As I did not hear any evidence from any of the other five named grievors, I have no evidence of what vacation leave was requested, approved, or denied, or what, if any, action was taken on that denied leave. In short, without some evidence, the portion of the group grievance that relates to those five grievors must fail for want of any evidence.

[114] While the evidence disclosed that certain specific vacation leave requests were denied, the evidence with respect to the reasons for those denials appears to be that they were denied for operational reasons.

[115] The work tasks that the grievors carried out involved dealing directly with telephone inquiries from the public. I did not hear specifics of the number of calls per day or week during any given period; nor did I hear how many employees were required to answer phones on any given day or during any given week or other period. I did hear that the employer had engaged a system that determined, based on the workplace, the number of employees who could be away on prescheduled leave, including vacation leave. In essence, the system in place provided for only 20% of the workforce to be off at any given time.

[116] In many workplaces, a certain number of employees must be available to do the work, especially in a work environment such as the call centre, where the CSOs' work is answering inquiries from the public. At the same time, it is also likely trite to state that there are only a finite number of prime vacation days and that the time frame of June to September in any given year in Winnipeg contains many of them. It is also trite to state that if all employees in the call centre want the same time off in a particular time frame, it will not happen; some will not be granted the time off they request.

[117] The employer had in place the Guidelines, which Ms. Horrox testified she used when making decisions about vacation leave. They set out a process that included

deadlines for employees to request vacation time for a future vacation period.

[118] The evidence also disclosed that the approval of vacation leave was somewhat fluid, meaning that when a particular leave request had initially been denied, it could later be approved.

[119] I agree with and accept the reasoning at paragraph 90 of *Pronovost*, where the adjudicator stated that when it defines a policy, an employer is acting reasonably by setting the criteria that enable it to avoid acting arbitrarily, such as in scheduling vacation leave. As in *Pronovost*, the employer in this case instituted a policy that was not rigid and that allowed it to schedule vacation leave in a manner that appeared fair and reasonable.

[120] The fact that an employee does not receive a specifically requested vacation day or period does not *prima facie* establish that the employer has breached the collective agreement.

[121] While I agree with the grievors' submission that vacation leave is important to employees' well-being, the evidence disclosed that the two employees who testified, Ms. Zubriski and Bell, both took significant amounts of vacation leave. Ms. Zubriski carried forward 83.26 hours of vacation leave into the 2009-2010 fiscal year, and on April 1, 2009, she was credited a further 101.6 hours. Over the course of 2009-2010, it appears that she did use 93.33 hours of vacation, again carrying forward into 2010-2011 91.53 hours of vacation leave. Ms. Bell, on the other hand, carried forward 18.13 hours of vacation leave into the 2009-2010 fiscal year, and on April 1, 2009, she was credited a further 150 hours. Over the course of 2009-2010, it appears that she did use 167.93 hours of vacation, carrying forward into 2010-2011 0.2 of an hour of vacation leave.

[122] The grievors submitted that the collective agreement did not use the term "operational requirements" in clause 34.05. While this might be the case, as set out in *Pronovost*, it does not mean that the employer cannot consider them or use them as a basis when determining a process for scheduling vacation leave or for determining that scheduling.

[123] The grievors also suggested that perhaps the employer should have hired more

term and casual employees and that it should have offered full-time hours to part-time employees. While it is true that an employer should have adequate staff to handle its work and to be able to address its employees' legitimate leave requests, this does not equate to a requirement to ensure there is adequate staff to be able to approve every leave request; nor have the grievors established that the employer's staffing levels somehow contributed to it unreasonably denying the leave at issue. Leave is fluid and subjective. The collective agreement details 19 different types of leave, including sick leave and vacation leave. While it may be easy to plan and schedule an employee who is to go on extended maternity or parental leave, many of the other types of leave are not as easy to manage, and as such, planning to ensure that there will be sufficient staff is difficult and tricky. It is also simplistic to say that an employer should hire more staff as that new staff would also be entitled to take time off on leave, including vacation leave.

[124] Having considered the arguments and evidence in this case, I am not convinced that the employer breached the collective agreement in denying vacation leave to the grievors.

1. Alternate relief requested

[125] As I have determined that the grievance must fail as the grievors have not met their burden of establishing a breach of the collective agreement, I need not address the issue of the change in relief requested by the grievors.

[126] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[127] The grievance is dismissed.

November 5, 2018.

**John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board**