Date: 20200310

File: 566-34-14534

Citation: 2021 FPSLREB 25

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

ELIE HADDAD

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Haddad v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Joanne B. Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Michael Fisher, counsel

For the Employer: Alexandre Toso, counsel

Decided on the basis of written submissions, filed September 29, October 23, November 20, and December 7, 2020.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] The grievor, Elie Haddad, grieved the decision of the Canada Revenue Agency (CRA or "the employer") not to grant the one-time leave of 37.5 hours provided under clause 34.18 of the collective agreement between the Public Service Alliance of Canada (PSAC) and the CRA that governs his employment and that expired October 31, 2016 ("the PSAC-CRA collective agreement").

[2] For the following reasons, the grievance is allowed.

II. Summary of the evidence

[3] This matter was decided by written submissions. The submissions included an agreed statement of facts from the parties. Note that the references to tabbed documents in the statement are included for completeness. The documents are not included with this decision. The statement reads as follows:

> *1. Elie Haddad (the "Grievor") grieves the decision of the employer, the Canada Revenue Agency ("CRA"), to deny his request for one-time leave under clause 34.18 of his collective agreement.*
>
> *a. The Grievor submitted his grievance on April 11, 2017. The grievance presentation form is attached hereto as TAB 1.*
>
> *2. The Grievor was a member of the Professional Institute of the Public Service of Canada ("PIPSC") from his date of hire on December 14, 2009, to September 2, 2013. The collective agreement between PIPSC and CRA applicable at that time, signed on July 10, 2012 and expiring on December 21, 2014, is attached hereto as TAB 2.*
>
> *a. During the time he was a member of PIPSC, the Grievor took thirty-seven and one-half (37.5) hours of his one-time leave entitlement under paragraph 15.17(a) of the PIPSC-CRA collective agreement from December 20, 2012, to December 28, 2012. The Grievor's leave status reports are attached hereto as TAB 3.*
>
> *3. On September 3, 2013, the Grievor accepted an SP-04 Collections Contact Officer position and became a member of the Public Service Alliance of Canada ("PSAC"). The Grievor's letter of offer is attached here to as TAB 4. The Grievor has remained a member of the PSAC from September 3, 2013 to the present date.*
>
> *4. The collective agreement applicable to the grievor in this matter is the Program Delivery and Administrative Services collective*

> *agreement signed by the PSAC and the CRA on October 25, 2016, which has an expiry date of October 31, 2016. This collective agreement is attached hereto as TAB 5.*
>
> *a. Although the collective agreement has an expiry date of October 31, 2016, it remains the governing collective agreement to date until a new collective agreement is signed.*
>
> *5. The grievance and corrective action were denied on June 22, 2017. The final grievance reply is attached hereto as TAB 6.*
>
> *6. The grievance was referred to adjudication on September 27, 2017.*
>
> *7. There are 127 other similar individual grievances relating to this interpretation being held in abeyance pending the outcome of the Grievor's grievance.*

III. Summary of the arguments

A. For the grievor

[4] The grievor's argument rests on the interpretation of clause 34.18 of the PSAC-CRA collective agreement. It provides as follows:

> ***34.18 One-time entitlement***
>
> *(a) An employee shall be credited a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay on the first (1st) day of the month following the employee's second (2nd) anniversary of service, as defined in clause 34.03.*
>
> ***(b) Transitional Provision:***
>
> *Effective the date of signing, employees with more than two (2) years of service, as defined in clause 34.03, shall be credited a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay.*
>
> *(c) The vacation leave credits provided in clauses 34.18(a) and (b) above shall be excluded from the application of paragraph 34.11 dealing with the Carry-over and/or Liquidation of Vacation Leave.*
>
> [emphasis in original]

[5] The grievor requested the one-time entitlement set out in clause 34.18. His request was refused. He filed a grievance which was denied. It was referred to the Federal Public Sector Labour Relations and Employment Board ("the Board") for adjudication.

[6] It is undisputed that the grievor was a CRA employee and a member of the PSAC bargaining unit and that when he made his leave request, his employment was

governed by the Program Delivery and Administrative Services collective agreement. It is submitted that he met all the eligibility requirements and that he was entitled to the benefit of the provision at issue.

[7] Formerly, the grievor was a member of a different bargaining unit that was represented by a different bargaining agent. The provisions of the collective agreement he was under in that situation are irrelevant to determining the merits of the present grievance.

B. For the employer

[8] The employer states that the PSAC-CRA collective agreement does not entitle the grievor to receive again the one-time leave entitlement he had already received. It would be absurd to consider otherwise. Read together, the one-time entitlement to leave and the reference to length of service show the intent to provide a single award of one week of leave relating to an employee's entire public service career. Had the parties intended to provide an additional week of vacation leave to employees after they had taken it and subsequently changed bargaining units, it could have been specified in the collective agreement. As it is, the one-time leave is awarded to an employee who crosses the two-year threshold of public service employment. This demonstrates that the award is not given simply because an employee is a member of a bargaining unit.

[9] The employer relies on *Professional Institute of the Public Service of Canada v. Treasury Board*, 2011 PSLRB 46 (*PIPSC v. TB*), in which the adjudicator found that in a similarly worded clause, the term "one-time" did not allow for a recurrence of the leave entitlement at issue when an employee changed bargaining units. It was found to be a single, public-service-wide entitlement, which was to be taken only once.

IV. Reasons

[10] The language of clause 34.18(b) is prescriptive: if an employee in that bargaining unit meets the defined conditions, the employer shall credit the employee 37.5 hours of vacation with pay. It is undisputed that the grievor was an employee with more than two years of service when the PSAC-CRA collective agreement became effective and that he requested the one-time leave entitlement.

[11] I find it unnecessary to look beyond the provisions of clause 34.18. The language is clear and unambiguous. It is irrelevant that the grievor might have had the benefit of a substantially similar leave entitlement when he was a member of a different bargaining unit and subject to a collective agreement negotiated by a different bargaining agent. Had it been intended that the one-time entitlement was to be a single event in an employee's public service career rather than a benefit defined by the collective agreement, then that would be reflected in the text, but it is not. To the extent that there is any restriction or limitation, it is that an employee must establish a period of service before the one-time leave credit is awarded.

[12] I note that the PSAC-CRA collective agreement has provisions that explicitly prohibit what is termed "double-banking" entitlements. For example, clause 33.08 provides that:

> *An employee shall not earn leave credits under this Agreement in any month for which leave has already been credited to him or her under the terms of any other collective agreement to which the Employer is a party or under other rules or regulations of the Employer.*

[13] The language is clear and precludes an employee from accruing a monthly leave credit twice. However, no such limit is expressed or implied in clause 34.18. I am not persuaded by the employer's argument that the presence of clause 33.08 implies that the parties did not intend to grant the same type of leave twice in general. If the parties did so intend, they should have said so expressly in clause 34.18. Furthermore, clause 33.08 is about leave credits that are earned monthly and, not about the special entitlement as agreed in clause 34.18.

[14] This Board has considered a similar question of leave relative to an employee who changes bargaining units. In *Delios v. Canada Revenue Agency*, 2013 PSLRB 133 (upheld in 2015 FCA 117), the former Public Service Labour Relations Board (PSLRB) considered whether a grievor who had taken an annual allotment of personal leave while a member of one bargaining unit was again entitled to personal leave after changing bargaining units.

[15] In upholding the grievance in *Delios*, the adjudicator found that personal leave flowed from the applicable collective agreement to all employees in the bargaining unit. It was immaterial that the grievor might earlier have taken leave of the same type

under employment that was governed by a different collective agreement and a different bargaining unit.

[16] The grievor was entitled to the benefit of the collective agreement governing the grievor's position. The collective agreement language was plain and clear. There was no suggestion that the allotted personal leave was to be considered a public-service-wide provision, available only once. Finally, the leave did not accumulate over time, and no limitation, such as the double-banking provision, was expressed in context with the personal leave provision.

[17] In *Fehr v. Canada Revenue Agency*, 2017 FPSLREB 17, the Board addressed the issue of leave with pay for family related responsibilities when an employee transferred from a position represented by PSAC to a position represented by the Professional Institute of the Public Service of Canada (PIPSC) and requested leave. The employee had earlier taken such leave while a member of a bargaining unit represented by PSAC and sought a renewed entitlement in the new position, represented by PIPSC. The Board found no limitation that precluded the leave and no application of double-banking provisions. The employee was entitled to the leave that existed by virtue of the express terms of the collective agreement governing the new position.

[18] In *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2016 PSLREB 77 (*PIPSC v. CRA*), the adjudicator found that when parties to a collective agreement wanted to place restrictions or exclusions on a provision, they expressly provided for them in the collective agreement. Consistent with this reasoning, my view is that when there are no restrictions or exclusions, they ought not to be implied. Doing so would effectively require amending the collective agreement and would exceed the Board's lawful mandate.

[19] The employer argued that it is absurd to consider that a one-time entitlement might accrue to an employee more than once during a public service career. However, its argument overlooks the fluidity of a workplace in which an employee may move between positions and correspondingly change bargaining agents and the governing collective agreement, as occurred in this case. If the one-time leave entitlement were intended to have an application broader than to the bargaining unit's members, the collective agreement provision would require an unambiguous statement of that intent.

[20] To accept the one-time, public service wide argument advanced by the employer would oblige me to imply terms that do not appear and would serve only to modify the unambiguous statement of intent by the parties. While the employer relies on the decision in PIPSC v. TB to support this position, I must underscore that it does not bind me, and I do not find it persuasive in the circumstances of the present case.

[21] *PIPSC v. TB* turned significantly on evidence admitted on consent that the entitlement to the one-time vacation leave had been agreed in exchange for the removal of the marriage leave entitlement found in earlier collective agreements. The adjudicator found that his interpretation of the clause was "most consistent" with the agreed facts and the framework of the collective agreement.

[22] In contrast, the factual context of *PIPSC v. TB* is absent. Even if contextual evidence had been presented, I would only have considered it to assist in interpretation if I had found the terms of the collective agreement to lack clarity. As stated, I find the language clear and unambiguous. Accordingly, resort to context would have been unnecessary.

[23] The employer also pointed to the terms of clause 34.03, to which clause 34.18 refers to define "service," and how similar provisions were interpreted in *PIPSC v. TB* Paragraph 34.03(a) states the following:

> *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 (1) year following the date of lay-off. For greater certainty, severance termination benefits taken under clauses 61.04 to 61.07, or similar provisions in other collective agreements, do not reduce the calculation of service for employees who have not left the public service.*
>
> [emphasis added]

[24] The employer argues that because paragraph 34.03(a) speaks of "all service within the public service," the one-time entitlement mentioned in clause 34.18 necessarily implies that the entitlement can only be received once in an employee's career in the public service. I find this interpretation untenable. The reference to clause 34.03 is merely intended to determine what constitutes two years of service to be eligible for the benefit. The grievor clearly has accumulated years of service "within the

public service." I do not see how the mere reference to this definition of service impacts the grievor's clear entitlement to the benefit set out in paragraph 34.18(b).

[25] I am satisfied by the plain language of clause 34.18 that the correct interpretation is that the one-time leave is to provide one allotment of 37.5 hours of vacation to an employee in the bargaining unit who meets the requirements. This is consistent with earlier decisions of the Board and its predecessors in *Delios*, *Fehr*, and in *PIPSC v. CRA*.

[26] On its face, clause 34.18 is complete. Although it refers to length of service as a qualifying condition, this does not imply a broader application beyond the bargaining unit to an employee's public service career as a whole.

[27] When the employer and the bargaining agent agreed to restrictions or limitations, for example the double-banking proscription, they were explicit. In the case of the one-time leave that is the subject of this grievance, there is no such restriction or limitation. The grievance must be allowed.

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

(The Order appears on the next page)

V. Order

[29] The grievance is allowed.

[30] The grievor is entitled to the leave credits in clause 34.18 of the PSAC-CRA collective agreement.

[31] I will remain seized of the matter for a period of 90 days to address any issues arising from the implementation of this order.

March 10, 2021.

Joanne B. Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board