Date: 20241010

Files: 566-02-43072 to 43080

Citation: 2024 FPSLREB 137

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

MARIE-PIER GUAY-BASSETT, CHARLOTTE BERRY, TINA DOYON, GLEN MILLER, DENNIS OLIVEIRA, SEAN QUEENAN, DEBORAH SCOTT, ANDREA SEABROOK, AND JOHN WORRALL

Grievors

and

TREASURY BOARD
(Canada Border Services Agency)

Employer

Indexed as
Guay-Bassett v. Treasury Board (Canada Border Services Agency)

In the matter of individual grievances referred to adjudication

Before: Adrian Bieniasiewicz, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Yaqiu Zhou, Public Service Alliance of Canada

For the Employer: Amita Chandra and Marc Séguin, counsel

Decided on the basis of written submissions, filed December 8, 2023, and January 5 and 19 and May 28, 2024.

I. Individual grievances referred to adjudication

A. Overview

[1] The key issue before me is whether the Treasury Board ("the employer") violated the relevant collective agreement by requiring the grievors, who were scheduled to work on a designated paid holiday ("DPH") but did not due to sickness or family related reasons ("FRR"), to use leave credits to cover the difference between the length of the paid leave on a DPH, which the employer claims is 7.5 hours, and the remainder of their shift.

[2] For the reasons that follow, I determined that the length of paid leave when an employee does not work a shift scheduled on a DPH due to sickness or FRR is not limited to 7.5 hours. As a result, I allow the grievances.

B. Summary of the facts

[3] The parties filed an agreed statement of facts. At all material times, the grievors were employed by the employer as border services officers classified at the FB-03 group and level with the Canada Border Services Agency (CBSA). They were stationed at different border crossings in Ontario. The grievors were covered by the collective agreement between the employer and the Public Service Alliance of Canada ("the bargaining agent") for the Border Services Group that expired on June 20, 2014 ("the collective agreement"). They were governed by a variable shift scheduling agreement ("VSSA") under clause 25.24 of the collective agreement.

[4] Under the VSSA, the grievors worked according to one of the following schedules: a 56-day schedule consisting of 300 working hours, a 24-week rotation with 900 working hours, or a 40-week rotation comprising 1500 working hours. As such, they did not have fixed days of work and could be required to work weekdays, weekends, or DPHs. Their standard shift was 11.5 hours.

[5] Although the grievors were scheduled and expected to work on a day that was deemed their DPH, they called in sick or requested FRR leave. The employer paid them for 7.5 hours of their shift, which in its view represents the value of a DPH, but required them to account for the remaining 4 hours by using sick leave or FRR leave, depending on the nature of the requested leave. The grievors grieved that decision. They are of the view that the employer's request that they use leave credits to account for the difference between 7.5 hours and the remainder of their scheduled shift on a DPH violated the collective agreement.

[6] In or around September 2014, before the grievors grieved the employer's decision that is under review, the employer and the bargaining agent entered into a memorandum of settlement ("MOS") under which the employer agreed to pay employees who are "H'd" on a DPH for the entire shift scheduled for that day, rather than only 7.5 hours.

[7] The terms "H'd" or "H'ing" refer to a situation in which management informs a shift-working employee that his or her services are no longer required on a DPH due to operational requirements. An employee can also request to be "H'd", subject to management's approval.

II. Summary of the arguments

A. For the grievors

[8] The grievors argue that clauses 25.28(e) and 30.07 of the collective agreement, upon which the employer relies to support its position that a DPH is worth 7.5 hours, do not establish the length of paid leave when an employee does not work a shift originally scheduled on a DPH. Clauses 25.28(e) and 30.07 read as follows:

25.28 Specific Application of this Agreement	***25.28 Champ d'application particulier de la présente convention***
For greater certainty, the following provisions of this Agreement shall be administered as provided for herein.	*Pour plus de certitude, les dispositions suivantes de la présente convention sont appliquées comme suit :*
…	[…]
(e) Designated Paid Holidays (clause 30.07)	***e) Jours fériés payés (paragraphe 30.07)***
(i) A designated paid holiday shall account for seven decimal five (7.5) hours.	*(i) Un jour férié désigné payé correspond à sept virgule cinq (7,5) heures.*
(ii) When an employee works on a designated paid holiday, the employee shall be compensated, in addition to the pay for the hours specified in subparagraph (i), at time and one-half (1 1/2) up to his or her regular scheduled hours worked and at double (2) time for	*(ii) L'employé-e qui travaille un jour férié payé est rémunéré, en plus de la rémunération versée pour les heures précisées au sous-alinéa (i), au tarif et demi (1 1/2) jusqu'à concurrence des 40 heures normales de travail prévues à son horaire et au tarif double (2)*

all hours worked in excess of his or her regular scheduled hours.	
…	[…]
30.07(a) When an employee works on a holiday, he or she shall be paid time and one-half (1 1/2) for all hours worked up to seven decimal five (7.5) hours and double (2) time thereafter, in addition to the pay that the employee would have been granted had he or she not worked on the holiday ….	*30.07a) L'employé-e qui travaille un jour férié est rémunéré au tarif et demi (1 1/2) pour toutes les heures effectuées jusqu'à concurrence de sept virgule cinq (7,5) heures et au tarif double (2) par la suite, en plus de la rémunération qu'il ou elle aurait reçue s'il ou elle n'avait pas travaillé ce jour-là;*
…	[…]

[9] They argue that clause 30.07 strictly provides a compensation formula for employees who actually work on a DPH. And the objective of clause 25.28(e) is to clarify clause 30.07, which does not address situations in which employees are scheduled to work longer shifts, such as the grievors, who typically work 11.5-hour shifts.

[10] Specifically, according to clause 25.28(e), which provides a different compensation formula than does clause 30.07, an employee subject to a VSSA and working on a DPH will be compensated as follows: 7.5 hours at straight time plus time-and-one-half for all hours worked up to the regular scheduled hours and then double time for hours worked in excess of the regular scheduled hours. This was made clear in *King v. Canada Customs and Revenue Agency*, 2001 PSSRB 117.

[11] The grievors further argue that under clause 30.03 of the collective agreement, a day of leave with pay that coincides with a DPH for an employee should count as a holiday rather than a day of leave. That clause reads as follows:

30.03 Designated Holiday Coinciding With a Day of Paid Leave	***30.03 Jour férié coïncidant avec un jour de congé payé***
Where a day that is a designated holiday for an employee coincides with a day of leave with pay, that day shall count as a holiday and not as a day of leave.	*Lorsqu'un jour désigné jour férié coïncide avec un jour de congé payé de l'employé-e, ce jour est compté comme un jour férié et non comme un jour de congé.*

[12] The grievors submit that the term "holiday" is defined in clause 2.01 of the collective agreement as a 24-hour period.

[13] According to the grievors, regardless of the duration of their shifts, they are entitled to a day off when a DPH coincides with a day of leave. If the employer intended to limit a benefit provided in the collective agreement, it should have included that limitation within the agreement. It cannot resile from the plain meaning of a collective agreement provision, as indicated in *Julien v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 67 at para. 20.

[14] The grievors submit that a predecessor to the Federal Public Sector Labour Relations Board ("the Board", which in this decision also refers to any of the current Board's predecessors) already examined the issue at stake in *Clarkson v. Treasury Board (Canada Border Services Agency)*, 2009 PSLRB 87. Specifically, the Board found that the employer violated the collective agreement by requiring Mr. Clarkson, who was "H'd" by the employer on a DPH, to take leave or work an additional 4 hours to account for the difference between the 7.5 hours, which the employer considers the value of a DPH, and his regular 11.5-hour shift.

[15] In *Garrah v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 148, the Board also found that the employer violated the collective agreement by asking the grievor to pay back half an hour for leave taken on a DPH.

[16] The grievors submit that given that the collective agreement does not specify the length of paid leave on a DPH, it is equal to the period normally scheduled (see *King*, and *Stockdale v. Treasury Board (Fisheries and Oceans Canada)*, 2004 PSSRB 4). Based on *Clarkson,* once the employer grants paid leave on a DPH, it should count as a day of holiday. Both sick leave and FRR leave are paid leave under the collective agreement. Consequently, for the employer's interpretation to be correct, sick leave and FRR leave would have to be excluded from clause 30.03.

[17] The grievors further submit that in September 2014, the employer and the bargaining agent signed an MOS pursuant to which the employer agreed to pay employees who are "H'd" on a DPH for their entire scheduled shift. The grievors note that the MOS does not exclude sick leave or FRR leave. They also refer me to a bulletin dated March 31, 2015, which the employer issued in connection with the MOS and in which it states that the value of a DPH is equal to the length of the shift on that day.

[18] The grievors refer me to several collective agreement interpretation principles. In summary, the cardinal presumption of interpretation is that the parties are assumed to have intended what they have said and that the meaning of the collective agreement is to be sought in its express provisions. The provisions must be given their normal and ordinary meaning, unless doing so would be inconsistent with the agreement as a whole or lead to an absurd result. An anomaly or unusual result is insufficient to alter the plain meaning of the words used in the agreement. The words used must be read within the context of the collective agreement and given meaning, as the parties are presumed not to have used superfluous or redundant language.

B. For the employer

[19] According to the employer, clauses 25.28 and 30.07 form a complete code on the normal hours of a DPH and on its compensation. Clause 25.28(e)(i) is clear. The value of a DPH is 7.5 hours. Clauses 25.28(e)(ii) and 30.07 provide a compensation formula for employees subject to a VSSA who actually work on a DPH.

[20] The employer argues that employees subject to a VSSA and who are scheduled to work on a DPH but who call in sick or request FRR leave will be paid 7.5 hours at straight time. However, they must use applicable leave to account for the difference between the 7.5 hours, which is the value of the DPH, and the remaining hours of their scheduled shift. Employees on a VSSA who work on a DPH, as scheduled, will be compensated 7.5 hours for the DPH (paid in cash or in lieu, subject to request and approval) and will be paid at time-and-one-half for their scheduled shift of 11.5 hours and at double time for all hours worked after that, if applicable. This is consistent with clause 25.28(e)(ii), read in conjunction with clause 30.07.

[21] The *Garrah* decision can be distinguished from this case. In *Garrah*, the DPH provision in the Correctional Services (CX) collective agreement stated that "[a] designated paid holiday shall account for the normal daily hours specified by this agreement." That language differs from the language in clause 25.28(e)(i) of the collective agreement in this case, which expressly states that the value of the DPH is 7.5 hours. When reading the words of clause 25.28(e) in their ordinary meaning and immediate context, it is clear that the parties intended that a DPH should account for 7.5 hours.

[22] The grievors were scheduled and required to work on a DPH, which consequently was considered a workday. Considering that their regular scheduled

hours of work are 11.5 hours, there was a gap between the value of a DPH (7.5 hours) and their regular shift hours (11.5 hours). The employer's position is that when an employee scheduled to work on a DPH calls in sick or uses FRR leave, the value of the DPH shall account for only 7.5 hours of the employee's shift, and he or she is required use either sick leave or FRR leave credits to account for the difference (i.e., 11.5 hours for the scheduled shift minus 7.5 hours for the DPH).

[23] The *Clarkson* decision, which the grievors relied upon, can be distinguished. The most significant difference is that unlike in this case, the grievor's services in that case were not required on their scheduled shift (see *Clarkson*, at para. 73).

[24] The employer submits that the MOS was signed after *Clarkson* was issued. The MOS was never intended to change the value of a DPH. Rather, according to the MOS, employees who are "H'd" should not be required to use their leave or to make up time to cover hours in which the employer instructed them not to report to work. In these grievances, the operational requirements required the grievors to work their scheduled shift. Additional details about the MOS were explained in a CBSA human resources bulletin, which specified that sick leave and FRR leave were excluded.

[25] The value of a DPH is defined in clause 25.28(e)(i) as 7.5 hours, rather than in clause 30.03. If an employee is scheduled to work on a DPH, he or she is compensated the value of the DPH. If the employee cannot report to work due to illness or FRR, he or she is still on schedule to work on that day and must account for the difference between their scheduled shift and the value of the DPH. The issue in these grievances is separate and distinct from employees who are "H'd".

[26] The employer submits that the grievors' proposed interpretation would lead to absurd consequences. Firstly, employees are compensated 7.5 hours for a DPH whether or not they work on the DPH. The notion that employees who were scheduled and required to work but who do not report or only partially work their shift due to personal circumstances are not required to use applicable leave credits would violate the collective agreement since if an employee requests sick or FRR leave for their scheduled shift, they are required under the collective agreement to use sick or FRR leave credits. Secondly, it would result in amending the collective agreement by adding benefits that the parties have not bargained. Specifically, an employee could absent himself or herself without having to use the prescribed leave credits that were specifically negotiated and included in the collective agreement for that purpose.

[27] In addition, last-minute leave due to FRR or sick leave for their regularly scheduled shift comes at a cost to the employer, since their services are required for operational reasons. The employer must replace absent employees, which may come at an additional cost such as overtime or short shift change (clause 25.21) and include shift premiums.

[28] To support its position, the employer referred to the general principles of interpretation, according to which the parties' intentions are to be found in the express written provisions of the collective agreement, words are to be given their ordinary meaning, provisions within an agreement or contract are to be read as a whole, effect must be given to every word, and specific provisions are to take precedence over general principles. The employer also referred to *the Cruceru v. Treasury Board (Department of Justice)*, 2021 FPSLREB 30 decision at paras. 83 and 84, which summarizes the interpretation principles.

[29] The employer submits that when the collective agreement language is clear, it must be applied, even if the result may seem unfair (see *Nowlan v. Canada (Attorney General)*, 2022 FCA 83 at para. 46).

[30] The Board is bound by s. 229 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which prevents it from amending the collective agreement to provide an entitlement (i.e., leave with pay) that the parties never negotiated.

[31] The employer referred to the *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55, *Denboer v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 58, and *Bédard v. Treasury Board (Canadian Grain Commission)*, 2019 FPSLREB 76, decisions to support its argument that a benefit involving a monetary cost to it must be clearly and expressly granted under the collective agreement. The grievors have the onus of proof to clearly demonstrate that on the balance of probabilities, it did not pay them as provided by the collective agreement.

C. The grievors' reply

[32] The grievors submit that the employer's argument that the ordinary meaning and the immediate context of the words in clause 25.28(e) clearly indicate that the parties intended that a DPH should account for 7.5 hours was advanced and rejected in the *Clarkson* decision, at paragraphs 68 to 70.

[33] The fact that the employee's services were not required on their scheduled shift, as the employer advanced to distinguish *Clarkson* from this case, is not at issue. These grievances concern the proper interpretation of clause 30.03, which entitles the grievors, whose DPH coincided with a day of leave with pay, to receive a day of holiday. The grievor in *Clarkson* was a CBSA employee who worked variable shifts under collective agreement provisions nearly identical to those in this case. The same logic should be applied in this case.

[34] When interpreting collective agreements, the burden of proof applies only when there is a factual dispute. Determining the meaning of the agreement is a question of law, and the Board's role is to determine the parties' intent, based on interpretation rules. There is no serious dispute as to the facts that gave rise to the grievances; the parties disagree as to the proper interpretation of the agreement.

[35] The reasoning in *Denboer*, which the employer cited, and the *Clarkson* decision are reconcilable with respect to this case. Both monetary benefit changes and depriving benefits require clear language (see *Canadian Union of Public Employees v. Canadian Staff Union (Harris Grievance*), 2015 CarswellOnt 3052 at paras. 55 to 57). The party that asserts such a change must prove its assertion. In this case, to succeed on this point, the employer would have to point to clear and unambiguous language in the collective agreement that limits employees who are on authorized leaves of absence to have a day off while on a DPH. There are no explicit terms in the agreement that would permit the employer to deny this benefit to bargaining unit members who are on sick leave or FRR leave.

[36] The employer's interpretation of the relevant collective agreement articles is directly contrary to the clear language in its bulletin of March 31, 2015, which confirms the value of a DPH as equal to the length of the shift. The new collective agreement, which was signed on July 3, 2018, did not change the language of the relevant provisions. Had the employer intended to exclude sick leave and FRR leave on a DPH, it would have undoubtedly said so.

[37] The definition of "holiday" is intended to ensure that all employees have the benefit of a DPH regardless of the duration of their shifts; employees are entitled to a day off. The collective agreement, read as a whole, provides this benefit to all bargaining unit members, without restriction.

III. Reasons

[38] The grievances before me require interpreting the relevant collective agreement provisions. In doing so, I applied the principles of interpretation that the parties suggest in their submissions, which I need not repeat. I also considered the headings and subheadings under which the provisions at issue are found. Although such headings and subheadings are not sources of rights or obligations, they may be referred to, to explain an article or clause that falls under them (see *Calgary Health Region v. U.N.A., Local 115*, 2006 CarswellAlta 1161 at para. 45, and *British Columbia (Workers' Compensation Board) v. C.E.U.*, 2001 CarswellBC 3379 at para. 34).

[39] I am also aware that s. 229 of the *Act* does not allow me to render a decision that would have the effect of requiring the amendment of the collective agreement.

[40] The facts in these grievances are undisputed. Essentially, the grievors were scheduled to work on a DPH, or on a day that was deemed to be their DPH, but they did not report to work. Instead, they called in sick or requested FRR leave. As a result, the employer asked them to submit either sick leave or FRR leave, depending on the nature of the leave that they requested, to cover the difference between the 7.5 hours, which it considers the length of paid leave on a DPH, and the remaining hours of their scheduled shift.

[41] The central issue in this case concerns the length of paid leave that an employee who does not work their shift scheduled on a DPH due to sickness or FRR is entitled to. In a nutshell, the employer contends that it is equivalent to 7.5 hours. The grievors argue that it is equivalent to the length of their scheduled shift on a DPH, which in this case was 11.5 hours.

[42] Clause 30.01 specifies which days are DPHs.

[43] In *Clarkson*, the Board addressed the issue of the length of paid leave when an employee does not work his or her shift scheduled on a DPH. Specifically, similar to the grievors in this case, Mr. Clarkson was subject to a VSSA and worked 11.5-hour shifts. He was scheduled to work an 11.5-hour shift on a DPH. A few days before that shift, the employer instructed him not to report to work, for operational reasons. In the CBSA's jargon, he was "H'd". The employer converted that shift into paid leave. As in this case, Mr. Clarkson received compensation for 7.5 hours for the DPH but was required to account for the remaining 4 hours with another type of leave or by working those additional hours upon his return to the office. To support its position, the

employer argued that, as it contends in this case, the length of paid leave on a DPH accounts for 7.5 hours. The Board disagreed. In a nutshell, it determined that the length of paid leave when an employee does not work a shift originally scheduled on a DPH is equivalent to the length of the shift normally scheduled.

[44] The employer does not argue that *Clarkson* was wrongly decided. In fact, I note that it discontinued its judicial review application of that decision. Rather, it takes the position that the circumstances in *Clarkson* were different from those in this case. The most significant difference is that Mr. Clarkson's services were not required on his scheduled shift, unlike in this case, in which the grievors were expected to work.

[45] I do not agree with the employer that this distinction in itself renders the reasoning in *Clarkson* inapplicable to the grievances at hand. The Board's interpretation of the relevant collective agreement articles in *Clarkson*, which for all intents and purposes are identical to those in this case, did not hinge on the fact that Mr. Clarkson was "H'd". Rather, it was based on the language of the provision at issue and their interplay. I also agree with the grievors that whether their services were required is not the issue. The focal point is the correct interpretation of the relevant collective agreement provisions.

[46] I see no reason to deviate from the reasoning that the Board adopted in *Clarkson*. The principal distinction provided by the employer, as mentioned earlier, is immaterial to the proper interpretation of the relevant collective agreement articles. I agree with the following principle, which the Board articulated in *Mackie v. Treasury Board (National Defence)*, 2003 PSSRB 103 at para. 27:

> *[27] … "certainty, uniformity, stability and predictability." are extremely important elements in fostering a positive labour relations climate. For an adjudicator to go against established jurisprudence should, I believe, be done only when the trier of fact is convinced the jurisprudence was wrong.…*

[47] Moreover, as the Board concluded in *Sahota v. Canada Customs and Revenue Agency*, 2004 PSSRB 166 at para. 42, and *Stockdale*, to ensure stability, predictability, and consistency in labour relations, similar provisions in agreements should be interpreted similarly.

[48] As mentioned before, the employer did not argue that the reasoning in *Clarkson* is wrong, and I am not convinced that it is. Therefore, for the reasons that follow, and based on an analytical framework similar to that adopted in *Clarkson*, I disagree with

the employer's position that the length of paid leave on a DPH is limited to 7.5 hours, in the circumstances described earlier in this decision.

[49] To persuade me that the value of a DPH is 7.5 hours, the employer adopts the same argument it did in *Clarkson*. Specifically, it relies on clause 25.28(e), which is found under the subheading "Terms and Conditions Governing the Administration of Variable Hours of Work".

[50] According to the employer, clause 25.28(e)(i) expressly states that paid leave on a DPH counts for 7.5 hours. Although this suggestion seems to carry weight at first glance, it does not withstand closer scrutiny of the collective agreement.

[51] First, I note that clause 25.28 amends only the collective agreement articles that it explicitly lists. These amendments were introduced to accommodate the specific circumstances of employees subject to a VSSA. They do not alter the application of the complete collective agreement. Clause 25.28 is under the subheading "Terms and Conditions Governing the Administration of Variable Hours of Work" for a reason.

[52] Specifically, clause 25.28(e) expressly amends clause 30.07 to account for the fact that employees subject to a VSSA work longer hours. I note that clause 30.07 was specifically inserted under the subheading "Work Performed on a Designated Holiday".

[53] I agree with the grievors that clause 30.07 does not define the length of paid leave when an employee does not work a shift scheduled on a DPH. It simply establishes a compensation formula for employees who are not subject to a VSSA and who actually work on a DPH. There is a reason the parties included that clause under the subheading "Work Performed on a Designated Holiday". Considering that employees subject to a VSSA work longer hours, the parties deemed it necessary to apply a different compensation formula to them. This is where clause 25.28(e) comes into play. However, just like clause 30.07, clause 25.28(e) does not define the length of paid leave when an employee does not work a shift scheduled on a DPH. It merely establishes the compensation to be received by an employee subject to the VSSA who actually works on a DPH.

[54] In addition, I note that the term "holiday" is defined in clause 2.01 as a 24-hour period. It reads as follows:

a) the twenty-four (24) hour period commencing at 00:01 hour of a	*a) la période de vingt-quatre (24) heures qui commence à 0 h 01 un*

day designated as a paid holiday in this Agreement.	*jour désigné comme jour férié payé dans la présente convention,*
…	[…]

[55] The Board's jurisprudence suggests that when a collective agreement does not specify the length of a leave, the leave is to be for the period that is normally scheduled (see *Clarkson*, at para. 72). In this case, the grievors were scheduled to work an 11.5-hour shift on a DPH.

[56] Neither clause 25.28(e) nor 30.07 has the effect of modifying the definition of "holiday" in clause 2.01. As already explained, these provisions have limited application and a specific purpose in the collective agreement. Ultimately, they provide for the compensation of employees who actually work on a DPH.

[57] I disagree with the employer's interpretation that the language of clause 25.28(e), when read in its ordinary meaning and immediate context, clearly indicates that the parties to the collective agreement intended for a DPH to account for 7.5 hours. This argument was rejected in *Clarkson.*

[58] As mentioned, clauses 25.28(e) and 30.07 do not establish the length of a paid leave when an employee does not work a shift originally scheduled on a DPH. They provide only a compensation formula for employees who work on a DPH. I doubt that it was purely by coincidence that the parties included clause 30.07 under the subheading "Work Performed on a Designated Holiday".

[59] The definition of "holiday" in clause 2.01 is not modified or restricted by clause 25.28(e). The parties could have limited the duration of "holiday" to less than a 24-hour period, yet they opted not to.

[60] Having determined that the length of paid leave, in the context described earlier, is not limited to 7.5 hours, I note that clause 30.03 provides that when a designated holiday coincides with a day of leave with pay, it should count as a holiday and not as a day of leave. Clause 30.03 reads as follows:

30.03 Designated Holiday Coinciding With a Day of Paid Leave	***30.03 Jour férié coïncidant avec un jour de congé payé***
Where a day that is a designated holiday for an employee coincides	*Lorsqu'un jour désigné jour férié coïncide avec un jour de* ***congé***

*with a day of **leave with pay**, that day shall count as a holiday and not as a day of leave.*	***payé** de l'employé-e, ce jour est compté comme un jour férié et non comme un jour de congé.*

[Emphasis added]

[61] The employer did not suggest that paid sick leave or paid FRR leave falls outside the scope of paid leave under clause 30.03. According to clause 35.02, an employee is entitled to sick leave with pay if the employer is satisfied that the employee is unable to work because of illness or injury, subject to the availability of sick leave credits. As for FRR, article 43 of the collective agreement provides that an employee is entitled to leave with pay for FRR for a maximum of 37.5 hours in a fiscal year, under the circumstances listed in clause 43.03. Based on the aforementioned, and in the absence of any argument to the contrary, I determine that both sick leave with pay and FRR leave with pay are paid leave within the context of clause 30.03.

[62] In this case, the employer asked the grievors to submit either sick leave or FRR leave, which are both paid, to account for the difference in their shift. They complied. However, I note that in accordance with clause 30.03, a day of leave with pay that coincides with a DPH should count as a holiday and not as a day of leave (see *Clarkson*, at para. 76).

[63] The employer submits that the grievors' proposed interpretation of the relevant provisions would lead to absurd consequences, given that employees are compensated for 7.5 hours of a DPH whether they work it or not. I disagree. The compensation of employees subject to a VSSA who actually work their shift on a DPH is specifically provided in clause 25.28(e). It is not limited to 7.5 hours. This is merely one component of their compensation, as the parties negotiated.

[64] As for employees who were not scheduled to work a shift on a DPH, they are not in the same situation as those who were scheduled to work such a shift but could not due to sickness or because of FRR. Again, clause 30.03 provides that when a day that is a designated holiday for an employee coincides with a day of leave with pay, the day shall count as a holiday and not as a day of leave. This is the language that the parties adopted. The employer did not refer me to any collective agreement provision that limits the scope of clause 30.03, other than clause 25.28(e), which has already been discussed. I would like to emphasize that any perceived unfairness or inequity between employees resulting from the application of the collective agreement should be addressed at the bargaining table. My role is to interpret the collective agreement.

[65] The employer further submits that when an employee does not report to work because of a last-minute sickness or FRR, it must replace them, which may come at an additional cost such as overtime, short shift change (clause 25.21), and shift premiums. Although it did not submit any evidence that the grievors had to be replaced when they did not report to work their shift scheduled on a DPH and as a result that it incurred additional costs (it is possible that lower operational needs meant that they did not have to be replaced, leaving me to speculate), this is simply the cost of doing business, regardless of whether or not the employee is scheduled to work on a DPH. These situations are typically unpredictable and arise at the last minute. This is why the collective agreement includes provisions for additional compensation for employees who are asked to work on short notice. That said, I do not find this argument relevant to the issue at hand, which is the length of paid leave as described earlier.

[66] I have also considered the jurisprudence that the employer submitted to support its argument that a benefit involving a monetary cost to it must be clearly and expressly granted under the collective agreement (see *Wamboldt*, *Denboer*, and *Bédard*). In this case, the benefit in question is the length of paid leave when an employee does not work a shift scheduled on a DPH. As already mentioned, the employer argues that this benefit is limited to 7.5 hours. The grievors take the position that it should be for the period that they were scheduled to work on a DPH.

[67] In *Clarkson*, the Board determined that the collective agreement provisions at issue in that case did not limit the benefit in question to 7.5 hours; rather, the hours were equivalent to the employee's scheduled shift on a DPH. Consequently, the benefit that the grievors seek has been already determined to exist under the collective agreement. As mentioned earlier, the employer does not argue that the *Clarkson* decision was wrongly decided. Furthermore, it discontinued the judicial review application of that decision. As previously mentioned, stability, predictability, and consistency are paramount in fostering a positive labour relations climate. Therefore, I see no reason to deviate from the reasoning established in *Clarkson*. I also note that the employer did not amend the language of the relevant collective agreement provisions after *Clarkson* was rendered to clarify the scope of the benefit, although it had plenty of opportunity.

[68] I understand that in *Clarkson*, the employee did not work his shift at the employer's request; however, as already explained, this fact has no impact on the

interpretation of the relevant collective agreement provisions. The employer did not point to any provision that indicates that the scope of the benefit varies depending on whether or not the employee was "H'd" on a DPH.

[69] In summary, the grievors were scheduled to work an 11.5-hour shift on a DPH. Clause 2.01 provides that "holiday" means a 24-hour period. For the reasons provided earlier, I disagree that clause 25.28(e)(i) limits the length of paid leave, as the employer suggests. Therefore, I determine that the employer should reimburse the grievors the leave credits that they used to account for the difference between 7.5 hours and the remainder of their shift scheduled on a DPH (see *Clarkson*, at para. 71).

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

(The Order appears on the next page)

IV. Order

[71] The grievances are allowed.

[72] I order the employer to reimburse the grievors the leave credits that they were required to use to account for the difference between 7.5 hours and the remainder of their scheduled shift on a DPH on the dates specified in the agreed statement of facts.

[73] I will remain seized of these grievances for 60 days from the date of this decision, to address any matters relating to its implementation.

October 10, 2024.

Adrian Bieniasiewicz,
a panel of the Federal Public Sector
Labour Relations and Employment Board

The following are relevant articles extracted from the collective agreement between the Public Service Alliance of Canada and Treasury Board for the Border Services (FB) group that expired on June 20, 2014.

ARTICLE 2	ARTICLE 2
INTERPRETATION AND DEFINITIONS	**INTERPRÉTATION ET DÉFINITIONS**
"holiday" (*jour férié*) means:	**« jour férié »** *(holiday)* désigne :
(a) the twenty-four (24) hour period commencing at 00:01 hour of a day designated as a paid holiday in this Agreement	a) la période de vingt-quatre (24) heures qui commence à 0 h 01 un jour désigné comme jour férié payé dans la présente convention,
(b) however, for the purpose of administration of a shift that does not commence and end on the same day, such shift shall be deemed to have been entirely worked:	b) cependant, aux fins de l'administration d'un poste qui ne commence ni ne finit le même jour, un tel poste est considéré avoir été intégralement effectué :
(i) on the day it commenced, where half (1/2) or more of the hours worked fall on that day;	(i) le jour où il a commencé, lorsque la moitié (1/2) ou plus des heures effectuées tombent ce jour-là;
or	ou
(ii) on the day it terminates, where more than half (1/2) of the hours worked fall on that day.	(ii) le jour où il finit, lorsque plus de la moitié (1/2) des heures effectuées tombent ce jour-là.
ARTICLE 25	**ARTICLE 25**
HOURS OF WORK	**DURÉE DU TRAVAIL**
25.24 Variable Shift Schedule Arrangements	**25.24 Aménagements d'horaires de postes variables**
(a) Notwithstanding the provisions of clauses 25.06 and 25.13 to 25.23 inclusive, consultation may be held at the local level with a view to establishing shift schedules which may be different from those established in clauses 25.13 and 25.18. Such consultation will include all aspects of arrangements of shift schedules.	a) Nonobstant les dispositions des paragraphes 25.06, et 25.13 à 25.23 inclusivement, des consultations peuvent être tenues au niveau local en vue d'établir des horaires de travail par poste qui pourraient être différents de ceux établis par les paragraphes 25.13 et 25.18. De telles consultations incluront tous les aspects des aménagements des horaires de travail par poste.

(b) Once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation.

(c) Both parties will endeavour to meet the preferences of the employees in regard to such arrangements.

(d) It is understood that the flexible application of such arrangements must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements. Such flexible application of this clause must respect the average hours of work over the duration of the master schedule and must be consistent with operational requirements as determined by the Employer.

(e) Employees covered by this clause shall be subject to the provisions respecting variable hours of work established in clauses 25.25 to 25.28 inclusive.

Terms and Conditions Governing the Administration of Variable Hours of Work

25.25 The terms and conditions governing the administration of variable hours of work implemented pursuant to clauses 25.09, 25.10 and 25.24 are specified in clauses 25.25 to 25.28 inclusive. This Agreement is modified by these provisions to the extent specified herein.

b) Quand une entente mutuelle acceptable est obtenue au niveau local, l'horaire de travail variable proposé sera soumis aux niveaux respectifs de l'administration centrale de l'Employeur et de l'Alliance avant la mise en vigueur.

c) Les deux (2) parties s'efforceront de satisfaire les préférences des employé-e-s quant à de tels aménagements.

d) Il est entendu que l'application flexible de tels aménagements ne doit pas être incompatible avec l'intention et l'esprit des dispositions régissant autrement de tels aménagements. Cette même application flexible du présent paragraphe doit respecter la moyenne des heures de travail pour la durée de l'horaire général et doit être conforme aux nécessités du service telles que déterminées par l'Employeur.

e) Les employé-e-s visés par le présent paragraphe sont assujettis aux dispositions concernant l'horaire de travail variable établies aux paragraphes 25.25 à 25.28, inclusivement.

Conditions régissant l'administration des horaires de travail variables

25.25 Les conditions régissant l'administration des horaires de travail variables mis en œuvre conformément aux paragraphes 25.09, 25.10 et 25.24 sont stipulées aux paragraphes 25.25 à 25.28, inclusivement. La présente convention est modifiée par les présentes dispositions dans la mesure indiquée par celles-ci.

25.26 Notwithstanding anything to the contrary contained in this Agreement, the implementation of any variation in hours shall not result in any additional overtime work or additional payment by reason only of such variation, nor shall it be deemed to prohibit the right of the Employer to schedule any hours of work permitted by the terms of this Agreement.

25.26 Nonobstant toute disposition contraire dans la présente convention, la mise en œuvre d'un horaire de travail différent ne doit pas entraîner des heures supplémentaires additionnelles ni une rémunération supplémentaire du seul fait du changement d'horaire, et ne doit pas non plus être réputée retirer à l'Employeur le droit d'établir la durée du travail stipulée dans la présente convention.

25.27

(a) The scheduled hours of work of any day as set forth in a variable schedule specified in clause 25.25 may exceed or be less than seven decimal five (7.5) hours; starting and finishing times, meal breaks and rest periods shall be determined according to operational requirements as determined by the Employer; and the daily hours of work shall be consecutive.

25.27

a) Les heures de travail d'une journée quelconque figurant à l'horaire variable précisé au paragraphe 25.25 peuvent être supérieures ou inférieures à sept virgule cinq (7,5) heures; les heures du début et de la fin, les pauses-repas et les périodes de repos sont fixées en fonction des nécessités du service déterminées par l'Employeur, et les heures journalières de travail sont consécutives.

(b) Such schedules shall provide for an average of thirty-seven decimal five (37.5) hours of work per week over the life of the schedule.

b) L'horaire doit prévoir une moyenne de trente-sept virgule cinq (37,5) heures de travail par semaine pendant toute la durée de l'horaire.

(i) Unless otherwise mutually agreed upon, the maximum life of a shift schedule shall be six (6) months.

(i) À moins que les deux (2) parties n'en décident autrement, la durée maximale d'un horaire de postes est de six (6) mois.

(ii) The maximum life of other types of schedule shall be twenty-eight (28) days except when the normal weekly and daily hours of work are varied by the Employer to allow for summer and winter hours in accordance with clause 25.10, in which case the life of a schedule shall be one (1) year.

(ii) La durée maximale des autres types d'horaires est de vingt-huit (28) jours, à moins que les heures de travail hebdomadaires et journalières normales soient modifiées par l'Employeur de façon à permettre la mise en vigueur d'un horaire d'été et d'un horaire d'hiver conformément au paragraphe 25.10, auquel cas la durée de l'horaire est d'un (1) an.

(c) Whenever an employee changes his or her variable hours or no

c) Lorsque l'employé-e modifie son horaire variable ou cesse de

longer works variable hours, all appropriate adjustments will be made.

travailler selon un tel horaire, tous les rajustements nécessaires sont effectués.

25.28 Specific Application of this Agreement

25.28 Champ d'application particulier de la présente convention

For greater certainty, the following provisions of this Agreement shall be administered as provided for herein.

Pour plus de certitude, les dispositions suivantes de la présente convention sont appliquées comme suit :

(e) **Designated Paid Holidays (clause 30.07)**

e) **Jours fériés payés (paragraphe 30.07)**

(i) A designated paid holiday shall account for seven decimal five (7.5) hours.

(i) Un jour férié désigné payé correspond à sept virgule cinq (7,5) heures.

(ii) When an employee works on a designated paid holiday, the employee shall be compensated, in addition to the pay for the hours specified in subparagraph (i), at time and one-half (1 1/2) up to his or her regular scheduled hours worked and at double (2) time for all hours worked in excess of his or her regular scheduled hours.

(ii) L'employé-e qui travaille un jour férié payé est rémunéré, en plus de la rémunération versée pour les heures précisées au sous-alinéa (i), au tarif et demi (1 1/2) jusqu'à concurrence des heures normales de travail prévues à son horaire et au tarif double (2) pour toutes les heures additionnelles qu'il ou elle effectue.

(h) **Leave**

h) **Congé**

(i) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.

(i) Aux fins de l'acquisition ou de l'octroi des congés, un jour est égal à sept virgule cinq (7,5) heures.

(ii) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

(ii) Pour chaque jour de congé utilisé, il faut déduire des crédits de congé, le nombre d'heures de travail prévues à l'horaire de l'employé-e ce jour-là.

ARTICLE 30

DESIGNATED PAID HOLIDAYS

30.01 Subject to clause 30.02, the following days shall be designated paid holidays for employees:

(a) New Year's Day;

(b) Good Friday;

(c) Easter Monday;

(d) the day fixed by proclamation of the Governor in Council for celebration of the Sovereign's birthday;

(e) Canada Day;

(f) Labour Day;

(g) the day fixed by proclamation of the Governor in Council as a general day of thanksgiving;

(h) Remembrance Day;

(i) Christmas Day;

(j) Boxing Day;

(k) one additional day in each year that, in the opinion of the Employer, is recognized to be a provincial or civic holiday in the area in which the employee is employed or, in any area where, in the opinion of the Employer, no such additional day is recognized as a provincial or civic holiday, the first (1st) Monday in August;

(l) one additional day when proclaimed by an Act of Parliament as a national holiday.

ARTICLE 30

JOURS FÉRIÉS PAYÉS

30.01 Sous réserve du paragraphe 30.02, les jours suivants sont désignés jours fériés désignés payés pour les employé-e-s :

a) le jour de l'An;

b) le Vendredi saint;

c) le lundi de Pâques;

d) le jour fixé par proclamation du gouverneur en conseil pour la célébration de l'anniversaire de la Souveraine;

e) la fête du Canada;

f) la fête du Travail;

g) le jour fixé par proclamation du gouverneur en conseil comme jour national d'action de grâces;

h) le jour du Souvenir;

i) le jour de Noël;

j) l'après-Noël;

k) un autre jour dans l'année qui, de l'avis de l'Employeur, est reconnu comme jour de congé provincial ou municipal dans la région où travaille l'employé-e ou dans toute région où, de l'avis de l'Employeur, un tel jour additionnel n'est pas reconnu en tant que congé provincial ou municipal, le premier (1er) lundi d'août;

l) un jour additionnel lorsqu'une loi du Parlement le proclame jour férié national.

30.03 Designated Holiday Coinciding With a Day of Paid Leave

Where a day that is a designated holiday for an employee coincides with a day of leave with pay, that day shall count as a holiday and not as a day of leave.

30.03 Jour férié coïncidant avec un jour de congé payé

Lorsqu'un jour désigné jour férié coïncide avec un jour de congé payé de l'employé-e, ce jour est compté comme un jour férié et non comme un jour de congé.

Work Performed on a Designated Holiday

30.07

(a) When an employee works on a holiday, he or she shall be paid time and one-half (1 1/2) for all hours worked up to seven decimal five (7.5) hours and double (2) time thereafter, in addition to the pay that the employee would have been granted had he or she not worked on the holiday;

or

(b) upon request and with the approval of the Employer, the employee may be granted:

(i) a day of leave with pay (straight-time rate of pay) at a later date in lieu of the holiday;

and

(ii) pay at one and one-half (1 1/2) times the straight-time rate of pay for all hours worked up to seven decimal five (7.5) hours;

and

(iii) pay at two (2) times the straight-time rate of pay for all hours worked by him or her on the holiday in excess of seven decimal five (7.5) hours.

Travail accompli un jour férié

30.07

a) L'employé-e qui travaille un jour férié est rémunéré au tarif et demi (1 1/2) pour toutes les heures effectuées jusqu'à concurrence de sept virgule cinq (7,5) heures et au tarif double (2) par la suite, en plus de la rémunération qu'il ou elle aurait reçue s'il ou elle n'avait pas travaillé ce jour-là;

ou

b) sur demande, et avec l'approbation de l'Employeur, l'employé-e peut bénéficier :

(i) d'un jour de congé payé (au tarif des heures normales), à une date ultérieure, en remplacement du jour férié;

et

(ii) d'une rémunération calculée à raison d'une fois et demie (1 1/2) le tarif horaire normal pour toutes les heures qu'il ou elle effectue jusqu'à concurrence de sept virgule cinq (7,5) heures;

et

(iii) d'une rémunération calculée à raison de deux (2) fois le tarif normal pour toutes les heures qu'il ou elle effectue le jour férié en sus de sept virgule cinq (7,5) heures.

ARTICLE 33

LEAVE - GENERAL

33.01

(a) When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.

(b) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.

(c) When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

(d) Notwithstanding the above, in Article 46, Bereavement Leave With Pay, a "day" will mean a calendar day.

ARTICLE 33

CONGÉS - GÉNÉRALITÉS

33.01

a) Dès qu'un employé-e devient assujetti à la présente convention, ses crédits journaliers de congé acquis sont convertis en heures. Lorsqu'il ou elle cesse d'y être assujetti, ses crédits horaires de congé acquis sont reconvertis en jours, un jour équivalant à sept virgule cinq (7,5) heures.

b) Les crédits de congé acquis ou l'octroi des autres congés sont à raison de sept virgule cinq (7,5) heures par jour.

c) Les congés sont accordés en heures, le nombre d'heures débitées pour chaque jour de congé correspond au nombre d'heures de travail normalement prévues à l'horaire de l'employé-e pour la journée en question.

d) Nonobstant les dispositions qui précèdent, dans l'article 46, Congé de deuil payé, le mot « jour » a le sens de jour civil.

ARTICLE 35

SICK LEAVE WITH PAY

Credits

35.01

(a) An employee shall earn sick leave credits at the rate of nine decimal three seven five (9.375) hours for each calendar month for which the employee receives pay for at least seventy-five (75) hours.

ARTICLE 35

CONGÉ DE MALADIE PAYÉ

Crédits

35.01

a) L'employé-e acquiert des crédits de congé de maladie à raison de neuf virgule trois sept cinq (9,375) heures pour chaque mois civil pendant lequel il ou elle touche la rémunération d'au moins soixante-quinze (75) heures.

(b) A shift worker shall earn additional sick leave credits at the rate of one decimal two five (1.25) hours for each calendar month during which he or she works shifts and he or she receives pay for at least seventy-five (75) hours. Such credits shall not be carried over in the next fiscal year and are available only if the employee has already used one hundred and twelve decimal five (112.5) hours of sick leave credits during the current fiscal year.

b) L'employé-e qui travaille par poste acquiert des crédits additionnels de congé de maladie à raison d'un virgule deux cinq (1,25) heures pour chaque mois civil pendant lequel il ou elle travaille des postes et touche la rémunération d'au moins soixante-quinze (75) heures. De tels crédits ne peuvent être reportés à la nouvelle année financière et sont accessibles seulement si l'employé-e a déjà utilisé cent douze virgule cinq (112,5) heures de congé de maladie durant l'exercice en cours.

Granting of Sick Leave

35.02 An employee shall be granted sick leave with pay when he or she is unable to perform his or her duties because of illness or injury provided that:

(a) he or she satisfies the Employer of this condition in such manner and at such time as may be determined by the Employer;

and

(b) he or she has the necessary sick leave credits.

35.03 Unless otherwise informed by the Employer, a statement signed by the employee stating that, because of illness or injury, he or she was unable to perform his or her duties, shall, when delivered to the Employer, be considered as meeting the requirements of paragraph 35.02(a).

Attribution du congé de maladie

35.02 L'employé-e bénéficie d'un congé de maladie payé lorsqu'il ou elle est incapable d'exercer ses fonctions en raison d'une maladie ou d'une blessure, à la condition :

a) qu'il ou elle puisse convaincre l'Employeur de son état de la façon et au moment que ce dernier détermine;

et

b) qu'il ou elle ait les crédits de congé de maladie nécessaires.

35.03 À moins d'indication contraire de la part de l'Employeur, une déclaration signée par l'employé-e indiquant que, par suite de maladie ou de blessure, il ou elle a été incapable d'exercer ses fonctions, est considérée, une fois remise à l'Employeur, comme satisfaisant aux exigences de l'alinéa 35.02a).

35.04 When an employee has insufficient or no credits to cover the granting of sick leave with pay under the provisions of clause 35.02, sick leave with pay may, at the discretion of the Employer, be granted to the employee for a period of up to one hundred and eighty-seven decimal five (187.5) hours, subject to the deduction of such advanced leave from any sick leave credits subsequently earned.

35.04 Lorsque l'employé-e n'a pas de crédits ou que leur nombre est insuffisant pour couvrir l'attribution d'un congé de maladie payé en vertu des dispositions du paragraphe 35.02, un congé de maladie payé peut lui être accordé à la discrétion de l'Employeur pour une période maximale de cent quatre-vingt-sept virgule cinq (187,5) heures, sous réserve de la déduction de ce congé anticipé de tout crédit de congé de maladie acquis par la suite.

35.05 When an employee is granted sick leave with pay, and injury-on-duty leave is subsequently approved for the same period, it shall be considered, for the purpose of the record of sick leave credits, that the employee was not granted sick leave with pay.

35.05 Lorsqu'un employé-e bénéficie d'un congé de maladie payé et qu'un congé pour accident de travail est approuvé par la suite pour la même période, on considérera, aux fins des crédits de congé de maladie, que l'employé-e n'a pas bénéficié d'un congé de maladie payé.

35.06 Where, in respect of any period of compensatory leave, an employee is granted sick leave with pay on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period if requested by the employee and approved by the Employer, or reinstated for use at a later date.

35.06 L'employé-e qui tombe malade pendant une période de congé compensateur et dont l'état est attesté par un certificat médical se voit accorder un congé de maladie payé, auquel cas le congé compensateur ainsi touché est soit ajouté à la période de congé compensateur, si l'employé-e le demande et si l'Employeur l'approuve, soit rétabli en vue de son utilisation à une date ultérieure.

35.07

(a) Sick leave credits earned but unused by an employee during a previous period of employment in the public service shall be restored to an employee whose employment was terminated by reason of lay-off and who is reappointed in the public service within two (2) years from the date of lay-off.

35.07

a) Les crédits de congé de maladie acquis mais non utilisés par un employé-e qui est mis en disponibilité lui seront rendus s'il ou elle est réengagé dans la fonction publique au cours des deux (2) années suivant la date de sa mise en disponibilité.

**

**

(b) Sick leave credits earned but unused by an employee during a previous period of employment in the public service shall be restored to an employee whose employment was terminated due to the end of a specified period of employment, and who is re-appointed in the core public administration within one (1) year from the end of the specified period of employment.

b) Les crédits de congé de maladie acquis mais non utilisés par un employé-e à la fin de sa période d'emploi déterminée lui sont rendus s'il ou elle est réengagé dans l'administration publique centrale au cours de la première (1re) année suivant la fin de la dite période d'emploi.

35.08 The Employer agrees that an employee shall not be terminated for cause for reasons of incapacity pursuant to paragraph 12(1)(e) of the *Financial Administration Act* at a date earlier than the date at which the employee will have used his or her accumulated sick leave credits except where the incapacity is the result of an injury or illness for which injury-on-duty leave has been granted pursuant to Article 37.

35.08 L'Employeur convient qu'un employé-e ne peut être licencié pour incapacité conformément à l'alinéa 12(1)e) de la *Loi sur la gestion des finances publiques* avant la date à laquelle il ou elle aura épuisé ses crédits de congé de maladie, sauf lorsque l'incapacité découle d'une blessure ou d'une maladie pour laquelle un congé pour accident de travail a été accordé en vertu de l'article 37.

ARTICLE 43

LEAVE WITH PAY FOR FAMILY-RELATED RESPONSIBILITIES

43.01 For the purpose of this Article, family is defined as spouse (or common-law partner resident with the employee), children (including foster children, step-children or children of the spouse or common-law partner), parents (including stepparents or foster parents), or any relative permanently residing in the employee's household or with whom the employee permanently resides.

ARTICLE 43

CONGÉ PAYÉ POUR OBLIGATIONS FAMILIALES

43.01 Aux fins de l'application du présent article, la famille s'entend de l'époux (ou du conjoint de fait qui demeure avec l'employé-e), des enfants (y compris les enfants nourriciers, les beaux-enfants ou les enfants de l'époux ou du conjoint de fait), du père et de la mère (y compris le père et la mère par remariage ou les parents nourriciers), ou de tout autre parent demeurant en permanence au domicile de l'employé-e ou avec qui l'employé-e demeure en permanence.

43.02 The total leave with pay which may be granted under this Article shall not exceed thirty-seven decimal five (37.5) hours in a fiscal year.

43.02 Le nombre total de jours de congés payés qui peuvent être accordés en vertu du présent article ne dépasse pas trente-sept virgule cinq (37,5) heures au cours d'une année financière.

43.03 Subject to clause 43.02, the Employer shall grant the employee leave with pay under the following circumstances:

43.03 Sous réserve du paragraphe 43.02, l'Employeur accorde un congé payé dans les circonstances suivantes :

(a) to take a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies, if the supervisor was notified of the appointment as far in advance as possible;

a) pour conduire à un rendez-vous un membre de la famille qui doit recevoir des soins médicaux ou dentaires, ou avoir une entrevue avec les autorités scolaires ou des organismes d'adoption, si le surveillant a été prévenu du rendez-vous aussi longtemps à l'avance que possible;

(b) to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;

b) pour prodiguer des soins immédiats et temporaires à un membre malade de la famille de l'employé-e et pour permettre à l'employé-e de prendre d'autres dispositions lorsque la maladie est de plus longue durée;

(c) to provide for the immediate and temporary care of an elderly member of the employee's family;

c) pour prodiguer des soins immédiats et temporaires à une personne âgée de sa famille;

(d) for needs directly related to the birth or the adoption of the employee's child.

d) pour les besoins directement rattachés à la naissance ou à l'adoption de son enfant.

(e) seven decimal five (7.5) hours out of the thirty-seven decimal five (37.5) hours stipulated in clause 43.02 above may be used:

e) sept virgule cinq (7,5) heures sur les trente-sept virgule cinq (37,5) heures prévues au paragraphe 43.02 ci-haut peuvent être utilisées :

(i) to attend school functions, if the supervisor was notified of the functions as far in advance as possible;

(i) pour assister à une activité scolaire, si le surveillant a été prévenu de l'activité aussi longtemps à l'avance que possible;

(ii) to provide for the employee's child in the case of an unforeseeable closure of the school or daycare facility;

(iii) to attend an appointment with a legal or paralegal representative for non-employment related matters, or with a financial or other professional representative, if the supervisor was notified of the appointment as far in advance as possible.

(ii) pour s'occuper de son enfant en cas de fermeture imprévue de l'école ou de la garderie;

(iii) pour se rendre à un rendez-vous avec un conseiller juridique ou un parajuriste pour des questions non liées à l'emploi, ou avec un conseiller financier ou autre type de représentant professionnel, si le surveillant a été prévenu de l'activité aussi longtemps à l'avance que possible.

43.04 Where, in respect of any period of compensatory leave, an employee is granted leave with pay for illness in the family under paragraph 43.03(b) above, on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.

43.04 Si, au cours d'une période quelconque de congé compensateur, un employé-e obtient un congé payé pour cause de maladie dans la proche famille en vertu de l'alinéa 43.03b) ci-dessus, sur présentation d'un certificat médical, la période de congé compensateur ainsi remplacée est, soit ajoutée à la période de congé compensateur si l'employé-e le demande et si l'Employeur l'approuve, soit réinscrite pour utilisation ultérieure.

ARTICLE 52

LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS

52.01 At its discretion, the Employer may grant:

(a) leave with pay when circumstances not directly attributable to the employee prevent his or her reporting for duty; such leave shall not be unreasonably withheld;

(b) leave with or without pay for purposes other than those specified in this Agreement.

ARTICLE 52

CONGÉS PAYÉS OU NON PAYÉS POUR D'AUTRES MOTIFS

52.01 L'Employeur peut, à sa discrétion, accorder :

a) un congé payé lorsque des circonstances qui ne sont pas directement imputables à l'employé-e l'empêchent de se rendre au travail; ce congé n'est pas refusé sans motif raisonnable;

b) un congé payé ou non payé à des fins autres que celles indiquées dans la présente convention.

52.02 Personal Leave

Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, a single (1) period of up to seven decimal five (7.5) hours of leave with pay for reasons of a personal nature.

The leave will be scheduled at times convenient to both the employee and the Employer. Nevertheless, the Employer shall make every reasonable effort to grant the leaves at such times as the employee may request.

52.02 Congé personnel

Sous réserve des nécessités du service déterminées par l'Employeur et sur préavis d'au moins cinq (5) jours ouvrables, l'employé-e se voit accorder, au cours de chaque année financière, une (1) seule période d'au plus sept virgule cinq (7,5) heures de congé payé pour des raisons de nature personnelle.

Ce congé est pris à une date qui convient à la fois à l'employé-e et à l'Employeur. Cependant, l'Employeur fait tout son possible pour accorder le congé à la date demandée par l'employé-e.