

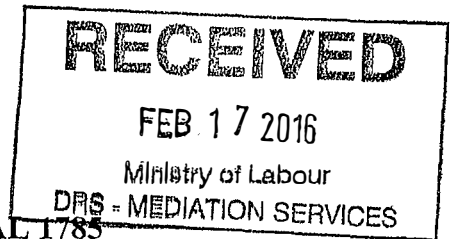
IN THE MATTER OF AN ARBITRATION

BETWEEN:

REGIONAL MUNICIPALITY OF DURHAM
(Hereinafter referred to as "the Region"),

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1785
(Hereinafter referred to as "the Union"),



AND IN THE MATTER OF A UNION POLICY GRIEVANCE
REGARDING VACATION SCHEDULING.

SOLE ARBITRATOR: Gordon F. Luborsky

APPEARANCES

For the Union: Michelle Miller, National Representative
Dan McGregor, President, Local 1785
Tom Sutherland, Vice-President, Local 1785
Denis Charbonneau, Chief Steward, Local 1785

For the Region: Jonathan A. Maier, Counsel
Kelly McDiarmid, Counsel
Claire Bebbington, Student-at-Law
Thom Sloley, Manager, Plant Operations
Louise O'Dell, Director of Human Resources
Cordell Samuels, Superintendent, Duffin Creek WPCP

HEARD: February 19, November 12, 2014, October 7, 2015 and
February 11, 2016
Ajax, Ontario

DECISION: February 12, 2016
(Final Award)

File ID: 826196
Folder ID: 10021RR-14
Rel ID: 42613

AWARD

[1] The Union's grievance dated December 18, 2012 alleges that, "There is an inconsistent policy for granting vacations for the Christmas Holiday week versus granting vacation for other weeks in the calendar year and any other Articles, Acts and/or Legislation." The remedy requested by the grievance is: "Full Redress - That the Policy of Seniority for vacation entitlement be practiced consistently throughout the whole calendar year and any other redress

deemed appropriate by a Board of Arbitration or Sole Arbitrator.” The Union has processed this matter as a policy grievance.

[2] After hearing all of the evidence in this case, I have concluded that the dispute between the parties boils down to this: The Region added a paragraph to its “Vacation/Lieu Guidelines” (identified as “number 8” in the Guidelines) providing as follows:

8. Requests for vacation/lieu will not be approved for those employees scheduled to work Christmas Eve, Christmas Day, New Year's Eve or New Year's Day. Should the scheduled employee be able to find their own coverage with a qualified replacement, approval may be granted. These arrangements will not be approved if they cause additional overtime.

[3] The Union takes the position that this paragraph 8 is an unreasonable exercise of managerial discretion in scheduling vacation or lieu time off work. But based on the evidence that I heard from Mr. Paul Annis, who is the District Plant Supervisor - Incineration, and the person responsible for administering the Region's Policy, it is clear that when an employee requests a vacation or lieu day off work during the Christmas/New Year's period, Mr. Annis follows the same procedure he would for any request for time off on a statutory holiday.

[4] Namely, as the Region's managerial official responsible for the administration of the Policy, he: (a) considers a request of any employee for such time off, and in that consideration; (b) determines based on his knowledge of the operational needs and experiences of the available workers, whether the request can be accommodated. If, after making that assessment, Mr. Annis concludes the request cannot be accommodated, he then adopts the wording of paragraph 8 of the Policy not to approve the request. However, in accordance with the remaining provisions of that paragraph 8, he may grant that request, “Should the scheduled employee be able to find their own coverage with a qualified replacement”, but which “will not be approved if they cause additional overtime”.

[5] Thus to the extent the Union is grieving the Policy as taking away the usual managerial discretion to operate the workplace in accordance with its management rights in a manner that conforms with article 2.02 of the collective agreement, which states the Region will exercise its managerial functions, “in a manner consistent with the general purpose and intent of [the collective agreement]”, I find on the basis of Mr. Annis' testimony that that is neither management's intent nor practice. Rather, as Mr. Annis confirmed in his testimony, the Vacation/Lieu Guidelines are exactly that – Guidelines. They do not replace or supersede any express terms of the collective agreement and/or statutory obligations to the contrary.

[6] Thus when it comes to the kinds of requests that are the subject of the present grievance, I find based on the testimony before me that requests for vacation and/or lieu time off will always be considered on an individual basis in management's discretion, having regard to all of the prevailing circumstances at the time. If, after an appropriate managerial review, the

determination is made that such requests cannot be accommodated, the rest of the Policy statement in paragraph 8 will apply.

[7] I accordingly conclude there has been no violation of the collective agreement in the circumstances of the present case and that the Union's grievance must consequently be dismissed.

DATED AT MARKHAM, ONTARIO THIS 12TH DAY OF FEBRUARY, 2016.


Gordon F. Luborsky,
Sole Arbitrator