

IN THE MATTER OF AN ARBITRATION
BETWEEN
TORONTO DISTRICT SCHOOL BOARD
("the Board" / "the Employer")
- AND -
LOCAL 4400, CANADIAN UNION OF PUBLIC EMPLOYEES
UNIT D
("the Union")
CONCERNING THE INDIVIDUAL GRIEVANCES of ADAM HABARTA
("the Grievor") (2015-D-03468 and 2017-D-04009)

Christopher Albertyn - Sole Arbitrator

APPEARANCES

For the Union:

Tim Gleason, Counsel

Adrienne Lei, Counsel

Dave Smith, Unit D Vice-President

Rick Kuberski, Grievance Administrator

Duane Kennedy, Unit D Steward Coordinator

For the Board:

Andrew Zabrovsky, Counsel

Ryan Goldvine, Senior Manager Labour Relations

Hearing held in TORONTO on July 9, 2018.

Award issued on July 9, 2018.

AWARD

1. An award in this matter was issued on January 25, 2018.
2. But for the description of the grievances, the issue, and the facts, the parties agree that the remainder of that award is void.
3. Having heard the parties' submissions on the two issues – proration of vacation entitlement and proration of sick leave – I reach the following conclusions and issue the following decision.
4. With respect to the proration of vacation entitlement, I find that vacation entitlement is a matter of status under the collective agreement. Article U.2 applies to all 12-month eligible employees. The Grievor is such a person. He has 24 years of continuous service. He is therefore entitled to 27 days of vacation. Pursuant to Article U.1, that is to be “paid vacation”.
5. As a result, I conclude that the Employer was not entitled to prorate the Grievor's vacation entitlement, as it purported to do in its letter to the Grievor of June 26, 2017. By doing so the Employer breached Article U.2 of the collective agreement.

6. Accordingly, the grievances with respect to vacation proration are upheld. I direct that, commencing July 1, 2017, the Grievor was entitled to 27 days of paid vacation (not 22 as the Employer stipulated). He is to be made whole to the extent these entitlements have not been applied.

7. With respect to the proration of sick leave, on the particular facts of this case, I find that the Grievor's sick days and STLDP days are to be paid in accordance with the pay he otherwise would have received but for his illness / injury. For clarity, he is not entitled to sick pay for days he otherwise would not have worked as a result of his accommodated schedule.

8. I remain seized of the implementation of this award, including its interpretation and application.

DATED at TORONTO on July 9, 2018.

A handwritten signature in blue ink, appearing to read 'Christopher J. Albertyn', with a horizontal line extending to the right.

Christopher J. Albertyn
Arbitrator