IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE *LABOUR RELATIONS ACT*

B E T W E E N:

CANADIAN UNION OF PUBLIC EMPLOYEES (CUPE), LOCAL 145

Union

- and -

SODEXO

Employer

Policy Grievance (19-P-01181)

AWARD

SOLE ARBITRATOR: Jasbir Parmar

On behalf of the Union:
Wassim Garzouzi, Counsel
Eric Witvoet, Local President

On behalf of the Employer:
Steven Da Silva, Sodexo
Emily Ryder, Sodexo

This matter was heard by teleconference on Monday, April 6, 2020.

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1. I have been appointed by the parties to determine a policy grievance presented by the Union in respect of the Employer's practice of calculating vacation accrual. This matter proceeded by teleconference, during which the parties agreed that no material facts were in dispute, and that I could render a decision based on their respective submissions. For the reasons that follow, I have decided to allow the grievance.

2. The sole issue in the grievance is how the Employer must calculate and track the accrual of vacation for full-time employees in their vacation "banks". The Employer's practice has been to calculate vacation banks in dollars, whereas the Union takes the position that employees' vacation banks must be calculated in time.

3. Vacation benefits for full-time employees are provided under Article 17.01 of the Collective Agreement, which states in the relevant part:

An employee who has completed the following number of continuous years of service:	But less than the following number of continuous years of service:	Is entitled to the following number of weeks of annual vacation with pay:
1	2	2
2	5	3
5	12	4
12	20	5
20	28	6
28		7

> Vacation pay shall be calculated on the basis of the employee's regular straight time rate of pay times their normal weekly hours of work, subject to the application of Article 9.04, Effect of Absence.

4. Vacation benefits generally include two components: vacation time (the amount of time the employee is entitled to take off of work each year), and vacation pay (the amount of money the employee will be paid for that time off). As Arbitrator Surdykowski confirmed in *Complex Services Inc. v. Ontario Public Service Employees Union, Local 278*, 2011 CanLII 2653:

> Vacation time and vacation pay are related but separate benefits (s. 33 of the ESA, *Ontario Lottery and Gaming Corp*. [[2008] O.L.A.A. No. 704 (Springate)], *National Steel Car Limited* [(2006) 148 L.A.C. (4th) 58; 2006 CanLII 50490 (Surdykowski)], *Toronto Transit Commission*).

5. In the present case, Article 17 addresses both components of vacation benefits—the time employees are entitled to take off work each year (a number of weeks per year, depending on the employee's years of continuous service), and the amount of pay they will receive for that time off (a weekly rate based on the employee's regular straight time rate times their normal weekly hours or work.)

6. In *Canadian Union of Public Employees Local 942 v Royal Ottawa Health Care Group*, 2017 CanLII 34457, Arbitrator Baxter considered this Article in the context of a dispute over whether employees accrue vacation gradually over the course of the year, or whether it is all 'dumped' in the employees' vacation banks at the beginning of the year. Arbitrator Baxter confirmed that, under this particular language, vacation does not accrue gradually, but rather is dumped in to employees' banks at the beginning of each year. While that case raised a different issue, his Award confirms the obvious proposition that the entitlement under this Article is to a number of <u>weeks</u> of vacation time.

7. In the present case, the Employer is using employees' vacation <u>pay</u> to calculate and track the accrual of their vacation <u>time</u>. The Union, in its submissions, outlined the problems with this approach. In addition to the practical difficulty for employees attempting to understand how much vacation time they have in their banks, the Employer's approach actually deprives employees of their full vacation entitlements under the Collective Agreement.

8. Employees are entitled to take vacation time up to 12 months after it has accrued. Of course, straight time rates of pay increase from year to year. As a result, a cash-based accrual inevitably short-changes an employee, such that the amount of money in their vacation bank does not match their actual entitlement to vacation time off from work. For example, if an employee accrued 4 weeks of vacation time in 2019, and it was calculated in their vacation bank based on their 2019 straight time rate of pay, they would not receive their full entitlement if they waited to take those four weeks until 2020, when their rate of pay was now higher.

9. Thus, I accept the Union's argument that the Collective Agreement requires the Employer to calculate the accrual of vacation time based on the actual amount of time the employee is entitled to take off from work in that year. When the employee takes that time off, they will receive pay based on their straight time rate and their regular hours of work.

10. The grievance is therefore allowed, and I order the Employer to bring its practice into compliance with the Collective Agreement. If the Employer requires time to make administrative arrangements to carry out this Order, the Employer and Union may negotiate a reasonable timeframe within which this Order will be implemented. I shall remain seized to address any issues arising from the implementation of the Order.

Dated this 6th day of April, 2020

"Jasbir Parmar"

JASBIR PARMAR