IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act*, R.S. 1995

BETWEEN:

SODEXO CANADA

("Employer")

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 145

("Union")

Policy Grievance (19-P-0118)

SOLE ARBITRATOR: Jasbir Parmar

On Behalf of the Employer:

Emily Ryder, Representative

On Behalf of the Union:

Wassim Garzouzi, Counsel
Eric Witvoet, Local President

Hearing held on December 9, 2020 by videoconference.

ISSUE

[1] I was appointed by the parties to determine the policy grievance presented by the Union in respect of the Employer's practice of calculating vacation accrual. On April 6, 2020 (2020 CanLII 26265), I found that the Employer's practice of calculating vacation banks in dollars was contrary to the provisions of the collective agreement, which required the Employer to calculate vacation accrual in time.

[2] I ordered the Employer to bring its practice into compliance with the collective agreement, and provided for "a reasonable timeframe within which this Order will be implemented."

[3] Some eight months later, the Employer has yet to change its practice. The Union is seeking compensation for the failure to comply with the decision.

BRIEF SUMMARY OF THE PARTIES' SUBMISSIONS

[4] The Union submits that employees are entitled to accrue vacation in time, and have been deprived of this opportunity for a considerable period. It is seeking a firm commitment from the Employer in term of timelines, and asks that this Board provide compensation for each employee affected. The Union argued that each member of the bargaining unit should be credited with three days of vacation. In the alternative, the Union asked me to outline a penalty should the Employer fail to comply with the order in the future.

[5] The Employer does not deny the delay in implementing the change, but argues that the issue is administrative and that all resources are being expended to address the issue. The Employer confirms that the practice should be brought in line with the collective agreement by February 12, 2021. The Employer also argues that no employee has been prejudiced by the current practice, and if any employee is actually prejudiced, they would be entitled to bring an individual claim. Lastly, the Employer argued that damages would be inappropriate in the present circumstances.

ANALYSIS AND DISPOSITION

[6] The Employer has had several months to address its practice, and has undertaken to do so by no later than February 12, 2021. I agree with the Employer that if any employee is actually prejudiced, individual grievances can be presented, and I need not provide additional remedy at this time. The Union asked me to outline a specific penalty, should the Employer fail to comply with my order by February 12, 2021.

[7] Given the time that has already lapsed, and the history of these proceedings, I agree that a specified penalty will be beneficial for both sides. The Employer will credit each member of the bargaining unit with one vacation day should it fail to bring its practice in compliance with the collective agreement by February 12, 2021.

[8] I remain seized.

Dated this 9th day of December, 2020.

"Jasbir Parmar"

JASBIR PARMAR