

Arbitration Award Summary

07-G--00516 – Group Grievance – Relief Employees - Multiple Positions

Case Outline:

This grievance falls under the Collective Agreement expiring March 31, 2009.

The grievance was filed due to a difference of interpretation between the Union and the Employer of language that was introduced into the Collective Agreement during contract negotiations in 2005. Appendix A1 was added to the Collective Agreement as the creation of Relief employee as a new category of employee. Corresponding changes were also made to Article 2.01 (m) for the definition of employee as well as Articles 4.03 and 4.04 for the Application of the Collective Agreement.

The new category was implemented after the ratification of the Collective Agreement in November 2005. The Employer created a number of indeterminate Relief positions which were first filled by current casuals in internal competitions. The “roll-out” proceeded on the Employer’s interpretation resulting in some Relief employees holding multiple positions within the same facility.

The Union’s interpretation of the language allowed for multiple positions but not within the same facility (building). The exception to this rule applies only to nursing situations where there had to be a minimum of two steps between the positions (A1.02 (b)).

Discussions were held between the Union and the Employer until it became apparent that each was firm in their interpretation. This grievance was filed on November 28, 2007.

Employer’s Argument:

The Employer argued that the contract language was ambiguous; unclear in whether an employee was excluded from working in the same job or the same facility. Further, it was not apparent as to what kind of employee was meant to be excluded from the same job or the same facility. The word “employee” was believed to mean one who was already holding Full Time Equivalent (FTE) rated indeterminate position. This interpretation allowed for Relief employees to hold multiple positions within the same facility. In support of their interpretation, the Employer argued that the Union did not take exception during the roll-out process.

In addition, it was suggested that the Union was initially in agreement that multiple positions could be held as in a presented example of a cook in an offender facility also working as a corrections officer.

The Employer presented evidence from the bargaining process supporting their view on how the accepted language developed and the Employer's interpretation of the language from the beginning. A letter confirming this interpretation was sent to the Union on February 15, 2007.

In conclusion, the Employer held that they had made their position clear with a Q&A document that was released shortly after implementation in November 2005 and that the time elapsed before the Union filed this grievance was considerable (2 years). Finally, the Employer submitted that with the next set of negotiations commencing soon, that "the parties should be left to work it out".

Union's Argument:

The Union argued that the word "employee" as written in Appendix A1 was defined under Article 2.01(m) as including all employee categories. Further, the term "facility" referred to a building or structure and not one of multiple locations within the same structure.

A response was sent to the Employer's Q&A document which clearly outlined the difference of interpretations. The response was discussed at a Joint Consultation meeting on December 1, 2006. The Union indicated that there was a miscommunication in the beginning but clarified its position which had otherwise stayed the same throughout bargaining and the intervening time.

Council for the Union cited Article 37.22 which denies the arbitrator any authority to "alter or amend any of the provisions..." He also pointed out that in other parts of the Collective Agreement that are directed at one employee category, that the language is specific.

In conclusion, there was no clear evidence that there was ever an agreement on the interpretation; therefore it must be taken from the plain language of the Collective Agreement. The plain language lends to the Union's argument that there cannot be multiple positions held by one employee within the same facility unless they are a nurse and there is more than a 2 pay range difference between the two positions.

Arbitrator's Decision:

The arbitrator ruled that the grievance must succeed.

He concluded that though the Employer interpreted the final language as allowing the stacking of relief employees, evidence from the negotiating table did not show that there was a mutual understanding to the meaning of Appendix A1.02. Therefore, the difference must be resolved based of the negotiated language as written within the Collective Agreement.

The definition of employee was clear in Article 2.01 (m), so the Appendix would not refer only to FTE rated employees. Interpretation in this manner supports the Union's view of the language. His final ruling was;

“that an “employee” in A1.02(a) and (b) includes the current employee category of “relief employee” as defined by article 2.01 (m)(v) of the collective agreement, and that the referenced restriction is with respect to performing a job in the same facility where the person is already positioned.”

Note

If you are a government employee (regardless of category) you cannot hold a Relief position within the same facility (building) that you already work in. The only exception is for employees in nursing positions who can be employed in a Relief position within the same facility as long as their positions are more than 2 pay ranges apart (i.e. Full time at pay range 16 and Relief at pay range 19).

This does not stop you from holding a Relief position within the same department, only within the same facility.