

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996 c. 244

BETWEEN:

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION
THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 54
(BULKLEY VALLEY)

AND:

BRITISH COLUMBIA TEACHERS' FEDERATION
BULKLEY VALLEY TEACHERS' UNION

(Temporary Contract Grievance)

ARBITRATOR:

Christopher Sullivan

COUNSEL:

Keith E. W. Mitchell
for Employer

Kerri Fisher
for Union

DATES AND PLACE OF HEARING:

November 21 and 22, 2016
Smithers, BC

PUBLISHED:

June 28, 2017

The parties agree I have jurisdiction to hear and determine the matter in dispute. The case involves a grievance filed by the Union on December 21, 2012, essentially alleging the Employer is violating the Collective Agreement by not allowing Teachers Teaching on Call (TTOCs) to carry over sick leave.

The parties submitted an Agreed Statement of Facts, which contains most of the salient matters for resolving the grievance, and the Union also called a witness, BCTF Staff Representative Ritchie Kendrick who gave evidence in relation to the Union's Salary Indemnity Plan, and other matters.

The relevant facts surrounding the grievance may be summarized as follows. The Board of Education of School District No. 54 (Bulkley Valley) (the "Board") is responsible for the education of students in elementary schools, secondary schools, and learning centres in the School District. The Board employs teachers, administrative staff, support staff and excluded staff. The Union, the Bulkley Valley Teachers' Union, a local of the British Columbia Teachers' Federation (the Union) represents the approximately 187 teachers employed by the Board. Approximately 52 members of the Union are on the Teachers Teaching on Call list maintained by the Board.

The Board employs teachers in three different ways as follows:

- TTOCs, who are teachers on the TTOC list whose employment rights are set out in Article C.27 of the teachers' Collective Agreement. TTOCs are "employees within the meaning of the *Labour Relations Code*."
- Teachers on "temporary contracts", which may include TTOCs, who are teachers who have not worked for a sufficient length of time to gain a "continuing contract", whose employment rights are set out in Article C.26 of the Collective Agreement.

- Teachers on continuing contracts. A teacher gains a continuing contract upon having worked ten aggregate months in temporary assignments as set out in Article C.26.

A TTOC may also hold a temporary assignment on a temporary contract. A teacher may attain and hold a temporary assignment without also being on the TTOC list.

TTOCs and temporary contract teachers come from a variety of career backgrounds, including:

- teachers who are early in their careers and are working until they can secure a continuing contract with the Board;
- teachers who have developed careers as temporary teachers or TTOCs;
- TTOCs and temporary teachers who do not fit in any of these categories; and
- teachers who have retired from their continuing contract but returned to teaching as TTOCs or temporary contract teachers.

A TTOC may be called out for an assignment of a single day or multiple days. Any assignment known to be 20 days or more must be posted as a temporary contract pursuant to Article E.22 of the Collective Agreement. If a TTOC assignment exceeds 20 days, the assignment is converted to a temporary contract retroactive to the commencement of the TTOC assignment pursuant to Article C27.1 of the Collective Agreement.

The Employer's interpretation and application of the sick leave provisions of the Collective Agreement contained in Article G.22, are as follows, with the bolded portions of points 3 and 4 being the focus of the parties' contention in the present grievance:

1. A continuing contract teacher working a 1.0 FTE assignment is entitled to 15 days sick per year which days are credited to the teacher on September 1st of each year and added to any accumulated sick days from prior years. The total sick bank is available to be drawn on immediately and unused sick days are carried forward from year to year.
2. A continuing contract teacher on a less than 1.0 FTE assignment or in a term position is credited that proportion of the 15 days that corresponds pro rata to their assignment. In other words, a 0.5 FTE teacher is credited 7.5 sick leave days on September 1st of each year, added to any accumulated sick bank from prior years. The total sick bank is available to be drawn on immediately and unused sick days are carried forward year to year
3. A temporary contract teacher is credited the pro ratea portion of sick leave associated with the FTE equivalent of the position and anticipated length of the temporary assignment. In other words, a teacher on a five month temporary contract at 1.0 FTE commencing February 1st would be credited 7.5 days sick leave at the commencement of the assignment. A teacher on a five month temporary contract at .5 FTE commencing the same day would be credited 3.75 sick leave days. The total sick bank is available to be drawn on immediately. **At the end of that contract, the Employer cancels any unused sick days credited to the teacher.**
4. In accordance with Article C.27.1, a TTOC whose assignment converts into a temporary contract after 20 days worked is credited with the pro rata portion of their sick days, retroactively to the first day of the assignment. The credited sick days are at that point available to be drawn on by the TTOC. **At the end of that contract, the Employer cancels any unused sick days credited to the teacher.**
5. A TTOC or temporary contract teacher whose status converts to a continuing contract teacher pursuant to Article 26 of the Collective Agreement retains all accrued, unused sick days in their sick bank in their new status as a continuing contract teacher.

As noted, the present grievance specifically involves the allegation that the cancellation of a TTOC's unused sick days in points 3 and 4 above contravene the

Collective Agreement. The Union asserts that until the present grievance was filed it was not aware any teachers were having sick days unilaterally cancelled by the Employer.

The Statement of Agreed Facts includes a number of examples of the Employer's local practice, although these were not relied upon to show the Union was aware of such or acquiesced.

The evidence also indicates the BCTF funds and administers a Salary Indemnity Plan (SIP) to which its members have access according to the regulations of the plan. Once a teacher's sick days have been brought to a zero balance through illness or injury they may receive partial salary replacement under the SIP. BCTF Representative Mr. Kendrick also gave some evidence regarding the application of similar language in other School Districts in the province, but this was not sufficiently clear upon which to determine the outcome of the present case.

No evidence was led regarding the bargaining history, which occurred about thirty years ago, and the parties generally agree this case is to be determined based on the language of the Collective Agreement.

RELEVANT COLLECTIVE AGREEMENT PROVISIONS

At these proceedings the parties cited a number of provisions of the Collective Agreement, including Article B.2, headed "Teacher on Call Pay and Benefits", which establishes certain rights for TTOCs, including minimum vacation entitlements; reporting for purposes of employment insurance purposes (where TTOC teaching time will be reported in the same amounts as would be reported for a teacher on a continuing contract); mileage; benefits; and specific pay scales. Article B.2.7 specifically deals with pay for Teachers on Call who hold a valid BC Teaching Certificate, and "Employees who

do not have a valid BC Teaching Certificate.” The Collective Agreement also contains the following:

B.2.8.a Sick leave provisions, in accordance with Article G.22 of this Agreement, shall become an entitlement from the twenty-first and subsequent consecutive teaching days on any one assignment. The qualifying period shall be calculated from the first day of the assignment.

B.11.2.c The Board shall advise each employee in writing at the end of September, December and March of his/her accumulated sick leave.

C.3.a Effective April 1, 2006, an employee on a temporary or term contract shall accumulate seniority for all days of service on a temporary or term contract.

C.4 Effective July 1, 2006, an employee on a temporary service or term contract shall accumulate seniority for all days of service on a temporary or term contract.

C.22 Employment on Continuing Contract

C.22.1 All teachers appointed by the Board to the teaching staff of the district shall be appointed to a continuing contract of employment, except for temporary appointments made in accordance with the following provisions:

- a. to replace a teacher on a continuing contract who is absent or on leave for any reason,
- b. replace a teacher on a temporary appointment, or
- c. fill a position that is temporarily created for program reasons for one school year or less, or fill a position that is temporarily created for enrollment fluctuations for less than one school year, or
- d. fill a position that has been vacated by a teacher during a school year, or
- e. Teachers-On-Call as provided for in Article C.27

C.26 Temporary Teachers' Employment Rights

(Provides for conversion from temporary status following accumulation of ten months aggregate service.)

C.27 Teacher-on-Call Employment Rights

C27.1 Temporary Appointment

- a. Twenty (20) days continuous teaching in the same assignment, shall entitle a Teacher-On-Call to a temporary appointment made retroactive to the start of the assignment.

E.22.7 In filling vacant positions, local teachers with the necessary qualifications shall be considered before applicants from outside the District.

The Board will proceed as follows:

- a. Teachers returning from leave of absence of 1 year or less to the same position.
- b. Continuing teachers applying for the vacancy, and teachers returning from leaves of more than one year.
- c. Board initiated transfer.
- d. Teachers on the recall list.
- e. Temporary teachers.

E.22.8 In filling the remaining positions the Board will give priority to applications as follows:

- a. Teachers On Call applying for a position;
- b. Other applicants.

G.22.1 Teachers under contract with the Board will be credited on September first of every year with the number of sick days they would be entitled to for the whole of that year plus any accumulated sick days from previous years. All of these days are available for use by the teacher at any time during the current school year, after which time absence for illness becomes leave without pay.

G.22.2 Fifteen (15) sick days shall be granted each year.

G.22.3 The number of sick days used shall not exceed one hundred and twenty (120) days in any one school year.

SUMMARY OF ARGUMENTS

On behalf of the Union, Ms. Fisher argues the language of the Collective Agreement, read in context with a view to the purpose of the provision in question, supports an outcome where sick leave credits are accumulated by a TTOC or temporary teacher in the District, and these cannot be unilaterally cancelled by the Employer. Sick leave is an “earned benefit”, and TTOCs and other temporary contract teachers who accrue sick leave credits through their work should be entitled to broad and liberal access to that earned benefit. Despite the fact sick leave benefits are credited to a teacher at the commencement of the school year they are still being “earned” by the teacher through their employment. An earned benefit cannot be encroached upon without clear language, which does not exist in the present case.

Counsel asserts there is no language in the local agreement that specifies an entitlement to the earned benefit in question expires at the end of a temporary teaching position. If the parties had agreed to impose such a significant limitation they would have expressly included as much in their agreement; otherwise, it must be concluded no such limitation exists. The Employer is seeking to limit its liability to teachers in a

manner that can only be done by express provision and through bargaining rather than unilateral imposition.

Ms. Fisher states the Employer is effectively seeking to add a new term to the Collective Agreement that calls for sick leave days to expire at the end of a teaching contract. Such a position introduces a significantly limiting condition to the employment of TTOCs and temporary contract teachers not found elsewhere in the Collective Agreement and one that is not agreeable to the Union. Counsel adds it is inherently unlikely the Union would ever have agreed to such a condition, particularly given the impact of it on particularly vulnerable teachers.

Ms. Fisher points out the gap in time between TTOC assignments or temporary contracts does not constitute a break in the employment relationship. The teacher continues to be available to the Employer and the contractual relationship remains intact. The reference in Article G.22.1 to “teachers under contract” means all teachers covered by the Collective Agreement. Counsel draws attention to Article G.1 of the local agreement, which allows teachers to port sick leave from other school districts within the province. This indicates these days are earned and retained by the teacher until they are used or the employment relationship ends. In the case of porting, sick leave days continue past the end of the local employment relationship.

Ms. Fisher notes the purpose of the sick leave provision in question is to provide financial protection for employees absent from work due to illness occurring when they would otherwise be working. Counsel adds TTOCs are not simply “substitutes”, but rather are highly qualified, professional teachers; in the case of retiring teachers returning to work as TTOCs, these employees may have decades of valuable experience as professional teachers. The Employer’s suggested interpretation punishes a particularly vulnerable group of teachers for no valid reason.

In support of its arguments the Union cited the following authorities: *British Columbia Public Schools Employer's Association and British Columbia Teachers' Federation (Salary Reimbursement Grievance)*, [2008] B.C.C.A.A.A. No. 172 (Sanderson); *BCPSEA and BCTF (Wai Grievance)*, [2008] B.C.C.A.A.A. No. 179 (Burke); *Burnaby School District No. 41 and BCTF*, [2006] B.C.C.A.A.A. No. 31 (Kinzie); *Comox Valley School District No. 71 and Comox District Teachers Association (Johnson Grievance)*, [2002] B.C.C.A.A.A. No. 219 (Germaine); *Kootenay-Columbia School District No 20 and Canadian Union of Public Employees, Local 1285 (Salsiccioli Grievance)*, [2009] B.C.C.A.A.A. No. 153 (Burke); *Mission School District No 75 and Canadian Union of Public Employees, Local 593*, [2002] B.C.C.A.A.A. No. 399 (Foley); and *Surrey School District No. 36 (BCPSEA) and British Columbia Teachers' Federation/Surrey Teachers' Association (Severance Pay Grievance)*, [2009] B.C.C.A.A.A. No. 27 (Korbin).

On behalf of the Employer, Mr. Mitchell argues a TTOC is not allowed to retain sick leave credits gained from one temporary teaching assignment to be carried over and used after that assignment is over. At the conclusion of the temporary assignment the temporary contract is at an end, and sick leave credits advanced in relation to that assignment are lost.

Counsel states sick leave is granted on assuming a temporary contract when the teacher becomes "a teacher under contract with the Board", and any entitlement to that benefit, including allowing for accrual and/or banking, concludes when the temporary contract ends. TTOCs are not entitled to the benefit but for receiving a temporary contract of more than twenty days. TTOCs do not otherwise accrue sick leave and do not take paid sick days. If a TTOC is unable to work they decline an assignment; TTOCs do not have access to a sick bank and they do not claim sick days. Counsel states the Union needs to point to clear and unambiguous language that shows a mutual intention of the

parties that a significant monetary benefit is to be granted to TTOCs, and there is no such language in the Collective Agreement.

While the Employer acknowledges that a TTOC whose temporary contract has concluded retains employment status for limited purposes, it takes the position that after a TTOC's temporary teaching contract/assignment has ended, that individual is not a "teacher under contract with the Board" in accordance with Article G.22.1. Mr. Mitchell states nothing in the Collective Agreement refers to TTOCs being "under contract" to the Board after their temporary teaching contract has expired and this contrasts starkly with the rights of employees who, under the Collective Agreement, have "continuing contracts".

Mr. Mitchell states nothing in the Collective Agreement supports TTOCs have any rights other than those explicitly granted in that document, and that where the parties have intended TTOCs to have a certain benefit, such as the accrual of seniority or accrual of experience increments, they have expressly stated as much. There is no such language that supports the continuation of sick leave credits after a temporary assignment ends. Counsel adds the Union's interpretation would lead to an anomalous result as a temporary teacher on the TTOC list would be able to carry forward sick leave, whereas a temporary contract awarded to someone not on the TTOC list would not be able to.

In support of its arguments the Employer cited the following authorities: *Selkirk College and BCGEU*, [2002] B.C.C.A.A.A. No. 150 (Chertkow); *HEABC and HEU*, [1997] B.C.C.A.A.A. No. 816 (Hope); *Mission School District No. 75 and CUPE, Local 593*, [2002] B.C.C.A.A.A. No. 399 (Foley); *Richmond Lions Senior Citizen Housing Society and BCNU*, [1982] B.C.C.A.A.A. No. 151 (Hope); *HEABC and HEU*, [2002] B.C.C.A.A.A. No. 130 (Gordon); *Prince Rupert School District No. 52 and IUOE, Local 882-B*, [2003] B.C.C.A.A.A. No. 148 (Blasina); *Greater Victoria School District No. 61 and Greater Victoria Teachers' Assn.*, [1992] B.C.C.A.A.A. No. 323 (Kinzie); *Copwood*

Products Ltd. and IWA, Local 1-417, [2001] B.C.C.A.A.A. No. 403 (Burke); *BCPSEA and BCTF*, [2005] B.C.C.A.A.A. No. 164 (Glass); *International Paints (Canada) Ltd. and United Steelworkers, Local 14209*, (1985) 19 L.A.C. (3d) 94 (Kennedy); *Hamilton Entertainment and Convention Facilities Inc. and IATSE, Local 129*, (1996) 52 L.A.C. (4th) 178 (Bendel); *Hertz Canada Ltd. and COPE, Local 378*, [2012] B.C.C.A.A.A. No. 143 (Hall); *Re Maple Ridge School District No. 42*, [1987] B.C.L.R.B.D. No. 347 (IRC); *School Trustees of School District No. 36 and CUPE, Local 728*, October 6, 1980 (Larson); *Government of BC and PEA*, [1985] B.C.C.A.A.A. No. 349 (Thompson); and *Powell River School District No. 47 and Powell River District Teachers' Association*, [1994] B.C.C.A.A.A. No. 369 (Laing).

DECISION

The present case involves a dispute regarding the proper interpretation of the parties' Collective Agreement, specifically in relation to bargained sick leave benefits for TTOCs. The role of an arbitrator in such an interpretive dispute is to determine the parties' mutual intentions based primarily on the words they have selected to describe their consensus.

In *Mission School District No. 75 and C.U.P.E., Local 593, supra*, Arbitrator Brian Foley cited Arbitrator Richard Bird's decision in *Pacific Press and G.C.I.U., Local, 25C*, which set out the following basic principles for interpreting a collective agreement:

1. The object of interpretation is to discover the mutual intention of the parties.
2. The primary resource for an interpretation is the collective agreement.
3. Extrinsic evidence (outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.

4. Extrinsic evidence may clarify but not contradict a collective agreement.
5. A very important promise is likely to be clearly and unequivocally expressed.
6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.
7. All clauses and words in a collective agreement should be given meaning, if possible.
8. Where an agreement uses different words, one presumes that the parties intended different meanings.
9. Ordinarily words in a collective agreement should be given their plain meaning.
10. Parties are presumed to know about relevant jurisprudence.

On balance, an assessment of the present grievance based on these factors supports a conclusion that TTOCs are not entitled to having their sick leave benefits carried beyond the assignment in which they are granted. The Employer did not and does not violate the Collective Agreement by cancelling these credits at the end of a TTOC's temporary contract/assignment.

I accept a purposive approach must be taken in interpreting a negotiated health care benefit aimed at providing income protection due to not being able to work because of an illness. Notwithstanding, the particular collective agreement language in the present case is sufficiently clear and compelling in support of an interpretation that TTOCs do not have the right to have their sick leave credits carried over beyond the conclusion of the temporary assignment that attracted the crediting of such days.

Article G.22.1 sets out the entitlement of teachers to the benefit in question. For ease of reference that provision states, in part:

Teachers under contract with the Board will be credited on September first of every year with the number of sick days they would be entitled to for the whole of that year plus any accumulated sick days from previous years....

In the context of this particular employment situation, the term “Teachers under contract with the Board” appears to be intended to capture those who are under contract with the Board, and that a TTOC’s contract concludes when their temporary contract ends. The term “contract” in the sense used does not broadly refer to being “under the Collective Agreement”.

Suffice it to observe that achieving a continuing contract with the Employer comes with significant rights and benefits including, for example, layoff and recall rights and preferential selection. The term “teacher under contract with the Board” captures teachers on continuing contracts and teachers on temporary contracts while working in a temporary contract. There is nothing of substance upon which to base a conclusion that the parties intended a “teacher under contract with the Board” to include a TTOC whose temporary contract with the Board had ended. The Union’s argument to the effect the parties intended the term “contract” to mean the Collective Agreement rather than their temporary teaching contract is creative but not plausible in the context of the language read as a whole.

The parties’ commitments contained in Article B.2.8 support this interpretation, and indicate TTOCs do not “accrue” sick credits as an “earned benefit”, but rather the trigger for one obtaining sick credits is the gaining of a temporary assignment. The express reference in Article B.2.8 to obtaining the benefit of sick leave credits after twenty-one days aligns with Article C.27.1, which provides that “twenty days (20) continuous teaching on the same assignment entitles a Teacher-On-Call to a temporary

appointment made retroactive to the start of the assignment”. The credited sick leave days are directly related to the attainment of a temporary contract and, as mentioned above, there is no indication that they extend beyond the conclusion of that contract. There is no provision in the Collective Agreement that addresses the granting of sick leave credits to TTOCs except Article G.22, which only applies once a TTOC gains a temporary contract; otherwise, TTOCs do not accrue sick leave for work done outside of a temporary contract.

Article B.2.8 indicates teachers do not become entitled to sick leave benefits prior to the “twenty-first and subsequent consecutive teaching days on any one assignment”, and this suggests TTOCs are not allowed to carry forward sick leave credits to subsequent assignments. The words “in any one assignment” disclose the parties intended the grant of sick leave credits to be directly related to working in a specific term assignment and not necessarily on the possession of employment status with certain retained Collective Agreement rights. TTOCs obtain sick leave credits after the gaining of a temporary contract, and these expire when the temporary contract is at an end.

The parties’ express reference in Article B.2.8 to “teaching days in any one assignment” indicates that a TTOC who is called out for twenty consecutive days to different assignments does not accrue sick leave, whereas a teacher working twenty consecutive days in one assignment would be credited with sick leave, although the two teachers worked the exact same amount. To uphold the Union’s argument would essentially require one to turn a blind eye to the express agreed upon words: “on any one assignment”.

On balance, the Collective Agreement language supports the Employer’s interpretation of the rights and obligations at issue in the present case. Sick leave credits obtained by TTOCs during temporary contracts expire at the conclusion of those contracts and do not carry over to subsequent assignments.

The grievance is therefore dismissed. It is so awarded.



Christopher Sullivan