

In the Matter of an Arbitration

Between

St. Lawrence College

(Employer)

and

OPSEU

(Union)

And in the Matter of Grievance - Beach, Robertson and Wilson
OPSEU#'S 97B693, 97B694 and 97B695

Board of Arbitration: M.B. Keller, Chairperson
Mr. B. Matheson, Employer Nominee
Mr. C. Vermey, Union Nominee

Appearances: Mr. Gavin Leeb for the Union
Ms. Catherine Peters for the College

Hearing at Kingston, March 5, 1998.

AWARD

The grievors claim they are entitled to severance pay under the Employment Standards Act (E.S.A.). Each had been employed at the College since the late 1980's as session or partial load employees and each was terminated in April 1996.

At the time the three grievors agreed that Heather Robertson would make enquiries on their behalf regarding any entitlement they might have at the termination of their employment. They were told by the employer that they had no entitlement. Ms. Robertson then contacted the union to see if they concurred with the employer and she was told they did. On that basis none of the grievors pursued the matter any further.

In March 1997 Ms. Robertson was enrolled in a computer skills upgrade course. During lunch one day the subject of termination and entitlement came up and Ms. Robertson was told that she was entitled to E.S.A. severance pay. She contacted the Ministry of Labour and she was told to contact her union. She did so that same day. Discussions then ensued. Not receiving any satisfaction Ms. Robertson grieved on May 14, 1997, Ms. Beach on June 3 and Ms. Wilson on June 11.

The employer takes the position the grievors are out of time and consequently the Board is without jurisdiction to deal with this

matter. In support of this proposition it submits that the provisions of the collective agreement are mandatory and that each of the grievors was aware, in May 1996, when their employment was terminated, that the employer was taking the position that they had no entitlement to anything. Consequently, argues the employer, the event giving rise to the grievance crystalized at that time and the grievors were fully aware then of the circumstances that gave rise to the instant grievances.

The union argues that in May 1996 none of the grievors had knowledge of the possibility of any entitlement to severance pay under the E.S.A. and therefore time limits can not be said to start then. It is submitted that the time limits can only run from April 16, 1997 the point at which, once the issue was raised with the College, they told the union that the grievors had no E.S.A. severance entitlement.

The union also argues that under the former provisions of the E.S.A. employees had two years in which to lodge a complaint and as the terminations arose during the currency of the "old" E.S.A., the grievors are entitled to pursue their claim notwithstanding the 20 day limit applying to grievances under the collective agreement.

Finally, and in the alternative, the union argues that the six month time limit under the current provisions of the E.S.A. should apply.

It is trite law that under the collective agreement the 20 day time limit is a mandatory one and this Board has no authority to amend or alter or vary it. The question that arises is what is the point at which the grievors became aware of the circumstances giving rise to the grievances.

Based on the facts the Board concludes that the triggering events were the terminations followed by the enquiries of Ms. Robertson both of the College and the union. The specific question asked by Ms. Robertson was whether she, and the other two grievors, had any entitlement flowing from their terminations. The answer was no. It was at that point that the matter should have been pursued.

The union relied on an award of arbitrator Swan Re Northern College and O.P.S.E.U. dated May 3, 1991 in support of their position. In that award arbitrator Swan puts forward the proposition that time limits start only at the point where the grievor has the requisite knowledge of the facts in the case. The issue in that case was recognition of time worked at the college. New facts came to the attention of the grievor and the Board determined that the time limits ran only from the point at which she became aware of the new facts.

The issue in the instant case is not similar. No new facts came to the attention of the grievors regarding the circumstances giving

rise to the grievance. There was nothing learnt subsequently which changed the material circumstances (i.e.) the determination by the College that the grievors had no post-employment entitlement. That is the issue that was grieved in mid 1997 and it crystalized May 1996.

As arbitrator Brunner wrote in Re Algonquin College and O.P.S.E.U., October 4, 1983

"... it is not when an employee first appreciates or ought reasonably to have appreciated that a breach of a Collective Agreement has or may have taken place that triggers the commencement of a limitation period, but rather when the circumstances or the facts which give rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee".

In the instant case, in March 1997 the grievors may have come on information that led them to appreciate that a breach may have taken place. That did not, however, change the time when the circumstances giving rise to the complaint occurred.

Thus, the Board finds that the 20 day period commenced in May 1996.

With respect to the union's first E.S.A. submission - that a 2 year period applies in which to claim benefits, we point to section 82.3(b) which are the transition provisions and which may have permitted a complaint to be filed beyond six months but only if a

complaint was made within 60 days after the day on which the section came into force. It was not.

The last issue is whether the six month provision of the E.S.A. applies. The Board need not deal with that issue as the grievance was filed outside that period.

The grievances are dismissed.

Signed this 30 day of March, 1998.

M. Brian Keller, Chair

I concur

"Mr. C. Vermey"
Mr. C. Vermey, Union Nominee

I concur

"Mr. B. Matheson"
Mr. B. Matheson, Employer Nominee