

GRIEVANCE AWARD

Headnote 90A772

H E A D N O T E

OPSEU  
OPSEU Local

90A772  
556

R. FRENCH (OPSEU) v. Ontario Council of Regents for the Colleges of Applied Arts and Technology (George Brown College)

Award dated October 26, 1990 (Teplitsky)

Sick Leave - Entitlement During a Strike

The Grievor was on sick leave and receiving sick leave credits which he had accumulated over 23 years of teaching. Then a strike commenced. The Employer refused to pay sick leave credits during the strike. When the strike was concluded, payments resumed. The issue was whether the Grievor was entitled to sick benefits during the strike.

Grievance dismissed: Section 59(2) of the College's Collective Bargaining Act prohibits such payments. In addition, there were two earlier decisions, one at George Brown decided by Stan Beck and one at Fanshawe decided by Joe Samuels which were against us.

Chris G. Paliare

IN THE MATTER OF AN ARBITRATION

CAAT (a)

Local 556

B E T W E E N :

ONTARIO COUNCIL OF REGENTS FOR THE  
COLLEGES OF APPLIED ARTS AND TECHNOLOGY  
(GEORGE BROWN COLLEGE)

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION  
(FOR ACADEMIC EMPLOYEES)

- Grievance of R. French  
No. 90A772

BOARD:

Martin Teplitsky, Q.C.,  
Chairman

David Gorelle  
College Nominee

Barry Stephens  
Union Nominee

APPEARANCES:

On behalf of the  
College:

Douglas K. Gray,  
Counsel

On behalf of the  
Union:

Chris G. Paliare,  
Counsel

Hearing held October, 18, 1990.

D E C I S I O N

The facts are not in dispute. The grievor was on sick leave and receiving sick leave credits which he had accumulated during 23 years of teaching. A strike commenced. The employer refused to pay any further sick leave credits during the strike. After the strike these payments resumed.

Mr. Grey submitted that there was no Collective Agreement in force during the strike and, therefore, no entitlement to sick leave. He also urged that Section 59(2) of the Colleges Collective Bargaining Act prohibits such payments. It provides:

"59(2) Where the employee organization gives notice of a lawful strike, all employees in the bargaining unit concerned shall be deemed to be taking part in the strike from the date on which the strike is to commence, as set out in the written notice, to the date on which the employee organization gives written notice to the Council and the employer that the strike is ended, and no employee shall be paid salary or benefits during such period."

In support of his submission, he relied on a number of previous awards.

George Brown College and OPSEU  
- Grievance of A. Moore  
(S. M. Beck, dated April 29, 1985)

Fanshawe College and OPSEU  
- Grievance of M. A. Geoghegan  
(J. W. Samuels, dated July 16, 1985)

Mr. Paliare submitted that the sick leave credits were accumulated under prior Collective Agreements and can be used regardless of the fact that the Collective Agreement has expired. He submits that Section 59(2) does not apply. It applies to wages and the cost of benefits paid by the employer not benefits already earned. Necessarily, he argues that the awards which have already dismissed this very same claim are manifestly wrong.

The only reference in the Collective Agreement to sick leave is found in a Letter of Understanding and is so short as to permit its reproduction in full.

"Dear Sir:

Re: Cumulative Sick Leave Plans

This will serve to confirm the advice given in negotiations by the Colleges' Negotiating Committee that the Colleges will continue the Sick Leave Plans as in operation on August 31, 1973, for the duration of the Memorandum of Agreement dated the 30th day of May, 1988."

There are 3 reasons why, in my respectful opinion, this grievance fails. First, Sec. 59(2) of the Colleges Collective Bargaining Act, R.S.O. 1980, Chapter 74, provides in part that "Where the employer organization gives notice of a lawful strike, all employees in the bargaining unit concerned shall be deemed to

be taking part in the strike ... (emphasis added). Accordingly, the grievor was on strike. In the eyes of the section, he was not on sick leave for the period of the strike. This result accords with the common sense perspective that it was not likely intended that a professor who was ill would be better placed than a professor who was healthy. The employer was obligated to treat all employees in the same way. Re Lavigne and OPSEU 55 O.R. 2d 449 at 518.

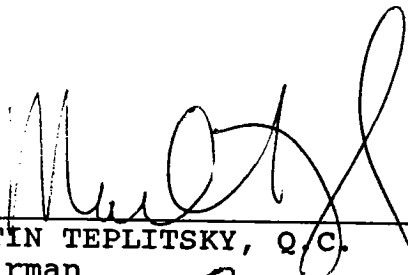
Second, when the parties included the letter of understanding on sick leave supra which requires the continuation of the plan as in operation, they both knew that the plan as in operation did not provide payments during a strike. The very same point raised in this grievance was decided against the Union in the 2 awards, referred to by Mr. Grey, supra. These awards were not challenged in judicial review. At this stage, if the Union wanted benefits to be payable during a strike (assuming such a term could be lawfully obtained in the light of Section 59(2), the forum for achieving this goal was collective bargaining not grievance arbitration.

Finally, I should only refuse to follow these prior awards if I conclude that the results are manifestly wrong. Although my reasons are in part different from those expressed by other arbitrators, we have reached the same result. Accordingly, these

awards, in my opinion, are not manifestly wrongly decided and must be followed by me.

In the result, the grievance must be dismissed.

DATED the 26th day of October, 1990.



MARTIN TEPLITSKY, Q.C.  
Chairman



DAVID GORELLE  
College Nominee

*I concur*



BARRY STEPHENS  
Union Nominee