

Jan 15/82

B E T W E E N:

THE ONTARIO COUNCIL OF REGENTS FOR
COLLEGES OF APPLIED ARTS & TECHNOLOGY
(FANSHAWE COLLEGE)

(hereinafter called the "Employer")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES
UNION

(hereinafter called the "Union")

GRIEVANCE OF S. SAFRAN

(hereinafter called the "Grievor")

BOARD OF ARBITRATION:

W. B. Rayner, Chairman

J. H. McGivney, Q.C., College Nominee

R. Cochrane, Union Nominee

APPEARING FOR THE UNION:

M. Pratt

APPEARING FOR THE COLLEGE:

W. Hayter

A HEARING IN RELATION TO THIS MATTER WAS HELD IN LONDON, ONTARIO, ON
13 AUGUST 1981

This matter comes on as a result of an award issued by the present Board to the parties with respect to a grievance filed by the grievor.

In that award, the Board concluded that the grievor was in fact a full-time probationary employee and was entitled to ninety days calendar notice pursuant to Article 8.03 (c) of the Collective Agreement. The Board retained jurisdiction with respect to any compensation payable to the grievor. The parties were unable to agree on the question of compensation and the matter now comes back before the Board.

There are two issues in dispute. The grievor, in her grievance, claimed that she in fact was working as a full-time employee from September 10th, 1978 and seeks payment of salary for that position from that date.

In 1979, the grievor was dismissed. In its original award, the Board found that the grievor was a full-time employee and that she did not receive proper notice of dismissal. The Board awarded that payment in lieu of notice be given to the grievor.

The parties have difficulties in determining the appropriate formula for calculating the amount of pay with respect to notice.

The second, and more important difficulty, is that

the Union claims that the grievor is entitled to receive payment from October of 1978 to October of 1979 on the basis of her now determined status of a full-time employée.

Mr. Pratt argued that the Board remained seized of the matter and that we still had jurisdiction to deal with the question.

Mr. Hayter argued, first, that the Board did not have jurisdiction to deal with this matter as the issue in dispute was not before us. Secondly, he argued that the grievor, if she was improperly classified as the Board found with respect to its determination of notice, she should have been well aware of that fact much earlier. Since the grievor failed to file a grievance pursuant to Article 9.02 of the Collective Agreement which sets out a twenty-day time limit period, and since the grievance was one of a continuing nature, the grievor was out of time with respect to this claim.

Finally, he argued that under the provisions of Article 3.03 (b) of the Collective Agreement, a full-time teacher by an agreement with the College, may work on an hourly rate as opposed to a salary basis.

We do not propose to deal with the first and third submissions put forward by Mr. Hayter, as we feel that the matter can be resolved on the basis of his second submission.

From the facts found by the Board in its earlier award, it is obvious that the grievor knew or should have been aware of the fact that she was not being paid as a full-time employee. Although the Board recognizes that there was some confusion in the parties' minds as to the grievor's status, the facts before the Board indicate clearly that the grievor should have filed her grievance with respect to the prior year much sooner than she did.

In actual fact, the situation would appear to this Board to be that the grievor was content to work under whatever arrangements she had made with the College and that her status only came into question upon her termination. Although it is true that the grievor did, in fact, make this claim upon her termination, that claim should have been made much sooner.

Hence, we are of the view that the amount of compensation granted by this Board must be determined with due regard to the provisions of Article 9.02 of the Collective Agreement. That is to say, a continuing grievance would not be barred by the time limits in Article 9.02, however, those time limits do affect the extent of relief or compensation that may be awarded. It may well have been that if the grievor had indicated to the College earlier that she was working hours to the extent that she was now properly considered a full-time employee, the College may well have decided at that point in time to give notice to her. It is not fair to the College, in the

circumstances of this case, to now permit the grievor to claim salary based on her full-time position, found by this Board, for the entire year before she filed the grievance.

Hence, with respect to the second issue before the Board, the Board concludes that the grievor is not entitled to compensation between the two dates in October in 1978 and 1979. Even if one could conclude that the grievor would be entitled to payment for the twenty days immediately preceding her grievance, on the basis that it was an ongoing grievance, that twenty-day period is subsumed by the ninety-day period of notice.

The parties also have difficulty in determining the appropriate mechanism for paying the grievor the ninety-day notice. The Collective Agreement requires notice of ninety calendar days. The difficulty between the parties arises for twenty-three days in December. These twenty-three days make up the last of the ninety-day period.

The Union takes the position that the grievor should receive payment based on one-tenth of her annual salary multiplied by twenty-three over thirty-one. It takes this position because the parties under the Collective Agreement pay on a monthly basis.

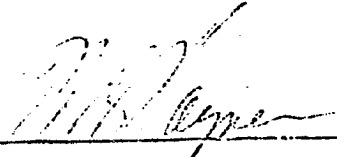
The College takes the position that the calculation should be ten percent of the annual salary multiplied by the number of working days in December over the period in December. This

generates a lower amount of money.

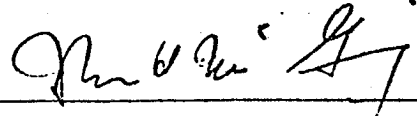
In our view the Union's position is correct with respect to this latter claim. There is no doubt that the parties do in fact make payment on a monthly basis. There is also no doubt that the purpose of the notice is to allow the employee to adjust to the dislocation caused by the termination. Both of these factors weigh heavily in favour of the Union. Accordingly, we are of the view that the Union's position is to be preferred with respect to the calculation and its calculation should be adopted for the calculation of the payment of monies under the notice provisions of the Collective Agreement. The Board so orders.

There was some suggestion by the Union that it would seek to have some of the monies payable to the grievor, if she was successful on her main claim, directed to the Union as Union dues. In view of the fact that the grievor was unsuccessful on her main claim in terms of compensation, we make no award with respect to Union dues.

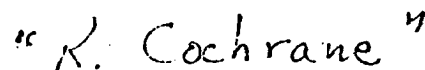
DATED at London, Ontario, this 15th day of January 1982.


W. B. Rayner, Chairman

I concur/~~dissent~~


J. H. McGivney, Q.C., College Nominee

I ~~concur~~/dissent


R. Cochrane, Union Nominee

R. Cochrane, Union Nominee