

Grievance: #11-P-00404
Decision: November 9, 2014
Arbitrator: Richard Brown

Grievor: Nunavut Employees Union
Department: All - Policy Grievance
Issue: Article 19.07, casual leave for medical care

Background:

The NEU filed a policy grievance contesting the Employer's uniform practice of denying paid leave to any employee who obtains medical care outside his or her home community. Employees requiring medical care outside of their home community have been denied paid casual leave under 19.07(b) although the language in the clause is permissive rather than obligatory:

(b) Employees **may** be granted casual leave with pay to a maximum of one day per occurrence where the employee's physician requires him/her to attend regular or recurring medical treatments and check-ups. **Such casual leave shall not be unreasonably denied.**
[emphasis added]

The union argued that, although the language is permissive, it is unreasonable to adopt a blanket rule rather than to make a decision on a case by case basis. The Employer's practice is to consistently grant medical travel leave and reimburse for travel expenses under Article 20.10 but not to grant casual leave with pay under 19.07(b) even though the language under 20.10 is also permissive.

Decision: The Arbitrator found in favour of the NEU. He found the Employer acted unreasonably in adopting a blanket rule denying casual leave to employees who leave their home community to obtain medical care. In reaching his decision he followed the **administrative law concepts for proper exercise of discretion** *[emphasis added]* set out in caselaw [*Kuyntjes*, 513/84 (Verity)]:

1. The decision must be made in good faith and without discrimination.
2. It must be a genuine exercise of discretionary power, as opposed to rigid policy adherence.
3. Consideration must be given to the merits of the individual application under review.
4. All relevant facts must be considered and conversely irrelevant consideration must be rejected.

In his decision he states: "In deciding whether to grant casual leave, the Employer is entitled to consider whether the applicant is being reimbursed for travel expenses and paid for time spent travelling. However, these are not the only factors to be weighed. Consideration must be given to other relevant circumstances."

Lessons learned: When applying **any** discretionary authority that the Employer may have, the above four concepts of administrative law must be taken into consideration before approval or denial is determined.

ER Ruling: A ruling on Casual Leave Approval for Employees with Recurring Medical Treatments/Checkups Outside their Home Community (Article 19.07(b)) has been made by Employee Relations and Job Evaluation on July 21, 2015. The ruling can be found on the GN intranet site.

Remember, you can always consult with your department's Employee Relations Consultant to discuss when it is appropriate to grant casual leave for outside of the community.