

## **BCTF/School District No. 36 (Surrey): Maternity/Parental Employment Insurance (EI) Top-Up**

The Surrey collective agreement provides for top-up of both maternity and parental EI benefits. The grievor, a father, applied for and received parental leave and EI top-up for summer 2002. He then applied for leave and further top-up for January to March 2003. The second leave was granted but top-up was denied. This grievance raised four questions:

1. Are teachers entitled to top-up during the summer non-teaching period?
2. Are teachers entitled to top-up in non-consecutive portions?
3. May teachers receive top-up at 95% of current salary for the first two weeks, regardless of whether they receive EI benefits during those two weeks?
4. Was the grievor entitled to parental leave and top-up for the period January to March 2003?

The essence of the Union's argument was that top-up is predicated on receipt of EI benefits and since teachers were able to split EI benefits under the *Employment Insurance Act* they should be able to split their top-up. Further, since they receive EI benefits in summer, they should receive top-up in summer. The essence of the Employer's argument was that an employee must be on leave to receive top-up and the leave provisions in the collective agreement and the *Employment Standards Act* (ESA) require the leave, and thus top-up, be taken in a consecutive period. BCPSEA also argued that as teachers do not work in summer, a leave is not required and top-up should not be paid.

Arbitrator Gabriel Somjen denied the grievance and answered the four questions as follows:

1. Teachers are eligible for top-up in summer if they qualify for leave under the ESA.
2. Top-up is available only during a leave pursuant to the ESA. Such leaves must be continuous. Therefore, top-up is only payable during a continuous period and cannot be split.
3. Teachers should receive no more than a total of 95% of weekly earnings during the first two weeks, including EI payments. Teachers are not entitled to collect both EI and SEB benefits for the two week waiting period when the teacher's spouse has already served the waiting period.
4. Although the grievor technically did not need a "leave" for the summer of 2002, he was granted a parental leave and received EI benefits and top-up. As the leave between January and March 2003 was not consecutive with the first leave, he was not entitled to top-up.

*BCPSEA Reference No. A-31-2005*

**BCTF/School District No. 68 (Nanaimo-Ladysmith): Seniority — Definition of “Aggregate”**

Seniority for continuing teachers is defined in the collective agreement as “a teacher’s **aggregate** length of service in the employment of the board for actual time worked, inclusive of services under temporary appointment and part-time teaching” (emphasis added). The BCTF argued that if a teacher resigned and was later rehired into a continuing position, the seniority calculation would “aggregate” to include service prior to the resignation.

Arbitrator Judi Korbin denied the grievance, saying “it is clear that the aggregation of seniority under Article 13.3, while not requiring continuous service per se, contemplates an unbroken period of employment with the Board. Put another way, while service due to leave, part-time work and such are to be aggregated for seniority purposes, this does not include periods of time prior to termination for cause, severance, resignation or retirement.”

*BCPSEA Reference No. A-30-2005*

**BCTF/School District No. 73 (Kamloops/Thompson): Partial Medical Leave**

Prior to January 6, 2004, the Board had granted partial medical leaves only in cases involving a return-to-work following an illness for the purpose of assisting teachers in returning to work full-time. On January 6, the Board confirmed a Settlement Agreement in response to several grievances. Specifically, the Board agreed to reimburse from sick leave credits two teachers who had sought a reduced assignment for medical reasons and confirmed a mutual understanding that “teachers are able to request partial sick leave and the Employer is able to request required medical documentation to support any such request.” In September 2004, the Union filed a new grievance on behalf of two teachers seeking reimbursement from sick credits going back to 1997 and 2000.

Arbitrator Joan McEwen dismissed the grievances. She found the grievances untimely: “The delay in filing the grievances was substantial, and no reason was given for that delay. In addition, the delay occurred at the beginning of the grievance procedure, namely before the grievances were filed.” Arbitrator McEwen also found that the Union had not established that the Settlement Agreement was intended to be retroactive in its effect.

In response to the Union’s claim for duty to accommodate, the arbitrator said, “Given that the Grievors never sought medical leaves, and hence, the Employer would have had no knowledge of an alleged disability, it cannot be said to have failed to accommodate it.”

*BCPSEA Reference No. A-32-2005*

**Questions**

If you have any questions concerning these decisions, please contact your BCPSEA liaison. If you want a copy of the complete award, please contact **Laura Parks** at [laurap@bcpsea.bc.ca](mailto:laurap@bcpsea.bc.ca) and identify the reference number found at the end of the summary.