

ARBITRATION AWARD SUMMARY

09-P-00782: VOLUNTARY REASSIGNMENT PROBATION PERIOD

CASE OUTLINE

This grievance falls under the 2005-2009 collective agreement.

Article 2.01(ii) was negotiated to encompass a situation where the Parties had recognized it to be in some employees' best interest to have the flexibility of moving into lower rated positions, receiving less pay in return for the personal benefit to be derived, whatever it might be. The voluntary reassignment category was considered by management to as an employment decision made by the employee that is certainly distinct from being demoted, transferred, and/or promoted.

The main issue of this case is whether bargaining unit employees already employed by the Government of the Northwest Territories, who choose to accept a voluntary reassignment, are subject to serving another probationary period.

EMPLOYER'S ARGUMENT

The Employer argues that employees taking voluntary assignments are required to serve a probationary period (unless specifically waived in individual circumstances) because it is important for any employee moving into a set of differently described duties to demonstrate over a suitable period of time, the necessary skills and ability to do the job.

Whether it is a promotion, lateral transfer or moving into a lesser rated position within the Public Service, an appointment into a described position occurs. And in this context, section 20(3) states that the employee is subject to a probationary period of six months (and under subsection (5) the probationary period may be subject to extension). This would be applied, even when there is no break in service, no change in benefits, and in situations where an employee is moving into fundamentally different duties, and thereby being without the "same duties" exception contained in article 2.01(y).

The Employer admits that the language of article 20.1 is presumably silent on the application of a probationary period to employees taking voluntary reassignments, but submits that understanding the language as a whole and then taking the probationary requirement into

context, all with regards to the *Public Service Act* requirements, will show that the Employer should not be prevented from applying a probationary period to employees taking voluntary assignments from within the Public Services, because there is no express prohibiting language contained in the collective agreement.

UNION'S ARGUMENT

The Union contends that that applying a probationary period to an employee accepting voluntary reassignment breaches the collectively bargained obligations of the Employer and that this category constitutes a unique circumstance not explicitly addressed in any probation language supporting the Employer's position.

Article 2.01(y) defines Probation as "a period of six (6) months from the day upon which an employee is first appointed to, or promoted within, the Public Service," and there is no reference to the situation of taking on lesser paying duties as a reassignment for which this Probation would apply.

The Union understands that first appointments, transfers, demotions and promotions are the only situations outlined in article 20.1 that require a probationary period. The Union argues it is doubtful that the Parties could have intended a probationary period attaching to one performing lower rated job duties because the language of article 20.1(y) expresses that a person taking a straight transfer into a situation with the same duties has no such obligation.

The Union further argues that if the Parties had intended to apply a probationary period to voluntary reassignments, the language should be clear and unmistakable being that it affects an employee's job security. Therefore, it is not sufficient to claim that the omission of such is simply an oversight, and enforcing such a requirement would constitute unilateral importation of nonexistent language on the part of the Employer. As written, there is no language to indicate that a renewed probationary period applies to voluntary reassignments.

DECISION

It is apparent that a voluntary reassignment employee's occurs when the employee "accepts a different position where the maximum rate of pay is less than his/her present rate of pay." It is accordingly the formal act of making an accepted appointment to a position in the Public Service which triggers the section 20 probation language under the *Act*, which then clearly subject to the probation language under section 20 of the *Public Service Act*.

Because the language in article 2.01(y) of the collective agreement does not expressly contradict this result, and because there is no conflict between this result and the *Act* and the collective agreement and this probation requirement, there is no violation on part of the Employer and this grievance is decided in the Employer's favour.