

## **Arbitration Award Summary (Preliminary Objection)**

### **17-P—02163 – Policy Grievance – Pay and Benefits**

#### **Case Outline:**

This grievance falls under the Collective Agreement expiring March 31, 2016. A new Collective Agreement wasn't signed until April of 2019.

The Union filed a policy grievance on August 14<sup>th</sup>, 2017 claiming several of its members have not been provided their benefits in the timelines as outlined in the Collective Agreement. The Union has provided 2 examples with this Grievance. The Employer claims that these examples are isolated incidents and should be dealt with independently. Subsequently, several other examples have arisen, inclusive of pay related issues.

The Employer has indicated that they are reserving their right to raise a preliminary objection relating to the scope of the grievance as the original grievance was not inclusive of pay issues.

#### **Employer's Argument:**

The Employer had taken the position that while the Union intended to raise pay issues with benefit issues, these two issues were stand-alone items and that "...pay is never a benefit", although later confirmed that benefit deductions are typically deducted from an employee's pay check.

While the Employer believes these issues should be raised and dealt with independently, the Employer had acknowledged, in response to the Union raising new concerns and examples, that "I have noted the example and the union's position which I understand intends to rely on for Grievance #17-P-02163".

The Employer contends that as pay issues were raised after the original policy grievance, the Employer did not have to opportunity to fully understand the grievance and as such it couldn't have been addressed or come to a resolve.

#### **Union's Argument:**

The Union testified that that the main issue was that members were receiving delays in their benefits being set up as well as the lack of response from the Employer to their repeated requests to have these issues rectified. Given the number of affected employees, it was decided that the best approach was to address it as a Policy Grievance as opposed to on individual basis.

When asked their interpretation of the Employers email' "I have noted the example and the union's position which I understand intends to rely on for Grievance #17-P-02163", the Union stated they interpreted it to mean that the examples "would go on file with the rest of them" and that the Employer was recognizing there was no need to file separate grievance for each of the claims. The Union contends

that if the employer objected to adding pay issue to be inclusive of the grievance, there would have been separate grievances filed.

Contrary to the Employers statement, the Union takes the position that pay is a type of benefit, similar to all benefits of the Collective Agreement, earned for work performed by the Employee.

The Union further contends that raising the issue of pay does not change the nature of the Grievance, it is simply an example of another benefit with held for an unreasonable amount of time.

The Employer had failed to put the Union on notice that it would object pay issue to be added to this grievance, but rather acknowledged that these examples would be added. By allowing them to be added, then 2 years later objecting to them, the Employer has denied the Union the opportunity to resolve these issues.

**Arbitrator's Decision:**

The Employer has a point in raising that, while pay and benefits have a compensatory aspect, they are treated separately in an employment relationship and are independent in the Collective Agreement; Article 24- Pay does not speak to benefits.

The main complaint by the Union is that employees were not having their claims processed in a timely matter, this is the core of the dispute.

While pay and benefits are separate issues, the link between the two is sufficient enough to fall under this grievance relating to delayed reimbursement. Because the pay issues arose after the grievance was filed, is not a sufficient enough basis for it to fall outside of the Grievance's scope. Dismissing pay issues under this grievance would undermine the flexibility of the grievance and arbitration process.

The email correspondences between the Employer and Union indicate that the Employer was aware of the Unions intention to add pay issues as examples.

The preliminary Objection is dismissed, and the parties may reconvene to deal with the merits of the grievance inclusive of both pay and benefit examples.