



IN THE MATTER OF AN ARBITRATION

BETWEEN:

**THE GOVERNMENT OF THE NORTHWEST TERRITORIES as
represented by THE MINISTER RESPONSIBLE FOR THE
PUBLIC SERVICE ACT**

AND:

THE UNION OF NORTHERN WORKERS

(UNION POLICY GRIEVANCE NO. 96-767)

Talbot
?

A W A R D

MERVIN I. CHERTKOW
— Arbitrator and Mediator —
#300 - 180 Seymour Street
Kamloops, B.C. V2C 2E3

IN THE MATTER OF AN ARBITRATION**BETWEEN:**

THE GOVERNMENT OF THE NORTHWEST TERRITORIES as
represented by **THE MINISTER RESPONSIBLE FOR THE**
PUBLIC SERVICE ACT

(hereinafter called the "employer")

AND:

THE UNION OF NORTHERN WORKERS

(hereinafter called the "union")

(UNION POLICY GRIEVANCE NO. 96-767)

BOARD OF ARBITRATION

Mervin I. Chertkow - Single Arbitrator

ADVOCATES

Mark Kent and Sharilyn Alexander - for the employer
Chris Dann - for the union

DATE AND PLACE OF HEARINGS

June 24th, 1997 at Yellowknife, N.W.T.

DATE OF AWARD

July 2nd, 1997

A W A R D**I**

This grievance was heard under the expedited arbitration procedure as set out in article 37.27 of the collective agreement between the parties.

This is a policy grievance brought by the union as a result of an Attendance Management Program instituted by the Stanton Regional Health Board. The union asserts the policy violates article 9.01 of the collective agreement which states;

EMPLOYER DIRECTIVES

- 9.01 (a) The Employer shall provide the Union with a copy of all Personnel Directives or other such instruments within thirty (30) days of issuance.
- (b) Where the Employer proposes to issue a Personnel Directive which is intended to clarify the interpretation or application of the Collective Agreement, the Employer shall consult with the Union prior to issuing the Directive.

That is because, asserts the union, it is in breach of Article 5.03 - **CONFLICT OF PROVISIONS** which states;

- 5.03 Where there is any conflict between the provisions of this Agreement and any regulation, direction or other instrument dealing with terms and conditions of employment issued by the Employer, the provisions of this Agreement shall prevail.

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The specific provision in the policy which the union asserts is in conflict with other provisions of the collective agreement is the definition of "absenteeism" as found on page 3 of the policy. It says;

Absenteeism:

Failure of the employee to be at work for scheduled shifts due to casual leave (article 19.06), sick leave or special leave.

It argues the inclusion of approved leaves as found in articles 19 and 20 of the collective agreement as "absenteeism", which would trigger management responses to unacceptable attendance as found in the policy, is wrong.

On its part, the employer says the definition of absenteeism as contained in the policy does not breach any of the provisions of the collective agreement.

II

The parties filed an Agreed Statement of Facts as follows;

1. On January 31, 1997, the Stanton Regional Health Board implemented an Attendance Management Program.
2. While in the Draft stages a copy of the Attendance Management Program was provided to Mr. Dave Talbot, a representative of the Union of Northern Workers, for comments and concerns identified by the Union.
3. On December 3, 1996 Mr. Talbot provided the Union's comments and concerns to Mr. Glenn Alexander of Stanton Yellowknife Hospital.
4. The Union maintains that the implementation of this policy violates Article 9, 20 and 40 of the Collective Agreement.

III

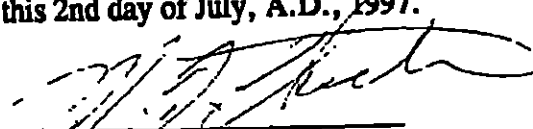
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After hearing the arguments of the advocates in support of the positions advanced by them in this dispute, I have concluded the grievance of the union is well-founded.

Here, the implementation of the employer's Attendance Management Program which defines "absenteeism" as failure of the employee "to be at work for scheduled shifts due to casual leave (article 19.06), sick leave or special leave" is in direct conflict with the provisions of article 9.03 which restricts the employer from creating any direction or other instrument dealing with terms and conditions of employment which may be in conflict with provisions in the collective agreement. That is what has happened here with respect to casual, sick and special leaves which are set out in the collective agreement.

Accordingly, the grievance of the union is upheld. It is hereby declared that the definition of absenteeism as set out in the Attendance Management Program is in breach of article 5.03 of the collective agreement.

DATED at Kamloops, British Columbia, this 2nd day of July, A.D., 1997.



MERVIN I. CHERTKOW
Arbitrator