



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. 97-580)



A W A R D

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

July 2nd, 1997

DATE OF AWARD

June 25th, 1997 at Yellowknife, N.W.T.

DATE AND PLACE OF HEARINGS

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

ADVOCATES

Mervin I. Cherkow - Single Arbitrator

BOARD OF ARBITRATION

(UNION POLICY GRIEVANCE NO. 97-580)

(hereinafter called the "union")

THE UNION OF NORTHERN WORKERS

AND:

(hereinafter called the "employer")

**THE GOVERNMENT OF THE NORTHWEST TERRITORIES as
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PUBLIC SERVICE ACT**

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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.

At issue in this policy grievance is whether employees who have chosen to receive Separation Assistance payments on a bi-weekly basis, and who are still residing in the community, are entitled to Northern Allowance.

The union says employees in that situation are entitled to Northern Allowance while the employer takes the opposite view asserting they are not so entitled.

II

An employee who has one year or more continuous employment and is laid off is entitled to be paid severance pay as provided in article 32.01 of the collective agreement. In such circumstances, the employee who is laid off has several options he or she may exercise. One of the options, and which is at the core of this dispute, is article 32.02 (a) (i) which states;

32.02 An employee who is laid-off following the signing of this Agreement, may request one of the following options:

- (a) (i) Separation Assistance - The lay-off shall receive severance pay of two (2) weeks pay per year for the first ten complete years of continuous employment, and three (3) weeks pay for each succeeding complete year of**

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continuous employment. The lay-off can request this payment be made bi-weekly to extend employment or in annual installments. The total amount of severance pay which may be paid under this sub-clause shall not exceed 65 weeks of pay.

Employees who have taken Separation Assistance on a bi-weekly basis have received superannuation, disability insurance and sudden death benefits on the basis that these benefits were "normally available to employees during the regular course of their employment (see 3rd level response by the employer dated February 12th, 1997)". However, the employer took the position that allowances such as the Northern Allowance were not included in those benefits.

One of the issues that had to be dealt with was whether an employee who has been laid and has opted to follow the course set out in article 32.02 (a) (i) could be deemed to be still under "continuous employment" as against a non-continuous employment status.

During the course of the proceedings the employer conceded that its administration of the layoff severance benefit under article 32.02 (a) (i) does not comply with the strict terms of that provision because of computer systems programming issues.

Further, the union accepted that whether the calculations are based on the laid off employee having either continuous or non-continuous status, in the result, there is no significant difference in the payment received by them.

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III

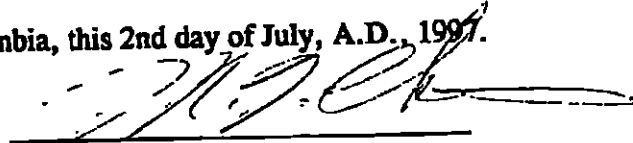
After considering the representations by the advocates for the parties, I have concluded the grievance is not well-founded and must be denied.

It was urged by the employer that there is a distinction between an employee's pay and his or her allowances. It points to article 24.01 which says that employees are entitled to be "paid for services rendered ... at pay rates specified in the appendices attached". Further, article 24.02 (5) (a) which says;

- (5) (a) Where an employee has received more than his/her proper entitlement to wages or benefits or where retroactive membership dues deductions are necessary, no continuing employee shall be subject to such deductions in excess of twenty percent (20%) of the employee's net earnings per pay period except in recoveries for absence without leave.

I think the position taken by the employer is correct. The total amount of severance pay to which an employee who opts under the provision of article 32.02 (a) (i) is limited to "65 weeks of pay". It does not say "65 weeks of pay and allowances". If the position of the union was correct and I were to read in "allowances" to the 65 weeks of pay limitation, then, simply put, I would be rewriting that provision of the collective agreement by incorporating the Northern Allowance into the concept of "65 weeks of pay". No arbitrator can amend the bargain reached by the parties and accordingly, the grievance of the union must be dismissed for the reasons stated above. It is so awarded.

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


MERVIN I. CHERTKOW
Arbitrator