

In the Matter of an Arbitration
Under the *Labour Relations Act, 1995*

BETWEEN:

Canadian Union of Public Employees and Its Locals 905.17 (Part-Time and Casual) and 905.18 (Full-Time)
(THE "UNION")

AND

Vaughan Public Library Board
(THE "EMPLOYER")

(National Day of Mourning)

Before: Adam Beatty, Sole Arbitrator

Appearances

For the Union

Dianna Christie, National Representative
Alexandra Eisenbichler
Jeffrey Dodge

For the Employer

Jeremy McLeish, Counsel
Erin Lane
Kristen Stevenson
Margie Singleton
Christine Fiorini

This hearing was held via videoconference on January 20, 2023.

AWARD

INTRODUCTION

1. Queen Elizabeth II passed away on September 8, 2022. September 19, 2022 was declared to be a National Day of Mourning to recognize the passing of the Queen (the "National Day of Mourning"). The Employer did not recognize the National Day of Mourning as a paid holiday under the parties' Collective Agreements. The Union grieved that decision.

2. The issue before me is whether the National Day of Mourning should be considered a holiday under Article 15.01 of the parties' Collective Agreements. As will be set out in greater detail below, whether or not the National Day of Mourning should have been recognized as a holiday under these Collective Agreements turns on the language in those Collective Agreements and the relevant facts.

3. The four following grievances (the "grievances") were before me:

2022-Policy Grievance – 905.17 – Vaughan Public Library (FT) – 548
2022-Policy Grievance – 905.18 – Vaughan Public Library (PT) – 549
2022-Group Grievance – 905.17 – Vaughan Public Library (FT) – 550
2022-Group Grievance – 905.18 – Vaughan Public Library (PT) – 551

4. The hearing for this matter was conducted on January 20, 2023. The parties entered an Agreed Statement of Facts (the "ASF") into evidence. That was the only evidence before me. It is not necessary to reproduce the ASF in its entirety here, however I will make reference to the relevant sections as needed.

5. For the reasons set out below, I am satisfied that the National Day of Mourning is not a holiday under these Collective Agreements. As such the grievances are dismissed.

BACKGROUND

6. There is one Collective Agreement for the part-time and casual employees and another for the full-time employees. The relevant provision is identical in both Collective Agreements.

7. Article 15.01 of both Collective Agreements provides as follows:

15.01 All employees will be paid for the following holidays:

New Year's Day
 Family Day
 Good Friday
 Easter Monday

Victoria Day
 Canada Day
 Civic Holiday
 Labour Day

Thanksgiving Day
 Christmas Day
 Boxing Day

and any other day proclaimed by the federal, provincial or municipal governments.

8. As set out above, Queen Elizabeth II passed away on September 8, 2022.

9. The following evidence is taken from the ASF. On September 13, 2022, the Prime Minister of Canada held a news conference where he stated, amongst other things, the following:

We have also chosen to move forward with a federal holiday on Monday. We will be working with the provinces and the territories to try and see that we're aligned on this. There are still a few details to be worked out, but declaring an opportunity for Canadians to mourn on Monday is going to be important.

10. Later that day, the Minister of Labour Mr. Seamus O'Regan issued a statement indicating that "Federally regulated employers are welcome to follow suit, but they are not required to do so".

11. The Prime Minister also published a statement regarding the National Day of Mourning on September 13, 2022. The statement included the following:

Statutory holidays in Canada can only be granted through legislation, which must pass through the House of Commons and the Senate, and receive Royal Assent. The Government of Canada has consulted the provinces and territories, who will determine an appropriate way to mourn Her Majesty Queen Elizabeth II in their jurisdictions.

12. Also on September 13, 2022, the Canada Gazette (the official gazette of the Government of Canada that publishes all public notices, official appointments, and proposed regulations from the Government of Canada) published "The Proclamation Requesting that the People of Canada Set Aside September 19, 2022, as the Day on Which They Honour the Memory of Her Late Majesty Queen Elizabeth the Second, Who Passed Away on September 8, 2022". This proclamation did not declare the National Day of Mourning to be a holiday.

13. On September 16, 2022, the Office of the Chief Human Resources Officer of the Government of Canada issued a directive to all Heads of Human Resources, Directors/Chiefs of Labour, Relations and Compensation, and the Public Service Pay Centre stating:

This Day of Mourning is a one-time holiday for all persons employed by the core public administration (CPA). It is not a Designated Paid Holiday; however, this day is to be administered pursuant to applicable authorities such as collective agreements and terms and conditions of employment.

14. The National Day of Mourning was not added to the list of general holidays under the *Canada Labour Code*, or the list of holidays under the *Holidays Act*. The National Day of Mourning has also not been proclaimed a public holiday under the Ontario *Employment Standards Act, 2000*. Nor was it proclaimed a public holiday by the City of Vaughan.

POSITION OF THE UNION

15. The Union emphasized that this case hinged on the term “proclaimed” as used in Article 15.01 of the Collective Agreements. Relying on the language in the Collective Agreements, along with the facts set out in the ASF (as summarized above), the Union argued that the National Day of Mourning had been proclaimed to be a federal holiday. As such, employees under the parties’ Collective Agreements were entitled to be paid for the day.

16. According to the Union, and again pursuant to the ASF, on September 13, 2022, the Prime Minister of Canada proclaimed that September 19, 2022 would be a National Day of Mourning and a federal holiday. In addition, the Minister of Labour Mr. O’Regan indicated that while the federal holiday announced by the Prime Minister would apply to federal government employees it would not apply automatically to federally-regulated employees. Mr. O’Regan stated that federally-regulated employers were welcome to recognize the holiday but not required to do so.

17. Finally, the Union pointed to the directive issued by the Office of the Chief Human Resources Officer of the Government of Canada to all Heads of Human Resources, Directors/Chiefs of Labour, Relations and Compensation, and the Public Service Pay Centre indicating that the National Day of Mourning would be treated as a “one-time holiday” and that it was to be administered pursuant to any existing collective agreements.

18. The Union argued that the language in the Collective Agreements was clear on its face. In addition, the Union noted that the title of Article 15

is "Holidays" not "Statutory Holidays". The Union argued that a holiday did not need to be a statutory holiday to qualify under this language. Absent additional language, reading in that type of requirement would not be appropriate.

19. According to the Union, the language in the Collective Agreements did not impose any additional conditions before a day could be found to be a holiday under Article 15.01. As long as the holiday was proclaimed by one level of government the requirements of Article 15.01 are met. The Union argued that in this case, the facts revealed that the Federal Government had proclaimed the National Day of Mourning to be a holiday. As such, the requirements of Article 15.01 had been met and the Employer's decision not to recognize the National Day of Mourning as a holiday violated the Collective Agreements.

POSITION OF THE EMPLOYER

20. The Employer argued that the National Day of Mourning did not meet the requirements of Article 15.01. Accordingly, the decision not to recognize it as a holiday did not violate the Collective Agreements.

21. The Employer argued that this was a contract interpretation case. The Employer argued that every word in a collective agreement must be given meaning. Words cannot be ignored. Different words have different meanings. Where a specific word is chosen, meaning must be given to that word.

22. The Employer relied on the decision of Arbitrator Surdykowski in *Ontario Power Generation v. Society of Energy Professionals*, 2015 CanLII 56079 (ON LA) ("*OPG*") in support of the interpretive principles it relied upon. At paragraph 7 of *OPG*, Arbitrator Surdykowski summarized three fundamental rules of collective agreement interpretation. First, he noted that the words in a collective agreement "must be given their objective plain and ordinary contextual labour relations meaning". Second, he indicated that all words must be given meaning and that different words should be given different meanings unless this would lead to an absurd or illegal result or a result that was inconsistent with the overall scheme and structure of the collective agreement. Third, Arbitrator Surdykowski noted that words and phrases should not be read into a collective agreement except in limited circumstances where it is necessary to make the collective agreement consistent with the applicable legislation or where it is required for the "purposive operation of the collective agreement".

23. Like the Union, the Employer argued that the term “proclaimed” in Article 15.01 was key to these grievances. However, the Employer also argued that the terms “holiday” and “Federal Government” were equally important.

24. Applying the principles of interpretation set out in *OPG*, the Employer argued that the term “proclaimed” has a specific meaning. Applying that meaning to the facts of this case, the Employer argued that the National Day of Mourning had not been proclaimed to be a holiday.

25. The Employer relied on the following decisions in support of its interpretation of the term “proclaimed”: *CUPE 1252 and the Province of New Brunswick (Finance and Treasury Board)*, 2022 CanLII 95985 (NB LA) (“*New Brunswick*”); *Alberta Union of Provincial Employees and Alberta Health Services*, 2022 CanLII 22226 (AB GAA) (“*AUPE*”) and; *Vaughan Public Library Board and Canadian Union of Public Employees, Local 905.17 (Part-time and Casual) and 905.18 (Full-time)*, 2022 CanLII 79947 (ON LA) (“*Vaughan Public Library*”).

26. In *New Brunswick*, Arbitrator Breen was required to determine whether the employer violated the collective agreement when it failed to recognize the National Day for Truth and Reconciliation as a paid holiday. The relevant article of that collective agreement listed a number of holidays. It also indicated that “all other days proclaimed as holidays” by either the federal or provincial governments would be recognized as holidays. Arbitrator Breen equated the term “proclaimed” with “officially declared” and indicated that upon receiving Royal Assent legislation is “proclaimed or officially declared – set to come into force”. According to Arbitrator Breen legislation being proclaimed marks the “completion of a legislative enactment process”. In other words, “proclaimed” has a specific meaning that is directly linked to the legislative process and marks the end of that process.

27. Similarly, in *AUPE* Arbitrator Bartel was asked to determine whether the National Day for Truth and Reconciliation constituted a holiday under the collective agreements before him. Here too, the language at issue included a provision that all general holidays “proclaimed” by the municipal, provincial or Federal governments would be considered a holiday. As was the case with the decision of Arbitrator Breen in *New Brunswick*, Arbitrator Bartel linked the term “proclaimed” to the end of the legislative process. Arbitrator Bartel noted that Bill C-5 (the Bill that effectively recognized the National Day for Truth and Reconciliation as a holiday) received Royal Assent on June 3, 2021. According to Arbitrator Bartel, as of that date “the National Day for

Truth and Reconciliation was “proclaimed” as that word is generally understood in legal parlance.”

28. Arbitrator Knopf also linked the concept of “proclaimed” with the end of the legislative process (at least implicitly) in her decision in *Vaughan Public Library* where she equated the proclamation of the National Day of Truth and Reconciliation with the date Bill C-5 received Royal Assent.

29. The Employer noted that there was no such legislative process in this case. As such, the National Day of Mourning was never “proclaimed” to be a holiday.

30. Turning to the word “holiday”, the Employer argued that the National Day of Mourning was not a “holiday”. The Employer argued that the Union’s case relied on the term holiday being used twice. Once by the Prime Minister during his September 13 news conference and once by the Office of the Chief Human Resources Officer of the Government of Canada where reference was made to the National Day of Mourning being a “one-time holiday”.

31. The Employer noted that the National Day of Mourning was not proclaimed a holiday in the Canada Gazette. Moreover, the Employer relies on the statement released by the Prime Minister following his September 13 news conference where he indicated that statutory holidays can only be granted through legislation. The Employer also relied on my decision in *Labourers’ Union of North America, Local 1059 and London & District Concrete Formwork Contractors’ Association*, 2021 CanLII 94043 (ON LA) where I held that a statutory holiday must be proclaimed by a level of government.

32. The Employer also noted that the National Day of Mourning was not made a holiday under the *Canada Labour Code*, the *Holidays Act*, or any other legislation. Taken as a whole, the Employer submitted that the National Day of Mourning was never considered a holiday. Other than the two statements referred to above, there was no evidence that it was ever declared or treated as a holiday.

33. Finally, the Employer turned to the term “Federal Government”. As set out above, the Employer argued that there were only two instances where the National Day of Mourning was referred to as a holiday. One was in a statement by the Prime Minister and one was in statement by the Office of the Chief Human Resources Officer of the Government of Canada.

34. According to the Employer, the Union's interpretation of "Federal Government" is far too broad. The Employer argued that the Union was attempting to equate either the Prime Minister or the Office of the Chief Human Resources Officer of the Government of Canada with the Federal Government. In a parliamentary democracy such as exists in Canada such an equation cannot withstand scrutiny. Had the parties intended to include statements by the Prime Minister (or the Office of the Chief Human Resources Officer of the Government of Canada) in Article 15.01 they could have included language to that effect. They did not. As such, the Union's interpretation must be rejected.

UNION REPLY

35. In reply, the Union reiterated that on its face Article 15.01 refers to holidays not statutory holidays. Accordingly, there is no need for the National Day of Mourning to have been legislated for it to qualify as a holiday under these Collective Agreements. It is sufficient that the Prime Minister proclaimed the National Day of Mourning to be a holiday.

ANALYSIS

36. Ultimately this is contract interpretation case. The language in Article 15.01 establishes that for a day to be considered a holiday it must be "proclaimed" by one of the levels of government. The key word is "proclaimed". Giving "proclaimed" its normal and ordinary meaning, and recognizing that different words have different meanings, I am satisfied that the term proclaimed includes a link or connection to a legislative process.

37. Proclaimed only appears in Article 15.01 of both Collective Agreements. It is not used anywhere else in the Collective Agreements. As such the parties must have intended to give the word a specific meaning (and a meaning distinct from other terms used in the collective agreements).

38. In addition, Article 15.01 indicates that for a day to become a holiday it must be "proclaimed" by one of the levels of government. The requirement that a holiday be proclaimed by a level of government under Article 15.01 is a strong indication that the meaning of the term "proclaimed" includes a link to the legislative process.

39. The Employer's interpretation, linking the concept of "proclaimed" to the legislative process, is also consistent with the existing jurisprudence. All of the cases put before me link the concept of a day being "proclaimed" a holiday with the end of the legislative process. This further supports the conclusion that the meaning of the term "proclaimed" in the context of the

holiday provisions of these Collective Agreements requires a connection to the legislative process (to be precise the end of that process).

40. The Union correctly points out that Article 15.01 does not state "Statutory Holidays". To read that term into the Article would not be appropriate. That being said, I am satisfied based on the normal and ordinary meaning of "proclaimed", and the fact that the term is used only in this Article (in both Collective Agreements), that the parties intended a specific meaning that included a link to the legislative process. As such there is no need to read a term into Article 15.01. It is already there.

41. The Union seeks to give the term "proclaimed" an overly-broad interpretation. The Union's interpretation removes any particular meaning from "proclaimed" and effectively reduces it to a synonym of "states", "notifies" or "indicates". In other words, based on the Union's interpretation it is sufficient for the Prime Minister to have stated, notified or indicated that the National Day of Mourning would be a holiday (or the Office of the Chief Human Resources Officer of the Government of Canada). All of those words are found in these collective agreements. That the parties chose to use "proclaim" instead of any of the other possible alternatives satisfies me that it must mean something distinct from those terms (or other similar terms). In short, it is not enough for the Prime Minister (or another governmental entity) to state that a day will be holiday. Proclaim must mean something more and I am satisfied that the "more" in this case is a link to the legislative process.

42. I am also satisfied that there is very little evidence to support the conclusion that the National Day of Mourning was treated as a "holiday". I agree with the Employer that there are only two examples before me of it being referred to as a holiday: the Prime Minister's statement during a press conference on September 13 and the directive issued by the Office of the Chief Human Resources Officer of the Government of Canada on September 16, 2022. To the extent that the Office of the Chief Human Resources Officer of the Government of Canada referred to it as a holiday, it also stated that that designation only applied to individuals "employed by the core public administration (CPA)". There was no evidence before me that the members of these bargaining units form part of the CPA.

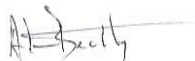
43. In addition, the National Day of Mourning was not made a holiday under any legislation. Nor was it referred to as a holiday in the Canada Gazette. In short, while not determinative, I am satisfied that the overall paucity of evidence referring to the National Day of Mourning as a holiday further supports the Employer's position.

44. Finally, I am also satisfied that there is no evidence that the Federal Government (or any other level of government) treated the National Day of Mourning as a holiday. Taken at its highest, the Union relies on a statement by the Prime Minister and a statement by the Office of the Chief Human Resources Officer of the Government of Canada. I agree with the Employer that neither of those entities constitute the Federal Government. Had the parties intended to expand the scope of who could proclaim a holiday they could have included language to that effect. That they didn't supports the conclusion that the Federal Government is a narrower concept than that being relied upon by the Union.

45. Accordingly, and for all of the foregoing reasons, I am satisfied that the National Day of Mourning does not constitute a holiday under Article 15.01 of the Collective Agreements and that the Employer did not violate the Collective Agreements in not treating them as such.

The grievances are therefore dismissed.

Dated at Toronto, Ontario, this 30th day of January 2023.



Adam Beatty, Arbitrator