IN THE MATTER OF AN ARBITRATION UNDER THE
***LABOUR RELATIONS CODE,* RSBC 1996 C. 244**

BETWEEN

PROVIDENCE HEALTH CARE (St. Paul's Hospital)

Employer

AND

HEALTH SCIENCES ASSOCIATION OF BRITISH COLUMBIA

Union

(Nancy Hay – Special Leave Grievance)

ARBITRATOR:	Lisa Southern
COUNSEL:	Adam Alteen for the Employer Lindsay Waddell Natasha Edgar For the Union
DECISION:	June 11, 2021

I. INTRODUCTION

1 This dispute concerns the interpretation of Article 20.02(c) of the *Provincial Agreement between Providence Health Care (St. Paul's Hospital) and the Health Sciences Association of BC* (the "Provincial Agreement"). The dispute involves the interaction between the Special Leave provisions of the Provincial Agreement and travel pay entitlement.

2 The parties seek an interpretation of Article 20.02(c) to determine whether the Grievor is entitled to Special Leave and travel pay when she travelled to visit her imminently palliative father on September 14, 2017. The parties seek additional clarification on the applicability of Article 20.02(c) as the Grievor was on previously approved Union Leave on September 14, 2017.

3 The parties have agreed that I have jurisdiction to determine this matter.

4 No hearing was required. The parties provided written submissions, an agreed statement of facts, and a joint book of documents.

II. FACTS

5 These facts are not in dispute. The parties agreed to the following:

1. Nancy Hay (the "Grievor") is a permanent full-time social worker with the Employer. She has been working for the Employer since 2005.

2. The Grievor sits on the Health Sciences Association's Board of Directors as the Region 6 Director. She was elected to that position in 2016.

3. On August 16, 2017, the Employer approved the Grievor's request for Union Paid Leave pursuant to Article 5.14 of the Provincial Agreement in order to attend a Health Sciences Association ("HSA") Board Meeting on September 13 and 14, 2017. A copy of the Grievor's completed Union Leave Request Form is at Tab 5 of the Joint Book of Documents. An email from a representative of the Employer approving the Grievor's Union Leave for September 13 and 14, 2017 is found at Tab 6 of the Joint Book of Documents.

4. Article 5.14 reads:

   > *5.14 Executive Council Member Members of the Union executive may apply in writing to the Employer for leave of absence to attend to Union business. The employee will give reasonable notice to minimize disruption of the department. The Employer will make every reasonable effort to grant such leave and, except where the employee's absence will significantly limit the operational capabilities of the department, the leave will be granted.*

5. In early August 2017, the Grievor's father was diagnosed with pancreatic cancer.

6. The Grievor's father lived in Sackville, New Brunswick.

7. The Grievor took a week of vacation to visit her father in late August 2017. She returned to Vancouver on September 5, 2017.

8. Shortly after the Grievor returned from visiting her father in New Brunswick, on or about September 10, 2017, she learned that her father was imminently palliative.

9. Upon learning her father's palliative diagnosis, the Grievor booked a flight to New Brunswick in order to be with her father. That flight was scheduled to leave in the afternoon of September 14, 2017.

10. The Grievor did not advise the Employer of her intention to depart the HSA Board Meeting for which she had been approved for Union Leave early or her travel to New Brunswick on September 14, 2017.

11. On September 14, 2017, the Grievor attended the HSA Board Meeting in New Westminster for which she had been granted leave.

12. The Grievor attended the morning portion of the HSA Board Meeting on September 14, 2017. She left after the morning portion of the meeting to catch her flight to New Brunswick.

13. On September 14, 2017, at approximately 1:00 p.m., the Grievor flew to New Brunswick to be with her father. The Grievor had a stopover in Montreal. She arrived in Sackville, New Brunswick after midnight on September 15, 2017.

14. The Grievor's father died on September 17, 2017.

15. The Grievor did not attend her scheduled shifts on September 15 and September 18 to 22, 2017.

16. On September 25, 2017, the Grievor requested pay out of her Special Leave bank for the afternoon of September 14, 2017. She also requested Special Leave for September 15, 2017, and Compassionate Leave for September 18 to 22, 2017. Further information was provided on October 18, 2017, with respect to the requests for Special Leave under Article 20.02(c) for September 14 and 15, 2017.

17. On October 12, 2017, Joanne Schwartz inquired by email with the Employer about the Grievor's Special Leave request. A copy of that email is found at Tab 3 of the Joint Book of Documents.

18. The Employer granted the Grievor Special Leave pursuant to Article 20 for September 15, 2017 only.

19. The Employer granted the Grievor Compassionate Leave pursuant to Article 15 for September 18 to 21, 2017. A copy of the emails between the Employer and the Grievor with respect to her Compassionate Leave and Special Leave requests are found at Tab 4 of the Joint Book of Documents.

20. Article 15, Compassionate Leave, reads:

> *15.01 Compassionate leave of absence of twenty-one point six (21.6) [twenty-two point five (22.5) effective September 1, 2013] working hours with pay to compensate for loss of income for scheduled work days shall be granted by the Employer upon request of a regular employee in the event of the death of a spouse, son, daughter, mother, father, (or alternatively stepparent, or foster parent) sister, brother, mother-in-law, father-in-law, legal guardian, legal ward, or grandparents, step-child, grandchild and relative permanently residing in the employee's household or with whom the employee permanently resides.*
>
> *15.02 Up to fourteen point four (14.4) [fifteen (15) effective September 1, 2013] hours with pay shall be granted for travelling time when this is warranted in the judgement of the Employer.*
>
> *15.03 Every effort will be made to grant additional compassionate leave of absence without pay if requested by the employee.*
>
> *15.04 Compassionate leave shall not apply when an employee is on any unpaid leave of absence.*

21. The Employer denied the Grievor's application for Special Leave for the September 14, 2017 half day of travel to provide care to her father.

22. The Employer paid the Grievor for September 14, 2017 as Union Paid Leave and subsequently invoiced the Union for reimbursement for this day.

23. Special leave is an earned benefit under the Provincial Agreement.

24. As per Article 20 of the Provincial Agreement, Union members earn 3.75 Special Leave hours every four weeks, to a maximum of 144 Special Leave hours.

25. The accumulation of Special Leave hours is addressed at Article 20.01 of the Provincial Agreement:

> *20.01 Accumulation*

An employee shall earn special leave credits with pay to a maximum of 144 [150 hours effective September 1, 2013] hours at the rate of 3.6 [3.75 effective September 1, 2013] hours every four weeks. Notwithstanding the foregoing, employees with accumulated special leave credits in excess of 144 [150 hours effective September 1, 2013] hours (20 days X 7.2 [7.5 effective September 1, 2013] hours) as of the first pay period prior to April 1, 2011, up to and including the previous maximum of 187.5 hours (25 days X 7.5 hours), shall retain the accumulated balance to their credit. Where this accumulated credit exceeds 144 [150 hours effective September 1, 2013] hours, no further credit shall be earned until the accumulated balance is reduced below 144 [150 hours effective September 1, 2013] hours, in which event the accumulation of special leave credits shall be reinstated, but the accumulated balance shall not again exceed 144 [150 hours effective September 1, 2013] hours.

26. The application of Special Leave is addressed in Article 20.02. Article 20.02 allows members to use their Special Leave Bank to provide care to an immediate family member [20.02(c)], to add 7.5 additional hours to compassionate (bereavement) leave [20.02(d)], and for travel associated with compassionate (bereavement) leave [20.02(e)].

27. Article 20.02 reads:

20.02 Application

Special leave shall be granted as follows:

a) marriage leave – 36 [37.5 effective September 1, 2013] hours;

b) to attend child birth or adoption-related child placement, for employees who are "Other Parents" as defined in Article 18.02(C) – 7.2 [7.5 effective September 1, 2013] hours;

c) to provide care to an immediate family member who has a serious illness – up to 14.4 [15 hours effective September 1, 2013] hours at one time;

d) leave of 7.2 [7.5 effective September 1, 2013] hours may be added at one time to 21.6 hours compassionate leave;

e) leave of 7.2 [7.5 effective September 1, 2013] hours may be taken for travel associated with compassionate leave.

28. After the Employer denied the Grievor's request for Special Leave for the afternoon of September 14, 2017, the Union reimbursed the Employer for those hours as Union Paid Leave.

29. The Union grieved the Employer's denial of the Grievor's request for Special Leave for the afternoon of September 14, 2017.

III. POSITION OF THE UNION

6 The Union submitted that the Grievor was entitled to Special Leave when she travelled to visit her imminently palliative father on September 14, 2017. The Union argued that travel time was implicitly captured by Article 20.02(c) of the Provincial Agreement and that approved Union Leave did not bar or limit the Grievor's right to access Special Leave entitlements. The Union seeks repayment from the Employer of the four hours of Union Leave paid to the Grievor.

Special Leave Generally

7 The Union relied on *Fraser Health Authority v Health Sciences Assn of British Columbia (Special Leave Grievance),* [2012] BCCAAA No 64 (Brown) and *Fraser Health Authority (Surrey Memorial Hospital) v Health Sciences Assn of British Columbia (Special Leave Grievance),* [2017] BCCAAA No 129 (Hall) to establish the purpose of Special Leave entitlements, the standard application and interpretation of this provision, and the burden of proof that is triggered by this provision.

8 The Union stated that Special Leave is an earned benefit, not a gratuitous or discretionary benefit. The mandatory nature of the benefit subjects the Employer's decision to review under the correctness standard. The Union also identified historical context to suggest that the language of the Article was broadened to allow for greater employee entitlements.

9 The Union argued that the onus was on the Grievor to demonstrate that their individual circumstances fell within the scope of the Article, and that it was the Employer's duty to seek additional information from the Grievor when it deemed the information provided as insufficient. The Union further indicated that the Employer's decision was restricted to the information that was in the parties' knowledge at the time the Special Leave request was made.

10 The Union submitted that the concept of "care" as stated in the Article should be interpreted broadly as the current state of the health industry encompasses holistic practices, such as the provision of emotional care of immediate adult family members.

11 The Union submitted that the Grievor satisfied the three stipulated requirements under the Article, entitling her to Special Leave. Namely, the Grievor was (a) providing care, (b) to an immediate family member, and (c) the family member had a serious illness. The Union further stated that nothing in the Provincial Agreement prohibited the Grievor from simultaneously using her Special Leave entitlements and her Union Leave entitlements.

12 The Union argued that travel must be covered because it is a necessary component of providing care under Article 20.02(c). It relied on *Parkland Regional Health Authority v Manitoba Nurses' Union*, [2007] MGAD No 33 ("*Parkland")*, where a Manitoba panel determined that the inclusion of travel time to care for a sick relative was not unreasonable where a family member living in a different city had to travel to a family member in need in order to provide them care. The Union further raised that the panel reached this decision despite the special leave provisions of the collective agreement being silent on entitlement to travel time.

13 The Union also cited *Flin Flon General Hospital Inc* (Re), [1992] MGAD No 37 ("*Flin Flon*") and *Russell and District Personal Care Home Inc and Canadian Union of Public Employees, Local 1837,* (November 22, 1979, unreported, Parkinson) ("*Russell*"), to support that travel should be included when reasonable and necessary.

14 The Union stated that the travel claimed for September 14, 2017 had a sufficient nexus to the care of the Grievor's palliative father. It stated that the facts were similar to those of *Parkland* where travel was considered a reasonable and "absolutely necessary" component of the leave in the circumstances. As such, the Union submitted that the Grievor was entitled to Special Leave pay inclusive of travel time.

15 The Union submitted that Special Leave was a right, and as such, the previously approved Union Leave did not bar the Grievor from Special Leave entitlements as the Provincial Agreement does not expressly restrict the Grievor from converting Union Leave to Special Leave. The Union particularly stated that Special Leave was often requested in emergent situations, therefore, the provision should not be interpreted narrowly. The Union's position was that the Grievor should be able to convert her Union Leave into a Special Leave.

IV. POSITION OF THE EMPLOYER

16 The Employer submitted that it was not required to consider the Grievor's application for Special Leave because the Provincial Agreement does not expressly include a right to convert Union Leave to Special Leave. Alternatively, the Employer stated that the Grievor was not entitled to Special Leave travel pay because this right is not expressly included in the Article. In the further alternative, the Employer submitted that even if travel time was included under the Provincial Agreement, the Union had failed to provide evidence to establish that the Grievor was entitled to it. The Employer held that the Union was not entitled to recover the Union Leave monies that were issued to the Employer for September 14, 2017 (the date on which the Grievor's was required to travel).

17 The Employer relied on *Pacific Press v Graphic Communications International Union, Local 25-C,* [1995] BCCAAA No 637 (Bird) and *Health Employers Assn of British Columbia v Hospital Employees' Union,* [2002] BCCAAA No 130 (Gordon) to support the principle that collective agreements must not be interpreted too broadly.

18 The Employer also relied on *Health Employers' Assn of British Columbia v Hospital Employees' Union (Union Leave "Lieu Day" Grievance),* [2016] BCCAAA No 26 (Hall) ("*Lieu Day*"). In this case, the issue was whether employees were entitled to union leave on a scheduled workday for having transacted union business on a scheduled

day off. The Employer relied upon this case to argue that the right of an employee beyond liberation from active service requires the clearest of language in the collective agreement. The Employer stated that the Grievor could not be retroactively liberated from active service when she was already liberated by another form of leave which she had already commenced.

19 The Employer stated that the Provincial Agreement expressly addresses the conversion of non-discretionary sick and vacation leaves. As such, the Union was attempting to read in an entitlement that was not expressly provided for in the Provincial Agreement. The Employer argued that conversion of a Union Leave into some other type of leave was not discussed during bargaining and was not the mutual intention.

20 The Employer relied upon *Re Corporation of the City Of Toronto and Canadian Union of Public Employees, Local 43,* [1981] OLAA No 68 ("*City of Toronto*"), where an employee was denied the conversion of vacation to bereavement leave. The arbitrator denied the conversion because the collective agreement did not allow employees to participate in the scheduling of their vacation. The Employer stated this case supported the conclusion that an employee could not convert a previously approved leave.

21 The Employer relied on *Board of Education of School District No 20 (Kootenay-Columbia) v Canadian Union of Public Employees, Local 1285 (Sick Leave Grievance),* [2013] BCCAAA No 97 (Kinzie); *Unisource Canada, Inc v Communications, Energy & Paperworkers Union of Canada, Local 1124 (Manness Grievance),* [1995] BCCAAA No 89 (Blasina); and *Cowichan District Hospital and BCNU, Re,* (July 5, 1989), (unreported) (HA Hope, QC) to support its submission that, in cases where the collective agreement is silent on the issue of conversion, an employee's leave is characterized by the nature of the initial reason that caused the absence, as a conversion would have significant implications on the Employer. The Employer submitted that Union Leave was the fundamental reason for the Grievor's absence on September 14, 2017, and that the Union did not oppose the Grievor's early departure on September 14, 2017 and did not raise concerns with reimbursing the Employer for the Union Leave on this day. As such, the Grievor was not entitled to retroactively convert the Union Leave to Special Leave.

22 In the alternative, the Employer stated that travel was not a benefit included in Article 20.02(c) of the Provincial Agreement. The Employer stated that the inclusion of travel represented a significant broadening of the benefit. Any further entitlements must be set out in clear and unequivocal language.

23 The Employer stated that the arbitral jurisprudence relied upon by the Union could be easily distinguished from the case at hand. The Employer stated that the provisions considered by the Manitoba panel in *Flin Flon* were so different from the Provincial Agreement before us that it could not assist with interpreting this matter. The Employer also stated that *Parkland*, another Manitoba case, was not applicable because the conclusion of the board was contrary to widely accepted interpretive arbitral principles.

24 The Employer submitted that the parties turned their minds to travel time as evidenced by 20.02(e) which explicitly provides travel time for compassionate leave granted under 15.02 of the Provincial Agreement. They did not agree to a similar explicit travel time provision for special leave under 20.02(c). These provisions specifically address travel associated with compassionate leave. The Employer argued that the failure to expressly mention travel in the Special Leave provisions meant that the Grievor was not entitled to travel benefits.

25 The Employer identified that the language of the Provincial Agreement which permits travel is only associated with compassionate care leave, no matter how reasonable or necessary travelling was to provide care. It further submitted that the parties would have explicitly included this entitlement in the Special Leave provision if it was its intention. Ultimately, the Employer submitted that the right to access Special Leave and associated benefits must be expressly set out in the Provincial Agreement.

26 Finally, the Employer argued that the Union failed to provide evidence showing that the travel was necessary during work hours as it was unavailable at other times. As such, the Union was not entitled to repayment for any of the hours reimbursed to the Employer.

V. UNION REPLY

27 The Union replied that the Employer's caselaw submissions were of limited value because none of the cases addressed Special Leave. The Union further argued that the onus was on the Employer to negotiate in bargaining an

exception to Special Leave because of its mandatory nature. The Union added that the Employer was required to provide Special Leave to the Grievor and did not.

28 The Union also relied on *Unisource Canada, Inc v Communications, Energy & Paperworkers Union of Canada, Local 1124 (Manness Grievance),* [1995] BCCAAA No 89 (Blasina) to argue that the principle of *expressio unius est exclusio alterius* is not considered reliable for contract interpretation.

29 In response to the argument that the Grievor could have travelled at alternate times, the Union stated the Grievor's situation was urgent and she was not required to provide evidence that other flights, which would have been more convenient for the Employer, were available to her.

VI. ADDITIONAL SUBMISSIONS

30 The Union sought to rely on an arbitration award that was published after submissions were closed on this matter. The decision involved the same parties and the Provincial Agreement. I allowed further submissions from the parties to address *Providence Health Care v Health Sciences Assn (Hay Grievance),* [2020] BCCAAA No 94 (Nichols) (the "*Providence Decision*"). In that case, Arbitrator Nichols considered circumstances where a Vacation Leave was converted to a Union Leave. The Union argued that a conversion from Union Leave to Special Leave was permissible under Article 23.10 (use of sick leave instead of vacation in certain circumstances), as the Grievor was not obligated to request additional leave under Article 5.14.

31 Additionally, the Union particularly submitted that the Union Leave provisions of the Provincial Agreement has strong mandatory language, with only limited exceptions. It held that the provision is not consistent with the nature and purpose of the Grievor's absence on September 14, 2017, as such, it should not be triggered.

32 Finally, the Union added that, similar to the case at hand, the Employer in the *Providence Decision* argued that the Grievor could not take Special Leave because she was already booked on Union Leave. The arbitrator rejected the Employer's argument and found that the language of the Union Leave Provision was mandatory, which the Employer was required to consider in its decision-making. The Union submitted that the Employer is held to the same standard in this case.

33 The Employer argued that the *Providence Decision* is distinguishable from the case at bar on two grounds:

1. The facts, and thus the issues, are materially different in that the grievance concerned a refusal for an application for Union Leave based on the Grievor's anticipated scheduled vacation. The case at bar concerns the application to replace Union Leave already taken with Special Leave.

2. Article 5.14 is different in its language, purpose, and jurisprudential treatment than Special Leave or, indeed, any other form of leave. This difference played a critical role in Arbitrator Nichols's decision.

34 The Employer submitted that in the *Providence Decision*, the Grievor applied for Article 5.14 Union Leave in May of 2018 for dates in August of 2018 for which she was already scheduled to be on vacation. The Employer denied the leave request because of the anticipated vacation.

35 In the *Providence Decision* the Employer argued that the Grievor was applying to unilaterally cancel her vacation as there was no need for a Union Leave of absence, which is unpaid, when the Grievor was scheduled to be off. The Arbitrator did not agree, finding that regardless of the Grievor's "anticipated schedule", Article 5.14 required the Employer to consider the request. The Employer submitted that this case does not stand for the proposition that the Grievor is entitled to substitute one form of leave for another; only that the Employer is required to consider a request for Union Leave regardless of the employee's anticipated schedule and, given the language and purpose of the Article, to make every reasonable effort to accommodate the request.

36 The Employer sought to distinguish the Providence Decision on the basis that the issue is the Grievor's entitlement to replace one form of leave, which had already commenced, with another. The Employer says these facts were not before Arbitrator Nichols.

VII. DECISION

40 There are three issues to decide.

41 First, can the Grievor convert the leave from Union Leave to Special Leave.

42 Second, is travel part of care and therefore captured by Special Leave.

43 Third, was the travel necessary during work hours.

44 In reaching my decision, I have considered the authorities cited above and applied the well-established principles that apply to collective agreement interpretation.

45 My task is to determine the mutual intention of the parties, using the language of the Provincial Agreement as the primary resource. The rules of interpretation are clearly set out by Arbitrator Nichols in the *Providence Decision*:

1. All words should be given meaning.

2. A harmonious interpretation is preferred over one that places provisions in conflict.

3. Inconsistencies and absurd results should be avoided.

4. Ordinarily words should be given their plain meaning, unless there is some indication that a special meaning was intended.

5. It is important to consider the purpose and the context of the provision(s) in issue.

6. The bargained terms should not to be read in isolation; rather, the terms, provisions, articles and collective agreement should be considered as a whole.

7. When deciding between two possible interpretations, reasonableness and/or the practical labour relations implications can provide assistance.

46 The relevant provisions in the Provincial Agreement are:

> *5.14 Executive Council Member*
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> *Members of the Union executive may apply in writing to the Employer for leave of absence to attend to Union business. The employee will give reasonable notice to minimize disruption of the department. The Employer will make every reasonable effort to grant such leave and, except where the employee's absence will significantly limit the operational capabilities of the department, the leave will be granted.*
>
> *15.01 Compassionate Leave*
>
> *Compassionate leave of absence of twenty-one point six (21.6) [twenty-two point five (22.5) effective September 1, 2013] working hours with pay to compensate for loss of income for scheduled work days shall be granted by the Employer upon request of a regular employee in the event of the death of a spouse, son, daughter, mother, father, (or alternatively stepparent, or foster parent) sister, brother, mother-in-law, father-in-law, legal guardian, legal ward, or grandparents, step-child, grandchild and relative permanently residing in the employee's household or with whom the employee permanently resides.*
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> *15.02 Up to fourteen point four (14.4) [fifteen (15) effective September 1, 2013] hours with pay shall be granted for travelling time when this is warranted in the judgement of the Employer.*
>
> *15.03 Every effort will be made to grant additional compassionate leave of absence without pay if requested by the employee.*
>
> *15.04 Compassionate leave shall not apply when an employee is on any unpaid leave of absence.*

20.02 Application

Special leave shall be granted as follows:

a) marriage leave – 36 [37.5 effective September 1, 2013] hours;

b) to attend child birth or adoption-related child placement, for employees who are "Other Parents" as defined in Article 18.02(C) – 7.2 [7.5 effective September 1, 2013] hours;

c) to provide care to an immediate family member who has a serious illness – up to 14.4 [15 hours effective September 1, 2013] hours at one time;

d) leave of 7.2 [7.5 effective September 1, 2013] hours may be added at one time to 21.6 hours compassionate leave;

e) leave of 7.2 [7.5 effective September 1, 2013] hours may be taken for travel associated with compassionate leave.

47 The *Providence Decision* is helpful in its clear articulation of the significance of the Union Leave provisions. Arbitrator Nichols confirmed that Union Leave is an "important entitlement that attracts liberal interpretation, care should be exercised before entitlements negotiated elsewhere in the Provincial Agreement are used to dilute its protections". It includes mandatory language chosen by the parties.

48 Similarly, Article 20.02 has mandatory language. Discretion is not left to the Employer to grant leave; as long as the employee establishes the leave is required on the basis of one of the enumerated grounds, leave must be granted.

49 Simply put, the Employer stated that once the leave was granted for Union Leave, it could not be changed, regardless of circumstance or reason. It stated in order for the employee to have the right to change the nature of the leave from Union Leave to Special Leave, language expressly permitting conversion is needed.

50 I disagree with both submissions. To interpret the language of both articles in the manner urged by the Employer would not be consistent with the mandatory language of Article 20.02. I am also concerned it would "dilute" the Union Leave provisions in the sense of it being used where its purpose (serving union business) could not be fulfilled for personal circumstances of the employee.

51 There is no dispute that during the afternoon of September 14, 2017, the Grievor was not attending to Union business, but had an understandable change in her priorities from attending to Union business to getting to her father who was dying. Her priorities and activities changed on that day, and to apply the Employer's interpretation to the circumstances undermines both the language and intentions of Article 5.14 and Article 20.02.

52 I find this conclusion is further supported by the language of 15.04 Compassionate Leave, where the prohibition from conversion was specifically addressed in the context of unpaid leaves of absence. In 15.05, the parties agreed that Compassionate Leave "shall not apply when an employee is on any unpaid leave of absence".

53 Given the mandatory language of the Special Leave provisions, I am persuaded it would take specific language prohibiting its application when an employee was on another type of leave, not specific language permitting conversion, as the Employer argued.

54 My answer to the first question is that the Grievor can convert the leave from Union Leave to Special Leave.

55 The next question is whether travel is part of care and therefore captured by Special Leave.

56 At issue is the definition of "to provide care to an immediate family member who has a serious illness". The Employer argues that the language does not include travel that is required in order to provide care, and the Employer primarily relied on 20.02(e), where travel has been specifically addressed. The Employer argued that if 20.02(c) includes travel, it would have been explicitly stated.

Special leave shall be granted as follows:

a) *marriage leave – 36 [37.5 effective September 1, 2013] hours;*

b) *to attend child birth or adoption-related child placement, for employees who are "Other Parents" as defined in Article 18.02(C) – 7.2 [7.5 effective September 1, 2013] hours;*

c) *to provide care to an immediate family member who has a serious illness – up to 14.4 [15 hours effective September 1, 2013] hours at one time;*

d) *leave of 7.2 [7.5 effective September 1, 2013] hours may be added at one time to 21.6 hours compassionate leave;*

e) *leave of 7.2 [7.5 effective September 1, 2013] hours may be taken for travel associated with compassionate leave.*

60 In reaching my decision about the correct interpretation of the language, I found the changes in the language of Article 20.02(c) to be helpful. The current language of Article 20.02(c) does not restrict the leave to care for individuals who reside with the employee. Rather, the current language continues to restrict the categories of person who needs the care, but does not require the person reside in the home of the employee. This is different than the previous language of Article 20.02(c) in the Provincial Agreement which was:

> *Special leave shall be granted as follows:*
>
> *(c) for serious illness of a spouse or child, residing with the employee and when no one at the employee's home other than the employee is available to care for the sick person and provided that the employee has made every effort to provide alternative care - up to 14.4 hours at one time;* [Emphasis added.]

61 To accept the argument of the Employer, I would have to give no meaning to the changes in language to Article 20.02(c).

62 "To provide care" may require an individual to travel to the family member's residence or place of care. The interpretation urged by the Employer is not harmonious with the language, and would result in an absurd outcome, where someone who, for example, had to drive 4 hours to Kelowna, or 1.5 hours to Whistler from the Lower Mainland, would not be able to claim the leave for that time.

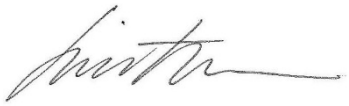
63 As noted above, "when deciding between two possible interpretations, reasonableness and/or the practical labour relations implications can provide assistance", and I have applied these considerations in this case.

64 The final question is whether there were other flights the Grievor could have taken. The cases establish that the Employer has the onus of requesting further information if it questions a leave. That was not done here. Further, I accept the Union's submission that these were urgent and emergent circumstances, and the employee's choices were reasonable in such circumstances.

65 In short, the Grievance succeeds.

66 Accordingly, I conclude the Employer has failed to comply with Article 20.02(c) of the Provincial Agreement. As a result, the Grievance succeeds. I leave it to the parties to address remedy, but retain jurisdiction if they are unable to agree.

Dated at the City of North Vancouver in the Province of British Columbia the 11th day of June, 2021.



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Lisa Southern