

IN THE MATTER OF AN ARBITRATION, PURSUANT TO THE
B.C. LABOUR RELATIONS CODE, RSBC 1996 c. 244

BETWEEN:

BC HYDRO & POWER AUTHORITY

(the “Employer”)

AND:

MOVEUP – LOCAL 378,
CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES’ UNION

(the “Union”)

AWARD

(Dental-Medical Appointments and RWWL Days Interpretation Grievance)

ARBITRATOR: Allison Matacheskie

APPEARANCES: Kas Pavanantharajah and Alex Bondy, for the Union
Alissa Demerse and Kate Jones, for the Employer

SUBMISSIONS: January 23, February 13, March 10 & 20, 2023

AWARD: April 13, 2023

I. INTRODUCTION

1. The issue in this case is the interpretation of Article 15.09(d) of the Collective Agreement which provides that employees can take up to two hours of leave for medical or dental appointments without loss of pay and can use sick leave for the balance where the appointment is more than two hours. The parties agree employees are required to make every effort to schedule such appointments outside of scheduled work hours or on Reduced Work Week Leave (“RRWL”). The dispute in this case is whether the employee can use sick leave for any time in excess of two hours when the Employer requires the use of RWWL.

II. FACTS

2. In the 2012-2014 Collective Agreement, Article 15.09 provided:

Employees who go for medical and dental appointments will not have any such leave deducted from their sick leave or their pay for periods of 2 hours or less. Appointments beyond 2 hours will result in the excess over 2 hours being deducted from sick leave or from pay (if paid sick leave is exhausted). Travel time of up to 2 days shall be granted where required for medical reasons, for travel to remote medical specialists or facilities. Time off for travel shall be treated as leave of absence with pay. (Refer to Memorandum of Understanding #9).

3. Memorandum of Understanding #9 is in a letter format from the Union to the Employer dated November 8, 1983 and states:

On behalf of the Union, I can assure you that we do not and will not condone the abuse of Article 15.09 of the Collective Agreement which has been negotiated to provide time off without loss of pay for "legitimate" medical and dental appointments.

The Union agrees that the Employer is entitled to as much notice as possible to facilitate replacement staff and scheduling of work. All employees should cooperate by giving as much notice as they can.

Further, we would encourage our members to make every effort to schedule their appointments on RWWL days, near the end of a working day or lunch time to help minimize the impact of medical or dental appointments.

4. In the 2014 bargaining, the parties incorporated MOU #9 into Article 15.09 as follows:

15.09 MEDICAL AND DENTAL APPOINTMENTS

a. Employees shall make every effort to schedule medical and/or dental appointments outside scheduled work hours or on RWWL days.

b. Only in time sensitive situations and where it is not possible to schedule medical and/or dental appointments outside of scheduled work hours or on RWWL days, should Employees schedule such appointments during regular work hours.

c. If appointments must be scheduled during work hours, Employees must provide as much notice as possible with respect to the scheduling of medical/dental appointments during work hours to facilitate the scheduling of work. In these cases Employees shall make every effort to schedule such appointments near the start of the working day, near the end of the working day, or during lunch time to help minimize the impact in the workplace.

d. Employees who go for medical and dental appointments will only code their time as sick leave for periods over 2 hours. Travel time up to 2 days shall be granted where required for medical reasons, for travel to remote medical specialists or facilities. Time off for travel shall be treated as leave of absence with pay.

5. RWWL is defined in Article 11.01 (a) of the Collective Agreement as follows:

The hours of work shall be the equivalent of 35 hours per week. This will be done by working a normal week of 5 x 7 ½ hour days and allowing 17 days a year Reduced Work Week Leave (RWWL) in lieu of the 35-hour week.

6. RWWL is a leave bank. Prior to the 2019 Collective Agreement, employees hired before 2005 were able to keep up to five unscheduled days of RWWL in their bank and were not required to cash them out at the end of the year. In the 2019 Collective Agreement, this ability to carry forward was removed and has resulted in some employees having significantly more RWWL in their banks than less senior employees. Under the terms of the current Collective Agreement, employees must schedule and use their RWWL earned during the year by March ³¹ of that year.

7. The Union filed a grievance disputing the Employer's ability to require employees to use RWWL for medical and dental appointments without exception. In May 2022, the parties reached a with prejudice settlement agreement on the interpretation and application of Articles 15.09(a) and (b) and Article 11.01(g) to resolve this grievance. It differentiates between RWWL that has been scheduled by the March 31 deadline and RWWL that has not. Under Section 4 of the Settlement Agreement, a manager cannot require an employee to reschedule their previously scheduled RWWL time to cover a medical/dental appointment. Under Section 5 to 8 of the Settlement Agreement, there is a process where the employee has the onus to establish that the unscheduled RWWL time is needed for an essential reason. It also gives an example such as keeping the time available for an unconfirmed appointment. Section 8 of the Settlement Agreement provides that:

After making the above inquiring with the employee, a manager may schedule an employee to use their remaining unscheduled RWWL time for medical/dental appointments or require the employee to schedule the medical dental appointments outside of work hours, where the manager has determined the employee has not made "every effort" to schedule medical/dental appointments outside scheduled work hours or on an RWWL day under Article 15.09(a), and/or where it is not a time sensitive situation under Article 15.09(b). The Union retains the right to grieve such a determination.

III. SUBMISSIONS

8. As this matter proceeded by written submissions, my recital of the arguments is not exhaustive. The Employer submits that Article 15.09 addresses the scheduling of medical and dental appointments during work time and employees can only code it as sick time under Article 15.09(d) if the appointment is scheduled during work time under Article 15.09(a) and (b). The Employer asserts that all provisions in Article 15.09 must be read sequentially and if the employee does not meet the requirements of Article 15.09(a) and (b), they do not obtain the benefit in Article 15.09(d).

9. The Employer relies on Article 15.03 of the Collective Agreement and MOU #6 to establish that sick leave is intended for employees suffering from injury or illness. It asserts Article 15.09 allows employees to attend time sensitive appointments during scheduled work hours with pay where they cannot be scheduled outside work hours or on RWWL. It says it is only in this discrete situation where the Employer has agreed under Article 15.09 to permit the employee to attend the appointment during work hours with any time over 2 hours being on sick time. It submits there is nothing in the Collective Agreement or Settlement Agreement that restricts the employee's manager from requiring the employee to use their unscheduled RWWL time for the entire duration of the appointment.

10. The Employer submits that its interpretation of Article 15.09(d) should be preferred as it is consistent with the parties' mutual intention and is a harmonious interpretation which fits logically within the scheme of the Collective Agreement: *Pacific Press v. Graphic Communications International Union*, [1995] BCCAAA No. 637, *BC Hydro and Power Authority v. IBEW, Local 258*, [2018] BCCAAA No. 83.

11. The Union submits that Article 15.09(d) is clear and unequivocal and applies to employees regardless of whether they satisfy the other requirements in Article 15.09. It relies on *Pacific Press* and *Imperial Oil Refinery*, [2004] 130 LAC (4th) 239. The Union asserts Article 15.09(d) consists of two stand-alone benefits without conditions: (1) when employees leave work to attend a medical or dental appointment, they can decide whether to code any time over two hours as sick time from their sick bank and (2) when they need to travel for specialist appointments, they are granted up to two days for travel time.

12. The Union submits that the Employer's interpretation of Article 15.09(d) being conditional on meeting provisions in Article 15.09(a) and (b) makes no sense when applied to the travel benefit. It says that if an employee books a specialist appointment at 5:00PM on Monday, outside scheduled work hours in a city eight hours drive away, they would not qualify for the travel benefit if the

Employer's interpretation was applied. It says the Employer's interpretation undermines the purpose of the benefit and it is significant that the Employer's submission is silent on the interpretation of the travel benefit.

13. The Union submits there is nothing in Article 15.09(d) that restricts an employee from using sick time for appointments over two hours to only when the appointment is taken and paid during work hours in accordance with Articles 15.09(a) and (b). It submits that Article 15.09(d) does not have the qualifiers "if" or "only" like other subsections of Article 15.09 and this supports that it contains stand-alone rights. The Union asserts there is no requirement that time away from work must be coded as paid time to receive this benefit of claiming sick leave time, as opposed to RWWL. It says the employee is entitled to preserve time over two hours as unscheduled RWWL that can be used later in the year for personal use.

14. The Union submits there is no ambiguity and therefore no grounds to use extrinsic evidence to interpret the Collective Agreement. It also says the Settlement Agreement is not an appropriate interpretative document as the language of Article 15.09(d) is not part of the settlement and was not contemplated during the settlement discussions. It relies on *BC Hydro and Power Authority and IBEW, Local 258*, [2016] BCWLD No. 6771 and *Nanaimo Times Ltd. and Graphic Communications International Union, Local 525-M*, BCLRB No. B40/96.

15. The Union submits that the Employer's interpretation produces absurd and unreasonable results. It says there are many senior employees who have a large amount of banked RWWL time. As the Collective Agreement was revised to stop banking RWWL time, junior employees do not have banked RWWL time. It says it is an unreasonable and unfair consequence to mandate that some employees use their earned time for medical or dental appointments while other employees can use sick time. The Union submits a fair and reasonable interpretation of Article 15.09(d) must apply equally to all employees.

16. In reply, the Employer submits that the Union's arguments about the interpretation of the travel benefit in Article 15.09(d) are outside the scope of my jurisdiction. It says the issue referred to me by the parties is the interpretation of the first sentence of Article 15.09(d) concerning the coding of time as sick leave. It concedes it is fair to consider submissions regarding the travel benefit in Article 15.09(d) but only to the extent they are considered relevant to the interpretation of the referred issue.

17. The Employer disputes the Union's assertion that there is a long-standing practice of the parties to allow RWWL time as hours and not days. It says the first time the Employer agreed to do that is

in the Settlement Agreement where it agreed employees could code RWWL time for appointments under Article 15.09 rather than full RWWL days.

18. The Employer says conditional language in Article 15.09(d) is not required to follow in sequence. It says it would be superfluous to add in Article 15.09(d) that it “only applies under Article 15.09”.

19. The Employer submits there is no absurdity in its interpretation of the travel benefit. It says if the employee has RWWL time that would cover the time required to travel to a medical appointment, they must use that time under Articles 15.09(a) and (b) and if they do not, they would be entitled to the two days paid leave of absence presuming they met all the other requirements of Article 15.09.

20. The Employer submits there is no inequity between senior and junior employees as the Employer does not look at an employee’s grand-parented bank when considering if an employee is eligible to schedule an appointment on work time under Article 15.09. It says it only considers the unscheduled RWWL time from the current year.

21. In sur-reply, the Union confirms that it is not seeking an interpretation of the travel benefit in Article 15.09(d) but only highlighting it to exemplify that Article 15.09(d) is meant to be read as a stand-alone provision.

IV. ANALYSIS

22. The object of contract interpretation is to determine the mutual intention of the parties: *Pacific Press*. The modern approach to determine the intention of the parties is to interpret the words in their entire context, harmoniously with the scheme of the collective agreement: Brown and Beatty, *Canadian Labour Arbitration, Fifth Edition*, Chapter 4 III B. 4.20.

23. The parties agree the intent of the changes to Article 15.09 in 2014 bargaining was to clarify the rights and obligations of employees under this provision, not to increase or decrease benefits. The employee’s right or benefit in the original Article 15.09 was the ability to attend medical or dental appointments during work hours without loss of pay. This is clear from the language in the 2012-2014 Collective Agreement:

Employees who go for medical and dental appointments will not have any such leave deducted from their sick leave or their pay for periods of 2 hours or less. Appointments beyond 2 hours will result in the excess over 2 hours being deducted from sick leave or from pay (if paid sick leave is exhausted).

24. There is no reference to RWWL in the original Article 15.09. However, in 1983, the parties agreed in MOU #9 that employees will “make every effort to schedule their appointments on RWWL days”. In 2014 bargaining, references to RWWL were incorporated directly into the language in Article 15.09. The rights and obligations of employees set out in Article 15.09(a), (b) and (c) are stronger and clearer than the language previously used in MOU #9. Instead of the Union agreeing to “encourage” its members to schedule appointments on RWWL, the Collective Agreement now provides that employees “shall make every effort” to schedule appointments “outside of scheduled work hours or on RWWL days”. Also, “legitimate” appointments are clarified in the Collective Agreement to mean “only in time sensitive situations and where it is not possible to schedule medical and/or dental appointments outside of scheduled work hours or on RWWL days”.

25. RWWL days are not hours of work, they are earned paid time off work. The parties treat RWWL the same as personal time in Article 15.09(a) and (b) requiring employees to make every effort to schedule appointments “outside scheduled work hours or on RWWL days”.

26. On the plain language of Article 15.09(a) and (b), if the Employer determines an employee has not made best efforts to schedule a medical or dental appointment on a day off, whether it is a normally scheduled day off or a scheduled day off for RWWL, it is entitled to deny the request for time off, subject to a Union grievance. Assuming the employee then schedules the appointment on their day off, they could not claim sick leave for any time over two hours spent at the appointment whether it was on a day not normally scheduled or on a day scheduled off as RWWL. In these circumstances, they are not leaving work to attend the appointment and sick leave does not apply.

27. The question is whether it is different when the Employer denies a request for time off for a medical or dental appointment during regular work hours because the employee has unscheduled RWWL. Can the employees claim sick time if they are required to use RWWL time for the appointment and it takes more than two hours? The Employer’s position is that the manager can schedule the entire duration of the appointment as RWWL time. The Union’s position is that the employee gets to choose to have time over 2 hours coded by their manager as sick time to preserve their earned RWWL for future use or payout during the year. The Settlement Agreement differentiates between scheduled and unscheduled RWWL for determining if the employee has made every effort to use RWWL. However, I agree with the Union that it does not expressly deal with Article 15.09(d), and I do not consider the terms of the Settlement Agreement for this decision.

28. The Union asserts that the parties intended to treat RWWL the same as work time in Article 15.09(d). It says Article 15.09(d) is a stand-alone right to code medical and dental appointment time as sick time when employees “go for” the appointments. It says that right has nothing to do with the appointments being on work time or RWWL. I do not accept this argument as the parties did not add new benefits in 2014 bargaining. The first sentence in the original Article 15.09 expressly said that employees will not have the first two hours of a medical or dental appointment deducted from their pay or sick leave. The new Article 15.09(b) says they can “schedule such appointments during regular hours” which clearly means it is paid time. I find that the first sentence from the original Article 15.09, setting out that there will be no deduction from pay or sick leave for the first two hours, was deleted as it was no longer necessary to ensure the employees were paid for appointments of two hours. The Union’s assertion is that now that Article 15.09(d) only says “Employees who go for medical and dental appointments will only code their time as sick leave for periods over 2 hours”, it is a stand-alone right to claim sick time for any time over two hours when an employee goes to an appointment on work time or RWWL. In other words, it is a stand-alone right to limit the use of RWWL to only two hours. I do not agree. I find the first sentence in the original Article 15.09 was deleted as it was not necessary to ensure the employee is paid for appointments up to two hours and not for the purpose of creating a stand-alone benefit of limiting the use of RWWL to two hours. Also, Article 15.09(d) read harmoniously in the context of the other sub-articles means that when the appointment is scheduled “during regular hours” under Article 15.09(b), it is paid time and any time over two hours will be coded as sick time under Article 15.09(d). I find this interpretation reflects the parties’ mutual intention in 2014 bargaining to incorporate the conditions in MOU #9 into the revised Article 15.09 without increasing or decreasing any employee benefits.

29. Also, there is nothing in the Collective Agreement language that differentiates between scheduled and unscheduled RWWL, and I accept the Employer’s argument that creating a limit on the amount of RWWL to be used for appointments is inconsistent with the clear language of Article 15.09(a) and (b) that every effort will be made to schedule appointments on RWWL.

30. Concerning the Union’s submissions related to the travel benefit in Article 15.09(d), I find applying the conditions in Articles 15.09(a) and (b) to the travel benefit does not lead to an absurdity. The time of the appointment is the critical determining factor to be able to claim sick leave for any time over two hours for the reasons set out above. For the travel benefit, the time of the appointment is not the critical factor but rather the travel time inclusive of the appointment. I do not agree with

the Union's assertion that an employee having a specialist appointment at 5:00PM on Monday would be denied the travel benefit unless Article 15.09(d) is a stand-alone benefit. If the employee had to travel during normal work hours on Monday to get to an appointment that meets the conditions in Article 15.09(b), and did not have RWWL available to meet the condition in Article 15.09(a) and (b), the employee would be entitled to the benefit of the paid leave of absence for the travel time under Article 15.09(d). In its reply submission, the Employer also says it would be unreasonable to apply Article 15.09 as suggested by the Union. I therefore find that the Union's arguments on the travel benefit do not persuade me to accept their interpretation of Article 15.09(d) for the purposes of this decision.

31. Concerning the Union's submission that the requirement to use unscheduled RWWL under Article 15.09 results in an unreasonable or unfair consequence, I find there is no inequity between senior and junior employees as the Employer does not look at an employee's grand-parented RWWL bank when considering if an employee is eligible to schedule an appointment on work time under Article 15.09. It confirmed it only considers the unscheduled RWWL time from the current year.

32. In conclusion, I find Article 15.09(d) is not a stand-alone benefit as it relates to coding for sick time. Based on the plain language of the Collective Agreement and a harmonious reading of all the provisions in Article 15.09, employees are not entitled to code time required for a medical appointment over two hours as sick time when the appointment is taken on RWWL if they have enough unscheduled RWWL in their bank to cover the duration of the appointment. The grievance is dismissed.

DATED at Vancouver, British Columbia this 13th day of April 2023.

A handwritten signature in blue ink, appearing to read 'A. Matacheskie', is written above the typed name.

Allison Matacheskie, Arbitrator