In the Matter of an Arbitration

Between

Bell Canada (employer)

And

Unifor (union)

And

In the Matter of Vacation Scheduling Grievances

Before: M. Brian Keller, arbitrator

Nadine Zacks, for the employer

Micheil Russell, for the union

Hearing in Mississauga October 3, 2018, March 25, April 2, 2019

AWARD

The union alleges that the employer violated article 21.09 of the collective agreement by not creating vacation schedules in accordance with that article.

The two most relevant provisions of the collective agreement read as follows:

"21.08. Vacation schedules shall be prepared each year by the Company between January 1st and February 1st with due consideration to seniority, provided, however, that such schedules shall be arranged to cause, in the judgement of the Company, the least possible interference with efficient performance of the work. In general, vacations shall commence at the beginning of the calendar week unless the demands of the work make this impossible.

21.09 For the purposes of vacation selection, each Tier D manager's group shall be considered a seniority unit."

This is not the first time I have addressed the meaning of, principally, article 21.09, but also the relevance of article 21.08 in the scheduling of vacations. The parties are both familiar with that award and both addressed it in their final submissions. I do not intend to quote from it and will say, only, that I reiterate that the results could vary from location to location, depending on the particular facts.

In the instant case, there was, at the relevant time, only one Tier D manager for a group of employees performing various tasks in parts of the 705 and 905 area codes. There was little, if any, interchange among the employees. Certainly, it cannot be said that they performed each other's work.

Additionally, they reported to separate Central Offices, had separate crew meetings and did not necessarily have transferable training or skills.

Of some relevance, but in no way determinative, is that a group of former Bell Alliant employees were repatriated back to Bell Canada after Bell Alliant was, effectively, wound up. They worked in the 705 area. What it did do was increase the number of employees working for the Tier D Manager, from 19 to 24, and expand the geographic are for which he was responsible.

Subsequently, following a query from Deborah Lonergan, who was Manager, Workforce Management, as to how he wanted to proceed with the upcoming vacation scheduling, the manager stated he wanted to have one schedule for the 905 employees and a second, separate one, for the 705 employees. That is what was implemented, and the grievances followed alleging that there should only be one schedule built for the combines 705 and 905 employees.

It is of note that on the Action program, the following is seen:

"Group: Dipasquale, Gordon J. *Subgroup; Dipasquale 905 " (*emphasis added)

The same is found for the 705 group.

Finally, I note that neither of the employer's responses to the grievance suggested that there is more than one group that reports to the Tier D Manager. In both grievance responses, the rationale for the denial is that the revised vacation scheduling process would:

" in the judgement of the Company...(cause)...the least possible interference with efficient performance of work "

That particular formulation is found, almost verbatim, at article 21.08.

The union argues that the language of the collective agreement is clear and supports its interpretation. It states that my earlier award is also clear and, on the evidence, the employer has ignored the wording of article 21.09 and that the employer has chosen to interject the need

for efficiency when the only test at article 21.09 is whether the entirety of the 905 employees and 705 employees, together, are the Tier D Manager's group.

The union also argues that it would be improper for me to not follow my previous award, given that, inter alia, this issue, and the one previously before me are effectively one and the same.

The employer argues that the previous decision was based on the particular facts of that case, as recognized in the award in which I stated that results will depend on the particular facts in each case, thus recognizing that a different result is possible.

The employer also submits that the wording of article 21.09, on its face, suggests that a Tier D Manager can have more than one group. Finally, it is submitted that it was not inappropriate to consider the question of efficiency as the employer is free to exercise its judgement in the granting of vacation leave pursuant to article 21.08.

The word group is not defined in the collective agreement. It's meaning in terms of this article, at least, therefore, has to be determined by looking at where it occurs in the collective agreement as well as any ancillary documents and evidence that could provide some insight. As counsel for the union pointed out, the parties have not used a formulation such as 'each group belonging to a Tier D Manager". Rather, the singular is used in each case in the collective agreement where there is reference to the Tier D Manager's group.

An assisting document is the exchange of email correspondence between Ms. Lonergan and Mr. Dipasquale. The question put to the manager was if there was any way to simplify the process. The is no suggestion that the modification to the vacation schedule build was based on anything but convenience.

The “Action” document referred to above clearly separates 905 and 705 into two subgroups under Mr. Dipasquale’s group.

The employer’s responses never suggested that they were denying the grievance based on anything but efficiencies.

The testimony of Ms. Lonergan as to why the employer did what it did was based on the proposition that to do it in the manner suggested by the union would be inefficient and, potentially, result in operational problems.

Based on all the above, I find that the group under Mr. Dipasquale was the entirety of his 705 and 905 employees, as submitted by the union, and that the splitting of the group for vacation scheduling purposes was based on article 21.08 and not 21.09.

The last issue that has to be dealt with is where article 21.08 fits into this. The employer, once the vacation bids are in, and the vacation schedule tentatively built, has the right, under article 21.08, to consider the final build based on the criteria in that article. In the instant case, the employer considered business efficiency as a pre-condition in the vacation scheduling process. It put the proverbial cart before the horse.

Employer counsel suggested that end result was the same. Perhaps, in my view, is the best that can be said. No one is in a position to know what the eventual result would have been if the bidding had taken place as it should have. It would have been up to the employer to consider the vacation schedule bid in view of its required efficiencies only after the bid was completed.

Depending on who bid what from where, the result could have been the same, or it could have been altogether different from what ultimately resulted.

The grievances succeed. It is declared that the employer violated the collective agreement by the manner in which it chose to apply article 21.09. Although I continue to say that the result could differ, depending on the factual circumstances, there should be more clarity now with how the employer is to proceed in the future. In particular, the employer is to look at article 21.08 only after the article 21.09 process has been completed as business efficiency plays no role in article 21.09. The employer is to proceed accordingly.

I remain seized to deal with any issue arising from this award.

Ottawa, this 8th day of April, 2019

M. Brian Keller, arbitrator